

**AGENDA FOR SPECIAL MEETING**

**KERRVILLE CITY COUNCIL**

**TUESDAY FEBRUARY 22, 2011, 6:00 P.M.**

**CITY HALL COUNCIL CHAMBERS**

**800 JUNCTION HIGHWAY, KERRVILLE, TEXAS**

**KERRVILLE CITY COUNCIL AGENDA**  
**REGULAR MEETING, TUESDAY, FEBRUARY 22, 2011, 6:00 P.M.**  
**CITY HALL COUNCIL CHAMBERS**  
**800 JUNCTION HIGHWAY, KERRVILLE, TEXAS**

**CALL TO ORDER**

**INVOCATION** offered by Reverend Stockton Williams, St. Peter's Episcopal Church.

**PLEDGE OF ALLEGIANCE TO THE FLAG** led by Post Commander Bill Cantrell & Post Adjutant Jim Myers of the CPL Jacob C. Leicht Memorial AMVETS Post 1000.

**1. VISITOR/CITIZENS FORUM:**

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

**2. PRESENTATIONS:**

2A. Proclamation honoring Partners in Ministry and the Volunteers for their hours of hard work and dedication to the community through CSI: Kerr County Program.

2B. Recognition of City Secretary Brenda Craig upon her recertification from the Texas Municipal Clerks Program at the University of North Texas.

**3. 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 council approve the following items which will grant the Mayor or City Manager the authority to execute all documents necessary for each transaction:

3A. Approval of the minutes of the city council meetings held on January 18, January 19, and January 25, 2011. (staff)

3B. Authorize execution of a contract to M & C Fonseca Construction Company for the construction of the Jackson Road/Glen Road water main project in an amount not to exceed \$450,000. (staff)

3C. A resolution amending the City of Kerrville fee schedule by revising fees charged for various services and uses provided by the city to include wholesale sewer rate and rental of the downtown pavilion. (staff)

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

I do hereby certify that this notice of meeting was posted on the bulletin board at the city hall of the city of Kerrville, Texas, and said notice was posted on the following date and time: Feb. 18, 2011 at 3:00 p.m. and remained posted continuously for at least 72 hours preceding the scheduled time of the meeting.

Brenda Craig  
City Secretary, City of Kerrville, Texas

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3D. Authorize an easement agreement with the Kerr Arts and Cultural Center for the placement of public art. (staff)

3E. A resolution authorizing the use of internal combustion engines on the lake upstream of the city's impoundment dam for a triathlon. (staff)

**END OF CONSENT AGENDA**

**4. ORDINANCES, SECOND AND FINAL READING**

4A. An ordinance amending Chapter 54 "Floods", Article II "Floodplain Management," of the Code of Ordinances of the City of Kerrville, Texas, to adopt the flood insurance study and updated flood insurance rate maps issued by the Federal Emergency Management Agency; containing a cumulative clause; containing a savings and severability clause; establishing an effective date; ordering publication; and providing other matters related to the subject. (staff)

**5. CONSIDERATION AND POSSIBLE ACTION:**

5A. Building board of adjustment and appeal's recommendation to amend the plumbing code to allow grey (recycled) water reuse systems. (staff)

5B. Direction to staff regarding amendments to the city's sign regulations in the proposed central business district. (staff)

5C. Regulation and land use control of coin operated machines commonly known as "8 liners". (staff)

5D. Recommended amendments to the Code of Ordinances regarding park regulations. (staff)

5E. Update regarding Lower Colorado River Authority Transmission Services Corporation's (LCRA-TSC) application for the proposed McCamey D to Kendall to Gillespie CREZ project (PUC Docket No. 38354). (staff)

5F. Interlocal agreements for services and joint operations between the City of Kerrville and Kerr County. (staff)

**6. INFORMATION AND DISCUSSION:**

6A. Economic update. (staff)

6B. Report by Kerrville Economic Development Corporation regarding the trip to Washington, D.C. February 10-12, 2011. (Ray Watson)

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Brenda Craig  
City Secretary, City of Kerrville, Texas

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**7. ITEMS FOR FUTURE AGENDAS**

**8. 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.

**9. EXECUTIVE SESSION:**

The city council reserves the right to adjourn into executive session at any time to discuss any of the matters listed as permitted by law including if they meet the qualifications in Sections 551.071 (consultation with attorney), 551.072 (deliberation regarding real property), 551.073 (deliberation regarding gifts), 551.074 (personnel matters), 551.076 (deliberation regarding security devices) and 551.087 (deliberation regarding economic development negotiations) of Chapter 551 of the Texas Government Code, including the following matters:

Section 551.071:

- Cause No. SA11CA0116 - FB; Louis V. Doss and Carolyn Doss, individually and d/b/a Mulugan's Pub v. Chief John M. Young, et al.; in the United States District Court for the Western District of Texas, San Antonio Division.
- Voluntary Cleanup Program No. 1793, Mooney Airplane Company, Inc. - Original Application.
- LCRA Transmission Services Corporation proposed McCamey D to Kendall to Gillespie 345-kV CREZ Transmission Line in Schleicher, Sutton, Menard, Kimble, Mason, Gillespie, Kerr, and Kendall Counties, Texas. Public Utility Commission of Texas (PUC) Docket No. 38354.

Sections 551.071, 551.072 and 551.073:

- Discuss the purchase, exchange, lease, sale, value or donation of real property from the Cailloux Foundation for use as a city hall, the public discussion of which would not be in the best interests of the city's bargaining position.

**10. ACTION ON ITEM DISCUSSED IN EXECUTIVE SESSION**

**11. ADJOURNMENT.**

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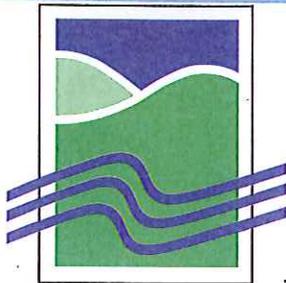
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Brenda Craig  
City Secretary, City of Kerrville, Texas

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**Agenda Item:**  
**(Staff)**

- 2A. Proclamation honoring Partners in Ministry and the Volunteers for their hours of hard work and dedication to the community through CSI: Kerr County Program.



## CITY OF KERRVILLE

MAYOR AND CITY COUNCIL

800 Junction Highway

Kerrville, Texas 78028

830-257-8000 / www.kerrvilletx.gov

### PROCLAMATION

- WHEREAS,** CSI: Kerr County (Community Service Infusion) is in its fifth year of helping neighbors in need and will take place March 26, 2011; and
- WHEREAS,** This county-wide day of community service provides help to those in need in our community with minor home repairs, painting, yard cleanup, house cleaning, window washing and more; and
- WHEREAS,** Partners in Ministry is asking for teams of volunteers to serve our "neighbors in the community" or to submit a project for review; and
- WHEREAS,** This year, the goal is to have 400 volunteers participate in Community Service Infusion; and
- WHEREAS,** The Community Service Infusion Day initiative of Partners in Ministry is "working as a community for the community."

**NOW, THEREFORE,** I, David Wampler, Mayor of the City of Kerrville, Texas, on behalf the Kerrville City Council and the City of Kerrville, do hereby honor **PARTNERS IN MINISTRY AND THE VOLUNTEERS** for their hours of hard work and dedication to the community through their **CSI: KERR COUNTY PROGRAM.**



**IN WITNESS WHEREOF,**  
I have hereunto set my hand and  
caused the Seal of the City of  
Kerrville to be affixed hereto,  
The 22nd day of February, 2011.

\_\_\_\_\_  
David Wampler, Mayor

## **Agenda Item:**

(Staff)

- 2B. Recognition of City Secretary Brenda Craig upon her recertification from the Texas Municipal Clerks Program at the University of North Texas

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

**SUBJECT:** Recognition of City Secretary Brenda Craig upon Recertification from the Texas Municipal Clerks Program

**FOR AGENDA OF:** February 22, 2011    **DATE SUBMITTED:** February 14, 2011

**SUBMITTED BY:** Todd Parton            **CLEARANCES:** Todd Parton, City Manager

**EXHIBITS:** Recertification

**AGENDA MAILED TO:**

**APPROVED FOR SUBMITTAL BY CITY MANAGER:** 

<b>Expenditure Required:</b>	<b>Current Balance in Account:</b>	<b>Amount Budgeted:</b>	<b>Account Number:</b>
\$	\$	\$	

**PAYMENT TO BE MADE TO:**

**REVIEWED BY THE FINANCE DIRECTOR:**

**SUMMARY STATEMENT**

City Secretary Brenda Craig received her third recertification from the Texas Municipal Clerks Program through the University of North Texas on January 13, 2011. The TMCP is recognized and endorsed by Section 22.074 of the Local Government Code, Vernon's Texas Codes Annotated, and mandates recertification every five years. The certification program at the University of North Texas is the only university-level professional education program for city secretaries in Texas and is the third oldest certification program in the nation.

**RECOMMENDED ACTION**

Recognize Brenda Craig upon her Texas Municipal Clerks recertification from the University of North Texas.

**Texas**  
**Municipal Clerks Certification Program**  
at the  
University of North Texas  
Awards this  
Certificate of Recertification  
To

**Brenda Glenn Craig**

signifying satisfactory completion of the prescribed course of study

*In testimony whereof we have hereunto set our hands and the official seal.*



Texas Registered  
Municipal Clerk No. 268  
Recertification Date: 12/31/2015

Presented this 13<sup>th</sup> day of January, 2011

*Mary Kaye*  
President, Texas Municipal Clerks Association, Inc.

*Debbie*  
Chair, Certification Committee

*Mr. Joyce Gray*  
Director, Texas Municipal Clerks Certification Program

**Agenda Item:**  
(Staff)

- 3A. Approval of the minutes of the city council meetings held on January 18, January 19, and January 25, 2011.

CITY COUNCIL MINUTES  
SPECIAL MEETING

KERRVILLE, TEXAS  
JANUARY 18, 2011

On January 18, 2011, the Kerrville City Council meeting was called to order by Mayor Wampler at 8:00 a.m. in the city hall council chambers, 800 Junction Highway.

MEMBERS PRESENT:

David Wampler	Mayor
R. Bruce Motheral	Mayor Pro Tem
Gene Allen	Councilmember
T. Scott Gross	Councilmember
Stacie Keeble	Councilmember

MEMBER ABSENT: None

STAFF PRESENT:

Todd Parton	City Manager
Mike Hayes	City Attorney
Kristine Ondrias	Assistant City Manager
Brenda G. Craig	City Secretary
Mindy Wendele	Director of Business Programs
Kevin Coleman	Director of Development Services
Kim Meisner	Director of General Operations

VISITORS PRESENT: List on file in city secretary's office.

EXECUTIVE SESSION:

Mr. Gross moved for the city council to go into executive closed session under Section 551.071 (consultation with attorney of the Texas Government Code; the motion was seconded by Mr. Motheral and passed 5-0 to discuss the following matter:

Section 551.071:

Lower Colorado River Authority Transmission Services Corporation's (LCRA-TSC) application for the proposed McCamey D to Kendall to Gillespie CREZ project (PUC Docket No. 38354).

At 8:04 a.m. the regular meeting recessed and council went into executive closed session at 8:06 a.m. At 9:03 a.m. the executive closed session recessed and council returned to open session at 9:04 a.m. Mayor Wampler announced that no action had been taken in executive session.

ACTION ON ITEM DISCUSSED IN EXECUTIVE SESSION:

Mayor Wampler stated council had received information from legal counsel, and the consensus of the council was to stay engaged in the process and act in the best interest of the citizens and taxpayers of Kerrville.

**ADJOURNMENT.** The meeting adjourned at 9:06 a.m.

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

\_\_\_\_\_  
David Wampler, Mayor

ATTEST:

\_\_\_\_\_  
Brenda G. Craig, City Secretary

CITY COUNCIL MINUTES  
OF A SPECIAL MEETING

KERRVILLE, TEXAS  
JANUARY 19, 2011

On January 19, 2011, a joint special meeting of the Kerrville City Council and Kerr County Commissioners' Court was called to order by Mayor David Wampler and Judge Pat Tinley at 8:00 a.m. at the Kerr County Sheriff's Department Annex, 402 Clearwater Paseo, Kerrville, Texas.

CITY COUNCIL MEMBERS PRESENT:

David Wampler	Mayor
Bruce Motheral	Mayor Pro Tem
Gene Allen	Councilmember (arrived at 8:17 a.m.)
T. Scott Gross	Councilmember
Stacie Keeble	Councilmember

KERR COUNTY COMMISSIONERS PRESENT:

Pat Tinley	County Judge
H.A. Baldwin	Commissioner (arrived at 8:26 a.m.)
Jonathan Letz	Commissioner
Bruce Oehler	Commissioner
Guy Overby	Commissioner

CITY STAFF PRESENT:

Todd Parton	City Manager
Mike Hayes	City Attorney
Kristine Ondrias	Assistant City Manager
Brenda G. Craig	City Secretary
Mike Erwin	Director of Finance
Mindy Wendele	Director of Business Programs
Kevin Coleman	Director of Development Services
Kim Meismer	Director of General Services
Robert Ojeda	Fire Chief
Mark Beavers	Assistant Fire Chief
Eric Maloney	EMS Coordinator
Tara LaMontia	Assistant to the City Manager

INFORMATION AND DISCUSSION:

Discuss joint interlocal agreements between city and county:

Judge Tinley noted the city had provided notice of termination of the existing interlocal agreements for various joint operations and services with the plan to renegotiate those agreements. He suggested the city provide a proposal for each operation along with information and cost figures justifying the city's position. He anticipated having draft proposals in place by the end of March 2011 for budget planning purposes.

Mayor Wampler suggested as a starting point that each entity provide a summary of the level of service that was available for each of the services, and both entities could then provide an anticipated level of service that they desired.

The following points were also discussed:

- Fire and EMS services were essentially a combined service with respect to employees, equipment, etc., and it would be very difficult from a functional standpoint to separate them into two separate agreements; proposed combining into one contract.
- Suggested preparing an outline of talking points rather than starting discussions with contracts already prepared.
- Under the current airport arrangement the city had been put into a lesser standing, but the city was an equal owner in the airport.
- First agree on a satisfactory level of service to be provided and then build the budget on that level of service.

The consensus was that the county and city would submit a list of specific data to be requested for each service to Mr. Parton, and he would try to provide a profile for each service by January 28, i.e. outline of the existing service level, the existing utilization of services, a baseline of the service being provided, and the associated costs. Mr. Parton should also advise what service levels were available.

Judge Tinley would provide a list of commissioners and which service they represented.

**Adjournment:** The meeting adjourned at 9:02 a.m.

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

\_\_\_\_\_  
David Wampler, Mayor

ATTEST:

\_\_\_\_\_  
Brenda G. Craig, City Secretary

CITY COUNCIL MINUTES  
REGULAR MEETING

KERRVILLE, TEXAS  
JANUARY 25, 2011

On January 25, 2011, the Kerrville City Council meeting was called to order by Mayor Pro Tem Motheral at 6:00 p.m. in the city hall council chambers, 800 Junction Highway. The invocation was offered by Heather Mitchell, First Baptist Church, followed by the Pledge of Allegiance led by William A. Cantrell, Post Commander of the CPL Jacob C. Leicht Memorial AMVETS Post 1000.

MEMBERS PRESENT:

R. Bruce Motheral	Mayor Pro Tem
Gene Allen	Councilmember
T. Scott Gross	Councilmember
Stacie Keeble	Councilmember

MEMBER ABSENT:

David Wampler	Mayor
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STAFF PRESENT:

Todd Parton	City Manager
Mike Hayes	City Attorney
Kristine Ondrias	Assistant City Manager
Brenda G. Craig	City Secretary
Travis Cochrane	Director of Information Technology
Mindy Wendele	Director of Business Programs
Mike Erwin	Director of Finance
Kevin Coleman	Director of Development Services
Kim Meismer	Director of General Operations
Charlie Hastings	Director of Public Works
Daniel Schwartz	Library Director

VISITORS PRESENT: List on file in city secretary's office.

1. VISITORS/CITIZENS FORUM: The following persons spoke:

1. Robert Naman questioned the need to spend \$11.5 million for exit ramps on I-10 between Harper Road and Hwy. 16 and the roadway through Town Creek Development to connect to Holdsworth Drive as proposed by Chuck Coleman at the January 11 council meeting. He noted there was no development now on Holdsworth Drive or the existing I-10 intersections.
2. Ellen Folk discussed the lack of notice and opportunity for property owners to be heard regarding the sidewalk project on Lois and Methodist Encampment roads and cited safety concerns and the destruction of property. She noted that homes on the other side of Methodist Encampment were further from the street and questioned why sidewalks were put on her side, noting her driveway was 25 ft. long and the fence would obstruct visibility entering and exiting her driveway. Her sprinkler system was 25 years old and had been destroyed, and she wanted it repaired. She requested council stall the construction until individuals had the opportunity to be heard.

## 2. **CONSENT AGENDA:**

Mr. Parton requested items 2F, 2G, and 2H be removed from the consent agenda.

Mr. Gross moved for approval of items 2A through 2E; Ms. Keeble seconded the motion and it passed 4-0:

2A. Resolution No. 005-2011 ordering that a general election be held on May 14, 2011, for the election of two city councilmembers; appointing election judges; adopting an electronic counting system; establishing a central counting station; appointing a central counting station manager; appointing a tabulation supervisor; appointing the central counting station presiding judge; and authorizing early processing of ballots.

2A. UNA RESOLUCIÓN 005-2011 QUE PIDE QUE UNA ELECCIÓN GENERAL SE LLEVE A CABO EL 14 DE MAYO DE 2011, PARA LA ELECCIÓN DE DOS MIEMBROS DEL AYUNTAMIENTO DE LA CIUDAD: NOMBRAR UN GERENTE PÚBLICO PARA LA ESTACIÓN DE CUENTAS CENTRAL: NOMBRAR UN SUPERVISOR DE LA TABULACIÓN: ESTABLECER LA ESTACIÓN DE CUENTAS CENTRAL: NOMBRAR UN SUPERVISOR DE TABULACIÓN: ESTABLECER LA ESTACIÓN CENTRAL DE CUENTAS: NOMBRANDO SU JUEZ: AUTORIZANDO EL PROCESO TAMPRANO DE LAS BALOTAS DE LA ELECCIÓN GENERAL, QUE SE LLEVARÁ A CABO EL 14 DE MAYO DE 2011.

2B. Authorize the execution of a ground lease between the City of Kerrville, Texas and United Parcel Service, Inc.

2C. Approval of the purchase and sale agreement between the City of Kerrville, Texas Economic Improvement Corporation and Kerrville Economic Development Foundation (KEDF) for the purchase of approximately 86.71 acres, addressed as 300 Peterson Farm Road, Kerrville, Texas.

2D. Resolution No. 007-2011 authorizing participation in TexPool/TexPool Prime and designating authorized representatives.

2E. Authorize execution of a professional services agreement with Peter Lewis Architect + Associates, PLLC for design of the renovation and expansion project at the Butt-Holdsworth Memorial Library in an amount not to exceed \$121,100.

### **END OF CONSENT AGENDA**

2F. Authorize execution of a right-of-way license agreement for sidewalk café at 701 Water Street. Mr. Hastings noted an error in the license agreement as was provided in the packet; Section 6 of the agreement should state "two countertops 10 ft. x 1.5 ft. and 6 ft. x 1.5 ft."

Mr. Gross moved to authorize a right-of-way license agreement with amendment to Section 6 as stated by staff; Mr. Allen seconded the motion and it passed 4-0.

2G. Approval of the economic development grant agreement between the Kerrville Economic Development Corporation (KEDC) and the City of Kerrville, Texas Economic Improvement Corporation (EIC). Mr. Parton noted EIC voted to approve a funding agreement authorizing an allocation of \$225,000 to KEDC. He noted KEDC's FY2011 budget totaled \$301,378 and the remaining \$76,378 would be funded by contributions from other participating entities.

Mr. Gross moved for approval of the agreement; Ms. Keeble seconded the motion and it passed 4-0.

2H. Resolution No. 003-2011 abandoning a waterline easement located within the Summit Phase V subdivision; and ordering recording. Mr. Hayes noted the original easement was recorded in 1973; however, the final plat did not recognize the easement and a house had been built over the easement. The property owner requested abandonment of the 20 ft. easement on Lot 21, Block 8 of Summit Phase V subdivision. He noted the water mains were relocated sometime in the past; however, staff did not recommend abandoning the entire easement but recommended a partial release of the easement. He also noted that Atmos Energy had provided a release of the easement.

Mr. Allen moved to approve Resolution No. 003-2011 authorizing a partial release. Mr. Gross seconded the motion and it passed 4-0.

### **3. ORDINANCE, FIRST READING**

3A. An ordinance amending the budget for fiscal year 2011 to account for changes in the status of various capital improvement projects, to amend other city funds to account for balances for approved purposes, and to account for revenue resulting from the settlement of a claim and grant funding awards.

Mayor Pro Tem Motheral read the ordinance by title only.

Mr. Erwin reviewed the proposed changes to FY11 budget and noted many of the changes were necessary to close out completed projects; also, transferring funds into the legal fund to cover unanticipated legal costs related to the CREZ line, and increase in the EIC fund to cover the purchase of property from the Kerr Economic Development Foundation for the USDA facility.

Ms. Keeble moved for approval of the ordinance on first reading; Mr. Allen seconded the motion and it passed 4-0.

### **3. PUBLIC HEARING AND ORDINANCE, FIRST READING**

3B. An ordinance amending the zoning district boundaries of Lot 445, Block 60, Schreiner Addition, otherwise known as 509 Barnett Street and located within the City of Kerrville, Kerr County, Texas, from the "R1-A" residential district to "C-19" central city district; containing a cumulative clause; containing a savings and severability clause; and ordering publication. Mayor Pro Tem Motheral read the ordinance by title only.

Mr. Coleman noted the applicant, Christian Assistance Ministry (CAM) recently purchased the subject property adjacent to their existing facility in order to expand their services. CAM requested the rezoning in order to combine all the property owned by CAM under one zoning district. Staff notified all area property owners of the rezoning, and no comments were received; staff and P&Z recommend approval.

Mayor Pro Tem Motheral opened the public hearing at 6:25 p.m.; no one spoke; Mr. Motheral closed the public hearing at 6:25 p.m.

Mr. Gross moved for approval of the ordinance on first reading as presented; Mr. Allen seconded the motion and it passed 4-0.

**4. CONSIDERATION AND POSSIBLE ACTION:**

4A. Resolution No. 006-2011 granting petitions requesting the annexation of various properties, such properties generally located beginning near the Town Creek Road and Morris Road intersection, north along Town Creek Road, across and including Interstate 10, continuing north through undeveloped property, and terminating at and including the James Avery Company headquarters, located along Avery Road, which intersects with Harper Road (FM 783); rejecting one petition for annexation for property within this same general area; and ordering the preparation of an ordinance to annex the petitioned properties and to include the annexation of Interstate 10 to an easterly point that it connects to the city's limits. Mr. Coleman noted Item 4A and 4B were two resolutions authorizing annexation of areas receiving utilities with the James Avery Craftsman utility construction project. The 4A voluntary annexation included properties that petitioned the city for annexation in accordance with development agreements with the city. That area ran from the Town Creek Road/Morris Road intersection along Town Creek Road and Old Harper Road, IH-10, the undeveloped property on the north side of I-10, and the James Avery Campus.

Item 4B would initiate involuntary annexation of the Higgins tract and a portion of the Hilburn property as well as small portions of two other tracts adjacent to Old Harper Road. Staff recommended council authorize surveys and include other areas in this annexation: 1) the I-10 right of way between Hwy. 16 and Harper Road; and 2) That portion of Avery Road adjacent to the northeast corner of the Avery Campus not included in 4A. The purpose of annexing the I-10 right of way would be for continuity and clarity; to assist public safety agencies when responding to emergency calls on I-10, and for clarity for the public instead of switching back and forth between in city and out of city.

If the resolutions in 4A and 4B were approved, staff will present the properties to the planning and zoning commission for a zoning recommendation, schedule public hearings, and prepare ordinances to complete the annexation of these properties.

The following persons spoke:

1. Robert Naman questioned what the statement "further action" meant? Mr. Coleman noted in order to be considered for annexation, property had to be adjacent to the city limits. There were two methods of annexation: 1) voluntary whereby an owner petitioned the city for annexation; and 2) involuntary, which required a minimum width and length. He noted the Harper Road/I-10 interchange was not part of the 4A or 4B annexations as the property was too narrow. The interchange could be part of a future annexation when properties were annexed in the future.

2. Allan Pose questioned where the CREZ power line would go in relationship to the proposed annexation. Mr. Coleman noted generally along the north side of I-10.

Mr. Gross moved for approval of Resolution No. 006-2011 and Resolution No. 004-2011 and to direct staff to proceed with the annexation of I-10 as presented; the motion was seconded by Ms. Keeble and passed 4-0.

4B. Resolution No. 004-2011 authorizing issuance of notice of intent to annex various properties, including public roads, generally located northeast of the intersection of Town Creek Road and Old Harper Road.

(Included in Item 4A above.)

4C. Courtesy EMS request to approve a certificate of necessity to provide ambulance service in the City of Kerrville.

Scott Evans, CEO, Courtesy EMS, stated he had purchased vehicles and had a state license, and he requested council approve a certificate of necessity for Courtesy EMS to operate an ambulance service in Kerrville. He was willing to get under the city medical director's guidance, and even though he was requesting a certificate to operate as an ambulance transport, he would be available to assist as a backup for 9-1-1 calls if called upon by the city.

Mr. Beavers, assistant fire chief, noted the city would not be comfortable using a BLS (basic life support) service staffed with ECAs (emergency care attendant) to assist on emergency 9-1-1 calls. In the event of a large number of calls, disaster, or multi-casualty incident, KFD would utilize the regional resources provided by the Southwest Texas Regional Advisory Council for Trauma (STRAC) for assistance. Mr. Beavers address inaccurate statements provided by Mr. Evans in his letter dated January 11:

- Patients at local nursing homes, Peterson Regional Medical Center, VA Medical Center, and Kerrville State Hospital were waiting an average of one hour or more for transfers. The PRMC, VAMC, and 9-1-1 did not track that information; also, there were no transfers initiated from KSH in 2010. The average pending status for all calls in FY10 was 2 minutes 5 seconds. 98% of KFD's transfers originated at PRMC and VAMC; PRMC and VAMC informed Mr. Beavers that there were no issues with KFD's service or any problem with delayed response for transfers.

- KFD had one (1) transfer ambulance. KFD operated 3 transfer ambulances and 2 emergency ambulances that could be used for transfer calls; approximately 65% of the time (24/7) KFD had 2 or 3 units available for transfers.

- Courtesy EMS will operate as Basic Life Support (BLS) with Mobile Intensive Care Unit (MICU) capability. KFD is licensed by the state as ALS (Advanced Life Support)-MICU and has 49 paramedics and 2 EMT intermediates; no operational personnel are certified below EMT basic. KFD has been operating as an MICU service staffed with an EMT basic and paramedic for several years.

Mr. Parton asked that council table the request in order that Mr. Evans could provide additional information regarding Courtesy EMS's state license, staffing levels and proposed local operation.

Mr. Allen moved to table the matter for staff to investigate and obtain additional information; Ms. Keeble seconded the motion and it passed 4-0.

4D. Discuss possible meeting dates and topics of discussion for joint meeting between the Kerrville City Council and the City of Kerrville, Texas Economic Improvement Corporation (EIC).

Mr. Parton noted at the January 11 meeting council voted to have a joint meeting with EIC to discuss a strategic plan to address economic development needs; EIC voted on January 17 to have a joint meeting. The council discussed topics of discussion and information to be available for the joint meeting: original document that established the EIC board; 4B information in state law; discussion of goals; type of projects that qualified for 4B funding; and long term vs. short term funding.

The consensus of the city council was to schedule a joint meeting with the EIC for the morning of Wednesday, February 2.

## **5. INFORMATION AND DISCUSSION:**

5A. Update regarding Lower Colorado River Authority Transmission Services Corporation's (LCRA-TSC) application for the proposed McCamey D to Kendall to Gillespie CREZ project (PUC Docket No. 38354). Matter was deferred to executive session.

The following persons spoke prior to executive session:

1. Mike Allen noted the appearance of the CREZ power line on I-10 was of great concern to the community. He stated that when the federal government discontinues subsidizing wind energy, it will no longer be economically feasible as compared to gas power, however the CREZ lines would remain. He encouraged council to appeal the PUC's decision and file legal action.

Mr. Motheral noted that wind farms across Europe were closing because they had proven not to be economically feasible to operate.

2. Dana Kirk, landowner north of I-10, stated that council had made a wise decision to bring utilities north of I-10 to serve James Avery Craftsman as well as other potential new developments in the area; however, construction of the CREZ line near the I-10 corridor would impede quality economic development. He encouraged council to file legal action for immediate irrevocable injury and to try to prove that the line was unnecessary; the city would have a strong case.

3. Cecil Atkisson, property and business owner at I-10 and SH16, stated his continued support of the city and encouraged council to take whatever action was necessary to keep the line from damaging Kerrville's gateway area.

4. Carolyn Lipscomb agreed that no one, including herself, liked the appearance of power lines; however, the decision of the PUC judges was unanimous. PUC's mind was made up and a court appeal would be costly; she would rather see city money spent on infrastructure or a new city hall, and try to make the best of the situation, for example, developing hike and bike trails and parking areas under the line.

5B. Library of Congress—Gateway of Knowledge Exhibit tour stop in Kerrville on February 18 and 19, 2011.

Mr. Schwartz noted the Library of Congress' Gateway to Knowledge tour would be in Kerrville February 17-19, with opening ceremony at 9:45 a.m. on February 18. The exhibition would be parked at Quinlan and Water streets, would be open to the public 10 a.m. to 6 p.m., and group tours could be arranged through the Library of Congress. He gave details about several of the exhibits and noted Kerrville was one of 60 cities selected for the tour.

5C. Economic update.

Mr. Erwin noted a 14% increase in sales tax, but HOT tax continued to drop; and despite housing prices dropping nationally, he noted that the Kerr Central Appraisal District believed home prices locally would remain static in 2011.

6. **BOARD APPOINTMENTS:**

6A. Appointments to the main street advisory board.

Mr. Gross moved to reappoint Penni Carr, Lee Fry, and Brett McDowell; and to appoint Rich Schneider and Scott Rain; all with terms to expire January 31, 2013. Mr. Allen seconded the motion and it passed 4-0.

6B. Appointment to the zoning ordinance input committee.

Mr. Gross moved to appoint Rustin Zuber; Ms. Keeble seconded the motion and it passed 4-0.

7. **ITEMS FOR FUTURE AGENDAS:** No items were proposed.

8. **ANNOUNCEMENTS OF COMMUNITY INTEREST:** None discussed.

9. **EXECUTIVE SESSION:**

Mr. Gross moved for the city council to go into executive closed session under Section 551.071 (consultation with attorney of the Texas Government Code; the motion was seconded by Mr. Allen and passed 4-0 to discuss the following matter:

Section 551.071:

LCRA Transmission Services Corporation proposed McCamey D to Kendall to

Gillespie 345-kV CREZ Transmission Line in Schleicher, Sutton, Menard, Kimble, Mason, Gillespie, Kerr, and Kendall Counties, Texas. Public Utility Commission of Texas (PUC) Docket No. 38354.

At 7:20 p.m. the regular meeting recessed and council went into executive closed session at 7:28 p.m. At 7:58 p.m. the executive closed session recessed and council returned to open session at 7:59 p.m. The mayor pro tem announced that no action had been taken in executive session.

**10. ACTION ON ITEM DISCUSSED IN EXECUTIVE SESSION:**

The consensus of council was to move forward with the appeal and to determine the interest of other partners.

**ADJOURNMENT.** The meeting adjourned at 8:00 p.m.

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

\_\_\_\_\_  
B. Bruce Motheral, Mayor Pro Tem

ATTEST:

\_\_\_\_\_  
Brenda G. Craig, City Secretary

**Agenda Item:**  
**(Staff)**

3B. Authorize execution of a contract to M & C Fonseca Construction Company for the construction of the Jackson Road/Glen Road water main project in an amount not to exceed \$450,000.

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

**SUBJECT:** Authorization for the City Manager to execute a construction contract with M & C Fonseca Construction Company for the construction of the Jackson Road/Glen Road Water Main project in an amount not to exceed \$450,000.00.

**FOR AGENDA OF:** February 22, 2011      **DATE SUBMITTED:** February 10, 2011

**SUBMITTED BY:** Michael Wellborn, P.E.      **CLEARANCES:** Kristine Ondrias  
Director of Engineering      Assistant City Manager

**EXHIBITS:** Contract  
Bid Tabulation

**AGENDA MAILED TO:**

**APPROVED FOR SUBMITTAL BY CITY MANAGER:**

Expenditure	Current Balance	Amount	Account
Required:	in Account:	Budgeted:	Number:
\$450,000.00	\$525,007.00	\$575,000.00	W90

**PAYMENT TO BE MADE TO:**

**REVIEWED BY THE FINANCE DIRECTOR:**

**SUMMARY STATEMENT**

As part of FY 2010 Budget, the City Council approved the Jackson Road/Glen Road Water Main as an approved Capital Improvement Project. This project was identified as a system deficiency in the City's Water & Wastewater Master Plan and specifically calls for the replacement of an existing 6" water main with a 10" to 12" main in Jackson & Glen Roads from Harper Road (RM 783) to approximately East Lane.

This Capital Improvement Project is funded by Water & Sewer Debt (Fund 70) and includes a \$75,000.00 budget for engineering related services & \$500,000.00 for construction. Of the \$575,000.00 budget, \$97,500.00 of these funds have already been allocated as follows:

- \$50,000.00 for professional engineering design services awarded to Hewitt Engineering, Inc. in August of 2010.
- \$47,500.00 to Allen Keller Company for the open-cut installation of the 12-inch water main & encasing pipe across Harper Road (RM 783) at the Jackson Road intersection. This crossing was originally part of the overall project scope; however, the city was able to take advantage of TxDOT having a contractor (Allen Keller Company) install this section of the water main while they had Harper Road excavated & detoured for construction of a storm sewer system.

The project's construction documents were completed and advertised for bids in January, 2011. Six bids were received for the project on the February 8, 2011 bid opening date. The lowest qualified bidder was M & C Fonseca Construction Company who bid the project at \$410,480.70. The Director of Engineering recommends awarding the project at a not to exceed amount of \$450,000.00 to cover the base bid and unforeseen change orders that may occur during the course of construction.

### **RECOMMENDED ACTION**

The Director of Engineering recommends that Council authorize the City Manager to execute a construction contract for the Jackson Road/Glen Road Water Main project with M & C Fonseca Construction Company in an amount not to exceed \$450,000.00.



Section 070

CITY OF KERRVILLE

CONSTRUCTION CONTRACT

This agreement made this day by and between the City of Kerrville, Texas, called "City," and the undersigned "Contractor" as follows:

1. THE WORK

The Contractor shall perform all the work as required by this contract for:

Installation of approximately 3,920 linear feet of 12-inch Waterline and 232 linear feet of 6-inch Sanitary Sewer on Glen Road and Jackson Road in Kerrville, Texas, as detailed in Section 090 "Description of Work".

The following are incorporated herein:

- a. General Provisions
- b. Technical Specifications
- c. Addenda issued prior to receipt of Bid
- d. Plans
- e. Instructions to Bidders
- f. Proposal

Some of such documents may not be physically attached hereto but are on file at City Hall, and copies may be obtained upon request.

2. TIME

Construction substantial completion time will be 180 calendar days and 10 calendar days after for final completion from the date of written notice to proceed. Working days are defined in specification section 123.20. The Contractor's obligations to the project however, are not complete and retainage will not be released until all disturbed areas within Kerrville right-of-way have been re-vegetated to the satisfaction of the City Engineer.

3. LIQUIDATED DAMAGES

Liquidated damages are hereby established for work which is not substantially complete in the amount of Three Hundred Dollars (\$300.00) per working day for each working day after the date established in the Notice to Proceed. The City may offset any such liquidated damages against any sums from time to time due by the City to Contractor.

The completion time assumes that fifteen percent of the working days are "bad weather days," days on which the work cannot proceed; therefore, the time for completion shall not be extended on account of bad weather until the said number of assumed "bad weather days" has been exceeded.

The time for completion shall not be extended except by written memorandum executed by the Contractor and the City Manager. Contractor shall make written application to the City not later than

ten (10) days after the day, event, or cause claimed by Contractor to be a delay. Failure to make such written claim within such time shall result in a waiver by Contractor of an extension based on those particular days, events, or causes. If, for example, this contract assumes twenty (20) bad weather days and Contractor desired a one-day extension for the twenty-first day of rain, Contractor shall make a written claim not later than ten (10) days after the occurrence of such twenty-first day.

The said amount per day is not a penalty but an agreed amount of actual damages which are difficult to calculate. Such damages include loss of staff time, answering complaints by citizens who have been inconvenienced by the work, City Council time, loss of use, and other damages difficult to reasonably anticipate or calculate.

#### 4. PAYMENTS

The City shall pay the Contractor ninety-five percent (95%) of the portion of Contract Sum properly allocable to labor, materials, and equipment incorporated in the Work and ninety-five percent (95%) of the portion of the Contract Sum properly allocable to materials and equipment suitably stored at the site or at some other location agreed upon in writing, less the aggregate of previous payments made by the City, and, upon substantial completion of the entire Work, a sum sufficient to increase the total payments to ninety-five percent (95%) of the Contract Sum. All retainages from progress payments shall be withheld without liability for interest. Upon acceptance, the City shall make payment to Contractor such that one hundred percent (100%) of the Contract Sum has been paid.

5. LIABILITY INDEMNITY

THE CONTRACTOR AGREES TO INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CITY OF KERRVILLE, TEXAS, AND ALL OF THEIR RESPECTIVE OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, LOSSES, PROPERTY DAMAGES, AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING ATTORNEY'S FEES BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OF DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PROPERTY ON ACCOUNT OF ANY NEGLIGENT ACT OF THE CONTRACTOR, THE CITY OF KERRVILLE, TEXAS, OR ANY OF THEIR RESPECTIVE OFFICERS, EMPLOYEES, AGENTS, REPRESENTATIVES, OR SUBCONTRACTORS IN THE EXECUTION, SUPERVISION, AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS AGREEMENT, WHETHER OR NOT THE ACT OR OMISSION OF THE CITY OR ANY OF THEIR RESPECTIVE OFFICERS, EMPLOYEES, OR AGENTS WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH THE NEGLIGENCE OF THE CONTRACTOR OR ITS OFFICERS, EMPLOYEES, AGENTS, CONTRACTORS, OR SUBCONTRACTORS, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS AGREEMENT.

6. LIABILITY INSURANCE

Prior to the commencement of any work and not later than fifteen (15) days following the execution of this contract, the Contractor shall furnish the City copies of paid-up policies (to the City Risk Manager/City Hall) providing Liability and Workman's Compensation Coverage as follows (minimum limits):

	TYPE OF INSURANCE	LIMITS
a.	Workman's Compensation covering all employees	Statutory
b.	Employer's Liability	<u>\$100,000.00</u>
c.	Comprehensive General Liability	
	Bodily Injury & Property Damage (per occurrence)	<u>\$1,000,000.00</u>
	Aggregate	<u>\$1,000,000.00</u>
	(Premises/Operations Products/Completed Operations/Independent Contractors/Contractual Liability/Coverages may not be excluded). XCU must be supplied if any exposure.	
d.	Business Automobile Liability covering owned vehicles, rented and non-owned vehicles and employee non-ownership	
	Bodily Injury Property Damage (per occurrence)	<u>\$1,000,000.00</u>
	Aggregate	<u>\$1,000,000.00</u>

The Commercial General Liability and the Automobile Liability policies shall name the City of Kerrville, Texas, as additional insured and all policies shall provide for a waiver of subrogation in favor of the City of Kerrville. The policy and any renewal certificate shall provide that the City be notified thirty (30) days prior to cancellation or modification of any coverage. Language to the effect that the company will "Endeavor" or "Attempt" to so notify the City of Kerrville is not sufficient.

Renewal certificates must be received by the City at least ten (10) days prior to any cancellation date. Policies will be in effect until final acceptance or cancellation of this contract, unless otherwise specified. The City may, at its sole option, terminate this agreement and file a claim on the Contractor's bid bond if the Contractor fails to deliver the required policies and certificates within 15 days after execution of this contract.

It shall be the responsibility of the Contractor to insure that all Subcontractors comply with the same insurance requirements as the said Contractor.

#### 7. CASUALTY INSURANCE

In the event the work includes structures or buildings susceptible to damage by fire, windstorm, or other casualty, then the Contractor before being authorized to begin work shall furnish the City a duplicate original of an insurance policy naming the City of Kerrville as an additionally insured. Such insurance shall insure both the City of Kerrville and Contractor, during the term of the work, against loss by fire, windstorm, vandalism, theft, or other casualty. Such policy shall be in the total amount of this contract.

#### 8. QUALITY OF WORK

All work shall be of good workmanship. Contractor shall comply with all applicable City of Kerrville Codes as well as all applicable professional and technical standards. Materials shall be of first quality.

#### 9. CHANGES AND EXTRAS

No change of this Contract, whether for additional work, additional compensation, or other, shall be effective unless prior thereto a written change order has been authorized by the City Engineer.

#### 10. ADDENDA

Contractor acknowledges the receipt of the following addenda:

1. Dated: 2-7-11

Acknowledged by:

2. Dated: 2-7-11

Acknowledged by:

#### 11. AWARD OF CONTRACT

The lowest qualified bidder will be awarded the base bid plus any combination of additive alternates pending availability of funds and City Council approval.

#### 12. CONTRACT SUM

Proposal: Contractor agrees to provide all labor, materials, and all incidentals necessary to complete "The Work" for the following Unit Prices:

ITEM NO.	APPROX. QUANTITY	UNIT	DESCRIPTION OF ITEM	UNIT PRICE	TOTAL AMOUNT
1	1	LS	Mobilization and Bonds (Maximum 5% of total Base Bid amount)		<u>\$19,546.70</u>
2	3920	LF	12-inch Diameter PVC C-900 SDR-14 Water Line, Open Cut, including bedding & backfill, testing, complete in place:	<u>\$ 32.00</u>	<u>\$125,440</u>
3	50	LF	6-inch Diameter PVC C-900 SDR-14 Water Line, Open Cut, including bedding & backfill, testing, complete in place:	<u>\$32.00</u>	<u>\$1,600</u>
4	70	LF	6-inch Diameter DIP Fire Hydrant Lead, Open Cut, including bedding & backfill, testing, complete in place:	<u>\$32.00</u>	<u>\$ 2,240</u>
5	3	EA	Automatic Air/Vacuum Release Valve, in Manhole, complete in place:	<u>\$10,000</u>	<u>\$30,000</u>
6	21	EA	12-inch Gate Valve & Box, complete in place:	<u>\$ 2,000</u>	<u>\$42,000</u>
7	2	LF	10-inch Gate Valve & Box, complete in place:	<u>\$ 2,000</u>	<u>\$4,000</u>
8	1	EA	8-inch Gate Valve & Box, complete in place:	<u>\$ 1,000</u>	<u>\$1,000</u>
9	6	EA	6-inch Gate Valve & Box, complete in place:	<u>\$ 1,000</u>	<u>\$6,000</u>
10	4	EA	Fire Hydrant Assembly includes: 4x4x6 concrete pad, concrete thrust blocking, anchor tee, 6" gate valve and box, bedding and backfill, excluding DI pipe fire hydrant lead.	<u>\$4,000</u>	<u>\$16,000</u>
11	1	EA	12-inch Wet Connection to Existing Main, complete in place:	<u>\$3,000</u>	<u>\$ 3,000</u>
12	1	EA	8-inch Wet Connection to Existing Main, complete in place:	<u>\$3,000</u>	<u>\$ 3,000</u>
13	1	EA	6" x 3" Reducer, complete in place:	<u>\$ 150</u>	<u>\$ 150</u>
14	1	EA	12" x 8" Cut in Tee, Mechanical Joint, complete in place:	<u>\$ 1,000</u>	<u>\$1,000</u>
15	5	EA	12" x 6" Cut in Tee, Mechanical Joint, complete in place:	<u>\$ 1,000</u>	<u>\$ 5,000</u>

16	1	EA	12" x 10" Cross, Mechanical Joint, complete in place:	<u>\$3,000</u>	<u>\$3,000</u>
17	26	EA	1-inch Long Water Service Connection, complete in place:	<u>\$1,500</u>	<u>\$39,000</u>
18	20	EA	1-inch Short Water Service Connection, complete in place:	<u>\$1,200</u>	<u>\$24,000</u>
18A	4	EA	1-inch Short Water Service Connection, with compression connections, complete in place:	<u>\$700</u>	<u>\$2,800</u>
19	3	TONS	Miscellaneous Fittings, complete in place:	<u>\$2,700</u>	<u>\$8,100</u>
20	232	LF	6-inch Diameter PVC ASTMD-3034 DR-26 Sanitary Sewer Line, Open Cut, 0'-6' depth including bedding & backfill, testing, complete in place:	<u>\$32.00</u>	<u>\$7,424</u>
21	3	EA	Sanitary Sewer Services, including bedding and backfill, complete in place:	<u>\$1,200</u>	<u>\$3,600</u>
22	1	EA	Two way cleanouts, complete in place:	<u>\$500</u>	<u>\$500</u>
23	1	EA	48-inch Diameter Sanitary Sewer Manhole, up to 6-ft depths, complete in place:	<u>\$3,000</u>	<u>\$3,000</u>
24	4260	LF	Pavement Trench Repair, including base and top course, saw cut, complete in place:	<u>\$8.00</u>	<u>\$34,080</u>
25	1	LS	Traffic Control and Regulation, complete in place:	<u>\$10,000</u>	<u>\$10,000</u>
26	1	LS	Preparation and installation of SWPPP, complete in place:	<u>\$5,000</u>	<u>\$5,000</u>
27	1	LS	Contingency-Budget allowed to be used only when directed in writing, by the City Engineer	<u>\$10,000.00</u>	<u>\$10,000.00</u>
<b>TOTAL BASE BID</b>				<u>\$67,086</u>	<u>\$410,480.70</u>

COMPLETED BY

M&C Fonseca Construction  
General Contractor Name

2-7-11  
Date

Matias Fonseca  
General Contractor Representative

owner  
Title

Sub-Contractors:

NAME	ADDRESS	PHONE	WORK TO BE PERFORMED
1. Rabka Kistner	12821 W 1st Golden Ln. San Antonio, TX 78249	(210) 699-9090	Soil & Density Testing
2.			
3.			

(Attach additional sheet if required)

INSURANCE AGENT

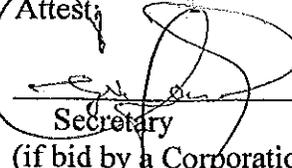
NAME	ADDRESS	PHONE	POLICY
1. Hutto & Dalchau	P.O. Box 216 Llano, TX 78643	(325) 247-5152	
2.	policy attached		
3.			

BONDING AGENT

NAME	ADDRESS	PHONE	POLICY
1. Alamo Surety Bonds	2361 Austin Hwy San Antonio, 78218	(210) 930-5550	
2.			
3.			

•Signed this 17th day of February, 2011

MFC Fonseca Construction Co. Inc.  
Contractor

Attest:  
  
Secretary  
(if bid by a Corporation)  
  
SEAL

BY: Matthew Lensen

Title: owner

Business Address:

1422 Kings Cove  
Granite Shoals, TX  
78654

Phone: 830-596-1744

Fax: 830-596-1824

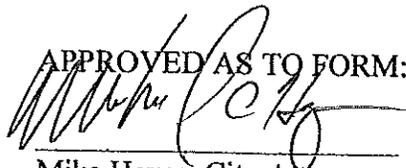
ACCEPTED THIS \_\_\_\_\_

day of \_\_\_\_\_, 2011

By: \_\_\_\_\_  
Todd Parton, City Manager  
City of Kerrville, Texas.

ATTEST:

\_\_\_\_\_  
Brenda G. Craig, City Secretary

APPROVED AS TO FORM:  
  
\_\_\_\_\_  
Mike Hayes, City Attorney

**Agenda Item:**  
**(Staff)**

3C. A resolution amending the City of Kerrville fee schedule by revising fees charged for various services and uses provided by the city to include wholesale sewer rate and rental of the downtown pavilion.

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

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**SUBJECT:** Resolution Amending FY 11 Fee Schedule

**FOR AGENDA OF:** February 22, 2011    **DATE SUBMITTED:** February 11, 2011

**SUBMITTED BY:** Mike Erwin *ME*  
Director of Finance

**CLEARANCES:** Todd Parton  
City Manager

**EXHIBITS:** Resolution

**AGENDA MAILED TO:**

**APPROVED FOR SUBMITTAL BY CITY MANAGER:** *TP*

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Expenditure Required:	Current Balance in Account:	Amount Budgeted:	Account Number:
\$	\$	\$	

**PAYMENT TO BE MADE TO:**

**REVIEWED BY THE FINANCE DIRECTOR:**

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**SUMMARY STATEMENT**

The resolution would add fees to the existing FY11 Fee Schedule:

**Water and Sewer Fund**

Wholesale Sewer Rate: \$4.301/1,000 gallons

Wholesale Sewer Rate Excess Capacity Charge: \$1,000.00 per day for usage over 425,000 gallons by City of Ingram

Wholesale Sewer Rate Late Fee: 10% of bill as per ordinance

**General Fund**

Boardwalk Pavilion Deposit: \$200

Boardwalk Pavilion Rental: \$100 per hour up to 4 hours (including set up and take down)

These additions would provide rates for the Ingram sewer tie in and for the use of the pavilion.

**RECOMMENDED ACTION**

Approve resolution to amend the FY 11 fee schedule.

**CITY OF KERRVILLE, TEXAS  
RESOLUTION NO. \_\_\_\_-2011**

**A RESOLUTION AMENDING THE CITY OF KERRVILLE FEE SCHEDULE BY REVISING FEES CHARGED FOR VARIOUS SERVICES AND USES PROVIDED BY THE CITY TO INCLUDE WHOLESALE SEWER RATE AND RENTAL OF THE DOWNTOWN PAVILLION**

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

**WHEREAS**, City staff recommends fees charged for various services and uses provided by the City be changed, to include the wholesale sewer rate and rental of the downtown pavilion, and the City Council has determined it is in the public interest of the citizens of Kerrville to revise such fees;

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

The Fee Schedule of the City of Kerrville, Texas, shall be amended as set forth in **Exhibit A**, attached hereto and incorporated herein by reference, such changes to be effective upon adoption.

**PASSED AND APPROVED ON this the \_\_\_\_ day of \_\_\_\_\_ A.D., 2011.**

\_\_\_\_\_  
David Wampler, Mayor

APPROVED AS TO FORM:



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

ATTEST:

\_\_\_\_\_  
Brenda G. Craig, City Secretary

## **Exhibit A**

### **Water and Sewer Fund**

Wholesale Sewer Rate: \$4.30/1,000 gallons

Wholesale Sewer Rate Excess Capacity Charge: \$1,000.00 per day for usage over 425,000 gallons by City of Ingram

Wholesale Sewer Rate Late Fee: 10% of bill as per ordinance

### **General Fund**

Boardwalk Pavilion Deposit: \$200

Boardwalk Pavilion Rental: \$100 per hour up to 4 hours (including set up and take down)

## **Agenda Item:** **(Staff)**

3D. Authorize an easement agreement with the Kerr Arts and Cultural Center for the placement of public art.

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

**SUBJECT:** Approval of an Easement Agreement between the City of Kerrville and the Kerr Arts and Cultural Center for the Placement of Public Art

**FOR AGENDA OF:** February 22, 2011 **DATE SUBMITTED:** February 11, 2011

**SUBMITTED BY:** Mindy N. Wendele      **CLEARANCES:** Todd Parton  
Director of Business Programs              City Manager

**EXHIBITS:** Easement Agreement, Survey

**AGENDA MAILED TO:**

**APPROVED FOR SUBMITTAL BY CITY MANAGER:** 

<b>Expenditure</b>	<b>Current Balance</b>	<b>Amount</b>	<b>Account</b>
<b>Required:</b>	<b>in Account:</b>	<b>Budgeted:</b>	<b>Number:</b>
\$	\$	\$	

**PAYMENT TO BE MADE TO:**

**REVIEWED BY THE FINANCE DIRECTOR:**

**SUMMARY STATEMENT**

The Kerrville Main Street Advisory Board has stated goals as a part of the KMS Program of Work. One goal is 'research and development of a Public Art Policy and Guidelines and implement a Public Art Project.'

In March 2010, the City Council approved a Public Art Policy and Guidelines developed by the KMS Design Committee. Immediately following approval, KMSAB members identified possible locations for the placement of public art pieces concentrating in the Main Street district area.

The Kerr Arts and Cultural Center, at the corner of Earl Garrett and Main Street, was selected for the inaugural art piece. Construction of the art piece would be confined to the northwest, Main Street frontage of the KACC lawn. A survey has been completed depicting the area.

The art would become the property of the City of Kerrville and maintained by city staff. The easement agreement allows for the construction and maintenance of the art piece.

**RECOMMENDED ACTION**

Approve easement agreement.

**Easement Agreement**  
**Kerr Arts and Cultural Center to City of Kerrville**

Date: March \_\_\_\_, 2011

Grantor: Kerr Arts and Cultural Center

Grantor's Mailing Address: 228 Earl Garrett, Kerrville, Kerr County, Texas 78028

Grantee: City of Kerrville, Texas

Grantee's Mailing Address: 800 Junction Highway, Kerrville, Kerr County, Texas 78028

Easement Property: A 0.016 of one acre (704 square feet) tract of land out of the Benjamin F. Cage Survey No. 116, Abstract No. 106, Kerr County, Texas and being a portion of that certain tract conveyed to Kerr Arts and Cultural Center, described in a Deed recorded in Volume 1048, Page 899, Real Property Records, Kerr County, Texas, and more particularly described and depicted in **Exhibit A**, attached hereto and made a part hereof for all purposes (the "Easement").

Easement Purpose: For the installation, construction, operation, maintenance, replacement, repair, upgrade, and removal of a "Public Art Piece" to be owned and maintained by Grantee and related facilities and landscaping, to include a wall as depicted in **Exhibit A** (collectively, the "Artwork").

Consideration: The sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are acknowledged by Grantor.

Reservations from Conveyance: This Easement shall be subject to any prior recorded easements and right-of-way affecting the Easement Property.

Exceptions to Warranty: None

Grant of Easement: Grantor, for the Consideration and subject to the Reservations from Conveyance and Exceptions to Warranty, grants, sells, and conveys to Grantee and Grantee's successors and assigns an easement over, on, and across the Easement Property for the Easement Purpose, together with all and singular the rights and appurtenances thereto in any way belonging (collectively, the "Easement"), to have and to hold the Easement to Grantee and Grantee's successors, and assigns forever. Grantor binds Grantor and Grantor's successors, and assigns to warrant and forever defend the title to the Easement in Grantee and Grantee's successors, and assigns against every person whomsoever lawfully claiming or to claim the Easement or any part of the Easement, except as to the Reservations from Conveyance and Exceptions to Warranty.

Terms and Conditions: The following terms and conditions apply to the Easement granted by this agreement:

1. *Character of Easement.* The Easement is appurtenant to, runs with, and inures to the benefit of all or any portion of the Dominant Estate Property, whether or not the Easement is referenced or described in any conveyance of all or such portion of the Dominant Estate Property. The Easement is nonexclusive and irrevocable. The Easement is for the benefit of Grantee and Grantee's successors and assigns.
2. *Duration of Easement.* The duration of the Easement is perpetual.
3. *Reservation of Rights.* Grantee's right to use the Easement Property is nonexclusive, and Grantor reserves for Grantor and Grantor's successors and assigns the right to use all or part of the Easement Property in conjunction with Grantee as long as such use by Grantor and Grantor's successors and assigns does not interfere with the use of the Easement Property by Grantee for the Easement Purpose, and the right to convey to others the right to use all or part of the Easement Property in conjunction with Grantee, as long as such further conveyance is subject to the terms of this agreement. Provided, however, any use by Grantor or Grantor's successors or assigns which results in obstruction of the Artwork from view from adjacent properties and public rights-of-way shall constitute an interference with the Easement Purpose.
4. *Secondary Easement.* Grantee has the right (the "Secondary Easement") to use as much of the surface of the property that is adjacent to the Easement Property ("Adjacent Property") as may be reasonably necessary to install and maintain the Artwork within the Easement Property that are reasonably suited for the Easement Purpose. However, Grantee must promptly restore the Adjacent Property to its previous physical condition if changed by use of the rights granted by this Secondary Easement.
5. *Improvement and Maintenance of Easement Property.* Improvement and maintenance of the Easement Property and the Artwork will be at the sole expense of Grantee. Grantee has the right to eliminate any encroachments into the Easement Property. Grantee must maintain the Easement Property and Artwork in a neat and clean condition. Grantee has the right to construct, install, maintain, replace, and remove the Artwork under or across any portion of the Easement Property. All matters concerning the Artwork and its configuration, construction, installation, maintenance, replacement, and removal are at Grantee's sole discretion, subject to performance of Grantee's obligations under this agreement.
6. *Binding Effect.* This agreement binds and inures to the benefit of the parties and their respective heirs, successors, and permitted assigns.
7. *Choice of Law.* This agreement will be construed under the laws of the state of Texas, without regard to choice-of-law rules of any jurisdiction. Venue is in Kerr County.
8. *Counterparts.* This agreement may be executed in any number of counterparts with the same effect as if all signatory parties had signed the same document. All counterparts will be construed together and will constitute one and the same instrument.

9. *Waiver of Default.* It is not a waiver of or consent to default if the nondefaulting party fails to declare immediately a default or delays in taking any action. Pursuit of any remedies set forth in this agreement does not preclude pursuit of other remedies in this agreement or provided by law.

10. *Further Assurances.* Each signatory party agrees to execute and deliver any additional documents and instruments and to perform any additional acts necessary or appropriate to perform the terms, provisions, and conditions of this agreement and all transactions contemplated by this agreement.

11. *Integration.* This agreement contains the complete agreement of the parties and cannot be varied except by written agreement of the parties. The parties agree that there are no oral agreements, representations, or warranties that are not expressly set forth in this agreement.

12. *Legal Construction.* If any provision in this agreement is for any reason unenforceable, to the extent the unenforceability does not destroy the basis of the bargain among the parties, the unenforceability will not affect any other provision hereof, and this agreement will be construed as if the unenforceable provision had never been a part of the agreement. Whenever context requires, the singular will include the plural and neuter include the masculine or feminine gender, and vice versa. Article and section headings in this agreement are for reference only and are not intended to restrict or define the text of any section. This agreement will not be construed more or less favorably between the parties by reason of authorship or origin of language.

13. *Notices.* Any notice required or permitted under this agreement must be in writing. Any notice required by this agreement will be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this agreement. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, or other commercially reasonable means and will be effective when actually received. Any address for notice may be changed by written notice delivered as provided herein.

14. *Recitals.* Any recitals in this agreement are represented by the parties to be accurate, and constitute a part of the substantive agreement.

15. *Time.* Time is of the essence. Unless otherwise specified, all references to "days" mean calendar days. Business days exclude Saturdays, Sundays, and legal public holidays. If the date for performance of any obligation falls on a Saturday, Sunday, or legal public holiday, the date for performance will be the next following regular business day.

GRANTOR:  
KERR ARTS AND CULTURAL CENTER

By: \_\_\_\_\_  
Its: \_\_\_\_\_

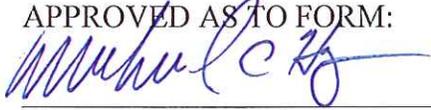
GRANTEE:  
CITY OF KERRVILLE, TEXAS

By: \_\_\_\_\_  
David Wampler, Mayor

ATTEST:

\_\_\_\_\_  
Brenda Craig, City Secretary

APPROVED AS TO FORM:

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

ACKNOWLEDGMENTS

THE STATE OF TEXAS §  
  §  
COUNTY OF KERR §

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2011, by \_\_\_\_\_, the \_\_\_\_\_ of Kerr Arts and Cultural Center, for and on behalf of said corporation.

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

THE STATE OF TEXAS §  
  §  
COUNTY OF KERR §

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2011, by David Wampler, Mayor, City of Kerrville, a Texas home rule municipality, for and on behalf of said municipality.

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

# MDS

LAND SURVEYING COMPANY, INC.  
BOUNDARY + TOPOGRAPHIC + CONSTRUCTION  
9120 DEITZ ELKHORN  
FAIR OAKS RANCH, TEXAS 78015  
PHONE: 830-755-6544 FAX: 830-755-6546  
EMAIL: [MDSINC@WINDSTREAM.NET](mailto:MDSINC@WINDSTREAM.NET)

## Field Notes for a 0.016 of One Acre Tract of Land

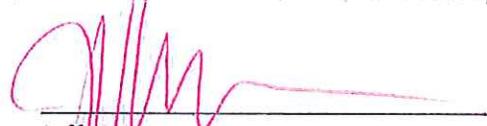
Being A 0.016 OF ONE ACRE (704 SQUARE FEET) TRACT OF LAND OUT OF THE BENJAMIN F. CAGE SURVEY NO. 116, ABSTRACT NO. 106, KERR COUNTY, TEXAS, AND BEING A PORTION OF THAT CERTAIN TRACT CONVEYED TO KERR ARTS AND CULTURAL CENTER, DESCRIBED IN DEED RECORDED IN VOLUME 1048, PAGE 899, REAL PROPERTY RECORDS, KERR COUNTY, TEXAS, SAID 0.016 OF ONE ACRE (704 SQUARE FEET) TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

Beginning at an "x" set in concrete for the east corner of the herein described tract, at the intersection of the northwest right-of-way line of Earl Garrett Street (80' right-of-way), with the southwest right-of-way line of Main Street (80' right-of-way), said point being the east corner of the Kerr Arts and Cultural Center tract;

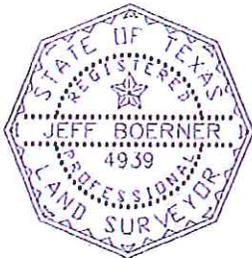
- (1) Thence, S. 44°34'00" W., along the northwest right-of-way line of Earl Garrett Street, the southeast boundary line of the Kerr Arts and Cultural Center tract, a distance of 31.46 feet (S. 44°34'00" W., record) to an "x" set in concrete for south corner;
- (2) Thence, N. 44°04'26" W., departing the northwest right-of-way line of Earl Garrett Street, a distance of 5.42 feet (no record) to a 1/2" iron rod set with "MDS" cap for the point of curvature of a curve to the right;
- (3) Thence, along said curve to the right with a radius of 17.70 feet, a central angle of 84°07'38", an arc length of 25.99 feet, and a chord which bears N. 02°00'37" W., a distance of 23.72 feet to a 1/2" rebar set with "MDS" cap for the point of reverse curvature of a curve to the left;
- (4) Thence, along said curve to the left with a radius of 9.70 feet, a central angle of 65°31'51", an arc length of 11.09 feet, and a chord which bears N. 07°17'17" E., a distance of 10.50 feet to a 1/2" rebar set with "MDS" cap for corner;
- (5) Thence, N. 44°34'00" E., a distance of 6.83 feet (no record) to an "x" set in concrete for north corner in the southwest right-of-way line of Main Street;

- (6) Thence, S. 45°08'00" E., along the southwest right-of-way line of Main Street, a distance of 29.00 feet (S. 45°08'00" E., record) to the Place of Beginning and containing 0.016 of one acre (704 square feet) of land, more or less.

Note: This description is based on an on the ground survey performed on 02-09-2010. The basis of bearings was established from the Deed to Kerr Arts and Cultural Center tract. A survey plat with same date accompanies this description.



Jeff Boerner  
Registered Professional Land Surveyor  
No. 4939 Job # 11-005-01

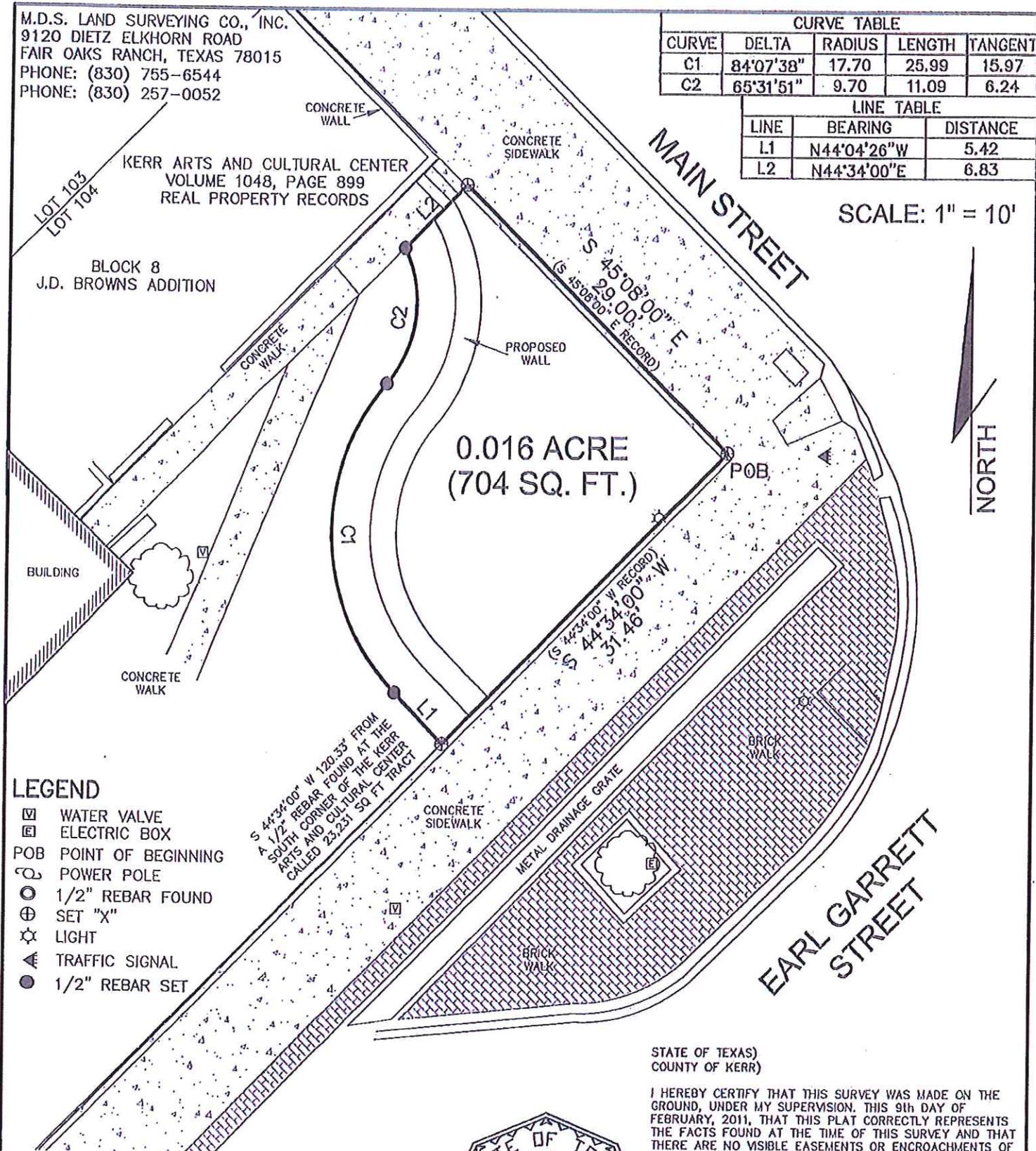


M.D.S. LAND SURVEYING CO., INC.  
 9120 DIETZ ELKHORN ROAD  
 FAIR OAKS RANCH, TEXAS 78015  
 PHONE: (830) 755-6544  
 PHONE: (830) 257-0052

CURVE TABLE				
CURVE	DELTA	RADIUS	LENGTH	TANGENT
C1	84°07'38"	17.70	25.99	15.97
C2	65°31'51"	9.70	11.09	6.24

LINE TABLE		
LINE	BEARING	DISTANCE
L1	N44°04'26"W	5.42
L2	N44°34'00"E	6.83

SCALE: 1" = 10'



**LEGEND**

- ☐ WATER VALVE
- ☐ ELECTRIC BOX
- POB POINT OF BEGINNING
- ⊙ POWER POLE
- ⊙ 1/2" REBAR FOUND
- ⊕ SET "X"
- ⊙ LIGHT
- ▲ TRAFFIC SIGNAL
- 1/2" REBAR SET

PLAT SHOWING: A 0.016 OF ONE ACRE (704 SQUARE FEET) TRACT OF LAND OUT OF THE BENJAMIN F. CAGE SURVEY NO. 116, ABSTRACT NO. 106, KERR COUNTY, TEXAS, AND BEING A PORTION OF THAT CERTAIN TRACT DESCRIBED IN DEED RECORDED IN VOLUME 1048, PAGE 899, REAL PROPERTY RECORDS, KERR COUNTY, TEXAS.



STATE OF TEXAS)  
 COUNTY OF KERR)

I HEREBY CERTIFY THAT THIS SURVEY WAS MADE ON THE GROUND, UNDER MY SUPERVISION. THIS 9th DAY OF FEBRUARY, 2011, THAT THIS PLAT CORRECTLY REPRESENTS THE FACTS FOUND AT THE TIME OF THIS SURVEY AND THAT THERE ARE NO VISIBLE EASEMENTS OR ENCROACHMENTS OF BUILDINGS ON ADJOINING PROPERTY AND THAT ALL BUILDINGS ARE WHOLLY LOCATED ON THIS PROPERTY EXCEPT AS SHOWN ABOVE.

WARNING: ONLY THOSE COPIES SIGNED IN RED SHOULD BE RELIED UPON.

JEFF BOERNER  
 REGISTERED PROFESSIONAL LAND SURVEYOR

# 4939

TEXAS REGISTRATION NO.

JOB #: 11-005-01

## **Agenda Item:** **(Staff)**

3E. A resolution authorizing the use of internal combustion engines on the lake upstream of the city's impoundment dam for a triathlon.

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

---

**SUBJECT:** Resolution authorizing operation of watercraft equipped with an internal combustion engine for the 2011 Kerrville Triathlon

**FOR AGENDA OF:** 2/22/11

**DATE SUBMITTED:** 2/10/11

**SUBMITTED BY:** Charlie Hastings <sup>CA</sup>  
Public Works Director

**CLEARANCES:** Todd Parton  
City Manager

**EXHIBITS:** Map of Swimming Event

**AGENDA MAILED TO:**

**APPROVED FOR SUBMITTAL BY CITY MANAGER:** 

---

Expenditure	Current Balance	Amount	Account
Required:	in Account:	Budgeted:	Number:
\$	\$	\$	

**PAYMENT TO BE MADE TO:**

**REVIEWED BY THE FINANCE DIRECTOR:**

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**SUMMARY STATEMENT**

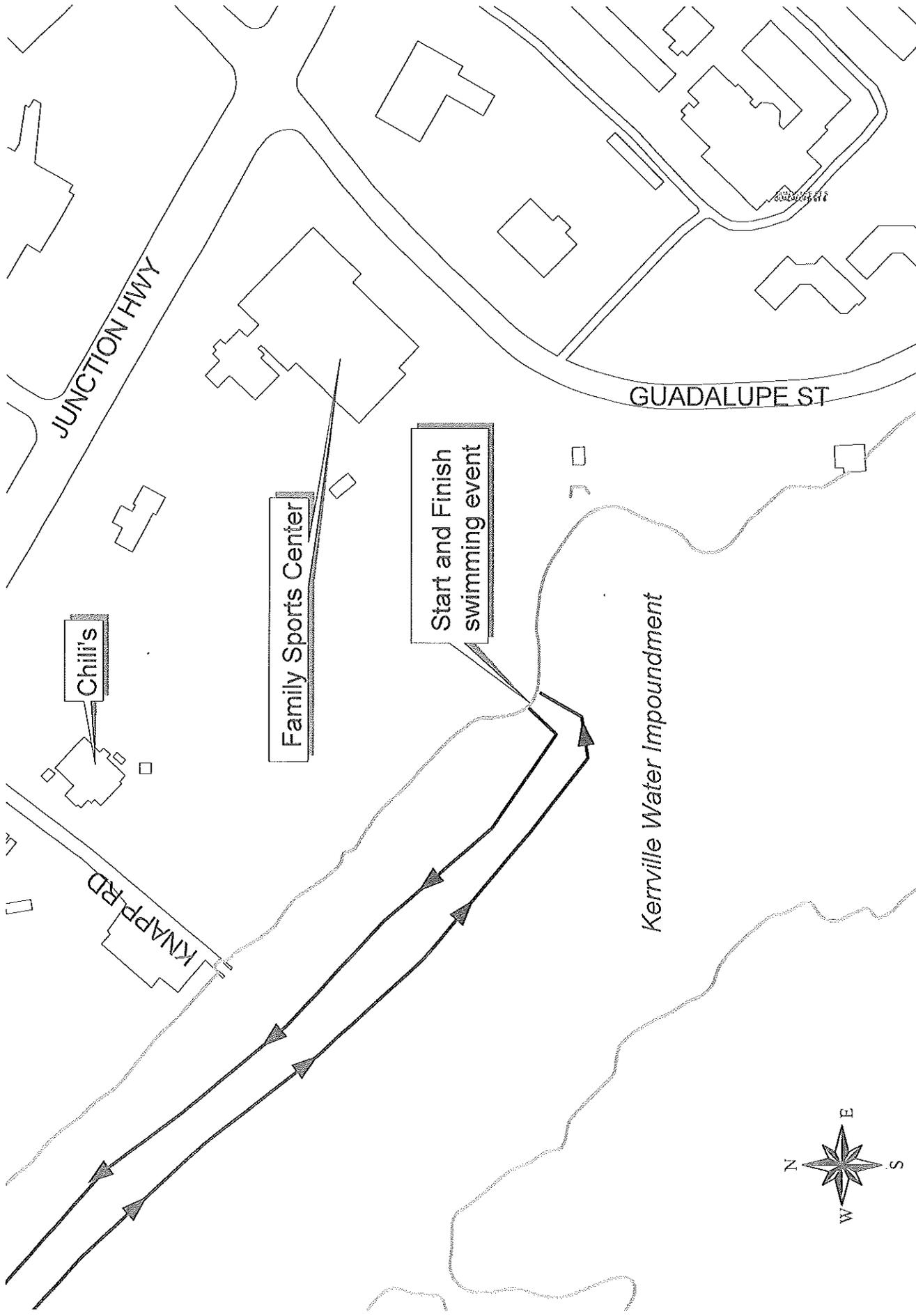
The 2011 Kerrville Triathlon, as planned and coordinated by High Five Events out of Austin, Texas will consist of a sprint triathlon (500 meter swim, 12 mile bike, 3 mile run) on Saturday October 1, 2011 and a half distance triathlon (1.2 mile swim, 56 mile bike, 13.1 mile run) on Sunday October 2, 2011. The swimming portion of the triathlon will be in the Guadalupe River with the start and finish on the grounds of the Kerrville Family Sports Center at the northern end of Guadalupe Street. This will require the use of watercraft equipped with internal combustion engines for course preparation (placement of buoys) as well as the monitoring and potential rescue of swimmers.

Chapter 118 Article II Water Impoundment Regulations of the Kerrville Code of Ordinances Section 118-34 (4) allows the operation of watercraft equipped with an internal combustion engine when it is engaged in an activity that has been authorized by resolution of the city council.

**RECOMMENDED ACTION**

The Director of Public Works recommends that Council adopts a resolution authorizing High Five Events to operate watercraft equipped with internal combustion engines for course preparation (placement of buoys) as well as the monitoring and potential rescue of swimmers from September 25, 2011 through October 2, 2011 for the swimming competition events of the 2011 Kerrville Triathlon.

# Kerrville Triathlon Swimming Event

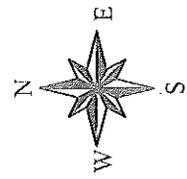


0.14 Miles

0.07

0

0.07



CITY OF KERRVILLE, TEXAS  
RESOLUTION NO. \_\_\_\_-2011

**A RESOLUTION AUTHORIZING THE USE OF INTERNAL COMBUSTION  
ENGINES ON THE LAKE UPSTREAM OF THE CITY'S IMPOUNDMENT  
DAM FOR A TRIATHLON**

WHEREAS, Chapter 118 of the City Code of Ordinances (the "Code") regulates and prohibits certain activities on the lake upstream of the City's impoundment dam (the "lake"); and

WHEREAS, one of the prohibited activities is the operation of an internal combustion engine on the lake; and

WHEREAS, under the Code, City Council may authorize an exception to this prohibition by adopting a resolution authorizing an activity which requires the use of an internal combustion engine on the lake; and

WHEREAS, the organizer of a triathlon to be held in Kerrville and who would like to use the lake for the swimming portion of its competition, is seeking an exception to the prohibition against combustible engines so that they may use boats with combustion engines to ensure the safety of competitors; and

WHEREAS, pursuant to this request and to promote and expand the recreational uses of the lake, the City Council hereby finds that a public purpose exists to authorize the use of internal combustion engines on the lake;

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

**SECTION ONE.** The City Council authorizes the use of internal combustion engines on the lake, such authority subject to the following terms:

- a. the authority is granted to High Five Events, LLC, of Austin Texas, their agents or representatives and no other person or group;
- b. the authority is valid from September 25, 2011, through October 2, 2011; and
- c. authority is limited to no greater than five (5) boats with such engines.

**SECTION TWO.** This Resolution and the authority granted hereby shall automatically expire and be revoked on October 3, 2011.

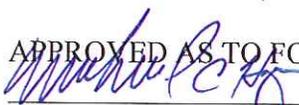
**PASSED AND APPROVED ON this the \_\_\_\_\_ day of \_\_\_\_\_, A.D.,  
2011.**

ATTEST:

\_\_\_\_\_  
David Wampler, Mayor

\_\_\_\_\_  
Brenda G. Craig, City Secretary

APPROVED AS TO FORM:

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

## **Agenda Item:** **(Staff)**

- 4A. An ordinance amending Chapter 54 "Floods", Article II "Floodplain Management," of the Code of Ordinances of the City of Kerrville, Texas, to adopt the flood insurance study and updated flood insurance rate maps issued by the Federal Emergency Management Agency; containing a cumulative clause; containing a savings and severability clause; establishing an effective date; ordering publication; and providing other matters related to the subject.

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

**SUBJECT:** Second Reading of an Ordinance amending Chapter 54, Article II of the City's Code of Ordinances regarding floodplain management.

**FOR AGENDA OF:** February 22, 2011      **DATE SUBMITTED:** February 11, 2011

**SUBMITTED BY:** Michael Wellborn, P.E.      **CLEARANCES:** Kristine Ondrias  
Director of Engineering      Assistant City Manager

**EXHIBITS:** FEMA Letter of Final Determination Ordinance

**AGENDA MAILED TO:**

**APPROVED FOR SUBMITTAL BY CITY MANAGER:**

Expenditure Required:	Current Balance in Account:	Amount Budgeted:	Account Number:
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**PAYMENT TO BE MADE TO:**

**REVIEWED BY THE FINANCE DIRECTOR:**

**SUMMARY STATEMENT**

In 2006, FEMA commenced with updating the Flood Insurance Rate Maps (FIRMs) and Flood Insurance Study (FIS) for Kerr County and the Incorporated Communities under FEMA Task orders 40 and 41. This effort is a nationwide project and is better known as the Map Modernization project and entailed updating hard copy FIRMS with newer topographical data and converting them into digital maps.

The City of Kerrville and Kerr County were included in the project beginning in 2007, and were provided with preliminary Flood Insurance Rate Maps (FIRMs) as well as Digital FIRMs (DFIRMs) on 9/30/2008. A Community Coordination Officer's Meeting (CCOM) was held on 12/15/2008 with representatives from FEMA, TWDB, City of Kerrville, City of Ingram, and Kerr County. Due to some incorrect/incomplete data, the City and County rejected the preliminary maps. On 5/26/2009, Kerrville City Council adopted Resolution No. 048-2009 protesting the preliminary FIRMs and DFIRMS along with the County. FEMA accepted the protest case on 11/23/2009. The City received new FIRMs and DFIRMs along with a letter of final determination (LOFD) on 9/07/2010 which addressed the protested concerns. In addition, the LOFD stated that the new FIS and FIRMs would become effective on March 3, 2011, and that our community is required to adopt this new data prior to the effective date in order to maintain eligibility in the National Flood Insurance Program (NFIP).

City staff identified approximately 150 structures that were not previously located within

the floodplain but will be with the new FIS & FIRMS. Therefore, staff sent letters to these property owners informing them that their properties would be affected as a result of the FEMA Map Modernization initiative. On November 16, 2010, a public meeting was held in City Hall for these property owners where representatives from the City, County, and FEMA were present to present the new data and answer questions. A map highlighting the revised floodplain was posted on the City's website in November 2010.

The modifications to the City's current Floodplain Management Ordinance include adopting the new March 3, 2011 FIS report and FIRM, designating the Floodplain Administrator as the Director of Engineer's designee, modifying the definition of the 100-Year flood to include the 1% chance flood of being equaled or exceeded once every year, and modifying the "Enclosures" requirement for Nonresidential Construction to allow parking, access, and storage below the Base Flood Elevation as allowed by FEMA standards.

Council conducted the first reading of this ordinance amending Chapter 54, Article II of the City's Code of Ordinances regarding floodplain management on February 8, 2011.

#### **RECOMMENDED ACTION**

The Director of Engineering recommends that Council approve an Ordinance amending Chapter 54, Article II of the City's Code of Ordinances regarding floodplain management to adopt the new March 3, 2011 FIS report and FIRM, designate the Floodplain Administrator as the Director of Engineer's designee, modify the definition of the 100-Year flood to include the 1% chance flood of being equaled or exceeded once every year, and modify the "Enclosures" requirement for Nonresidential Construction to allow parking, access, and storage below the Base Flood Elevation as allowed by FEMA standards.



# Federal Emergency Management Agency

Washington, D.C. 20472

**RECEIVED**

SEP 07 2010

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

IN REPLY REFER TO:  
19P-N

September 3, 2010

The Honorable Todd Bock  
Mayor, City of Kerrville  
800 Junction Highway  
Kerrville, Texas 78028

Community: City of Kerrville, Texas  
Community No.: 480420  
Map Panels Affected: See FIRM Index

Dear Mayor Bock:

This is to formally notify you of the final flood hazard determination for your community in compliance with Title 44, Chapter I, Part 67, Code of Federal Regulations. On July 19, 2000, the Department of Homeland Security's Federal Emergency Management Agency (FEMA) issued a Flood Insurance Rate Map (FIRM) that identified the Special Flood Hazard Areas (SFHAs) the areas subject to inundation by the base (1-percent-annual-chance) flood in the City of Kerrville, Kerr County, Texas. Recently, FEMA completed a re-evaluation of flood hazards in your community. On September 30, 2008, FEMA provided you with Preliminary copies of the Flood Insurance Study (FIS) report and FIRM that identify existing flood hazards in your community.

FEMA has addressed all comments received on the Preliminary copies of the FIS report and FIRM. Accordingly, the FIS report and FIRM for your community will become effective on March 3, 2011. Before the effective date, FEMA will send you final printed copies of the FIS report and FIRM.

Because the FIS for your community has been completed, certain additional requirements must be met under Section 1361 of the National Flood Insurance Act of 1968, as amended, within 6 months from the date of this letter. Prior to March 3, 2011, your community is required, as a condition of continued eligibility in the National Flood Insurance Program (NFIP), to adopt or show evidence of adoption of floodplain management regulations that meet the standards of Paragraph 60.3(d) of the NFIP regulations (44 CFR 59, etc.). These standards are the minimum requirements and do not supersede any State or local requirements of a more stringent nature.

It must be emphasized that all the standards specified in Paragraph 60.3(d) of the NFIP regulations must be enacted in a legally enforceable document. This includes adoption of the current effective FIS report and FIRM to which the regulations apply and the other modifications made by this map revision. Some of the standards should already have been enacted by your community in order to establish eligibility in the NFIP. Any additional requirements can be met by taking one of the following actions:

1. Amending existing regulations to incorporate any additional requirements of Paragraph 60.3(d);
2. Adopting all the standards of Paragraph 60.3(d) into one new, comprehensive set of regulations; or
3. Showing evidence that regulations have previously been adopted that meet or exceed the minimum requirements of Paragraph 60.3(d).

Communities that fail to enact the necessary floodplain management regulations will be suspended from participation in the NFIP and subject to the prohibitions contained in Section 202(a) of the Flood Disaster Protection Act of 1973 as amended.

In addition to your community using the FIS report and FIRM to manage development in the floodplain, FEMA will use the FIS report to establish appropriate flood insurance rates. On the effective date of the revised FIRM, actuarial rates for flood insurance will be charged for all new structures and substantial improvements to existing structures located in the identified SFHAs. These rates may be higher if structures are not built in compliance with the floodplain management standards of the NFIP. The actuarial flood insurance rates increase as the lowest elevations (including basement) of new structures decrease in relation to the Base Flood Elevations established for your community. This is an important consideration for new construction because building at a higher elevation can greatly reduce the cost of flood insurance.

To assist your community in maintaining the FIRM, we have enclosed a Summary of Map Actions to document previous Letter of Map Change (LOMC) actions (i.e., Letters of Map Amendment, Letters of Map Revision) that will be superseded when the revised FIRM panels referenced above become effective. Information on LOMCs is presented in the following four categories: (1) LOMCs for which results have been included on the revised FIRM panels; (2) LOMCs for which results could not be shown on the revised FIRM panels because of scale limitations or because the LOMC issued had determined that the lots or structures involved were outside the SFHA as shown on the FIRM; (3) LOMCs for which results have not been included on the revised FIRM panels because the flood hazard information on which the original determinations were based is being superseded by new flood hazard information; and (4) LOMCs issued for multiple lots or structures where the determination for one or more of the lots or structures cannot be revalidated through an administrative process like the LOMCs in Category 2 above. LOMCs in Category 2 will be revalidated through a single letter that reaffirms the validity of a previously issued LOMC; the letter will be sent to your community shortly before the effective date of the revised FIRM and will become effective 1 day after the revised FIRM becomes effective. For the LOMCs listed in Category 4, we will review the data previously submitted for the LOMA or LOMR request and issue a new determination for the affected properties after the revised FIRM becomes effective.

The FIRM and FIS report for your community have been prepared in our countywide format, which means that flood hazard information for all jurisdictions within Kerr County has been combined into one FIRM and FIS report. When the FIRM and FIS report are printed and distributed, your community will receive only those panels that present flood hazard information for your community. We will provide complete sets of the FIRM panels to county officials, where they will be available for review by your community.

The FIRM panels have been computer-generated. Once the FIRM and FIS report are printed and distributed, the digital files containing the flood hazard data for the entire county can be provided to your community for use in a computer mapping system. These files can be used in conjunction with other thematic data for floodplain management purposes, insurance purchase and rating requirements, and many other planning applications. Copies of the digital files or paper copies of the FIRM panels may be obtained by calling our FEMA Map Information eXchange (FMIX), toll free, at 1-877-FEMA MAP (1-877-336-2627). In addition, your community may be eligible for additional credits under our Community Rating System if you implement your activities using digital mapping files.

If your community is encountering difficulties in enacting the necessary floodplain management measures, we urge you to call Frank Pagano, Director, Federal Insurance and Mitigation Division of FEMA in Denton, Texas, at (940) 898-5127, for assistance. If you have any questions concerning mapping issues in general or the enclosed Summary of Map Actions, please call our FMIX at the toll free number shown above. Additional information and resources your community may find helpful regarding the NFIP and floodplain management, such as *The National Flood Insurance Program Code of Federal Regulations*, *Answers to Questions About the National Flood Insurance Program*, *Frequently Asked Questions Regarding the Effects that Revised Flood Hazards have on Existing Structure*, *Use of Flood Insurance Study (FIS) Data as Available Data*, and *National Flood Insurance Program Elevation Certificate and Instructions*, can be found on our website at <http://www.floodmaps.fema.gov/lfid>. Paper copies of these documents may also be obtained by calling our FMIX.

Sincerely,



Kevin C. Long, Acting Chief  
Engineering Management Branch  
Mitigation Directorate

Enclosure:  
Final Summary of Map Actions

cc: Community Map Repository

Bobby Gore  
Floodplain Administrator, City of Kerrville

## FINAL SUMMARY OF MAP ACTIONS

Community: KERRVILLE, CITY OF

Community No: 480420

To assist your community in maintaining the Flood Insurance Rate Map (FIRM), we have summarized below the previously issued Letter of Map Change (LOMC) actions (i.e., Letters of Map Revision (LOMRs) and Letters of Map Amendment (LOMAs)) that will be affected when the revised FIRM becomes effective on March 3, 2011.

## 1. LOMCs Incorporated

The modifications effected by the LOMCs listed below will be reflected on the revised FIRM. In addition, these LOMCs will remain in effect until the revised FIRM becomes effective.

LOMC	Case No.	Date Issued	Project Identifier	Old Panel	New Panel
LOMR	05-06-0920P	01/27/2008	01061 LARRY HOWARD	48265C0165E 48265C0170E	48265C0460F
LOMR	07-06-2160P	03/03/2008	TOWN CREEK SUBDIV	48265C0170E	48265C0460F 48265C0470F
LOMR	07-06-2603P	06/16/2008	Comanche Traco Golf Course	48265C0275E	48265C0470F 48265C0490F

## 2. LOMCs Not Incorporated

The modifications effected by the LOMCs listed below will not be reflected on the revised FIRM panels because of scale limitations or because the LOMC issued had determined that the lot(s) or structure(s) involved were outside the Special Flood Hazard Area, as shown on the FIRM. These LOMCs will remain in effect until the revised FIRM becomes effective. These LOMCs will be revalidated free of charge 1 day after the revised FIRM becomes effective through a single revalidation letter that reaffirms the validity of the previous LOMCs.

LOMC	Case No.	Date Issued	Project Identifier	Old Panel	New Panel
LOMA	93-05-219	08/14/1993	J.A. TIVY ADDITION, PORTION OF BLOCKS 92-83 -- 1421 MAIN STREET	4804200005D	48265C0470F
LOMA	R6-94-04-250	05/02/1994	GALERIA ESTATES, BLOCK 2, LOT 4 -- 808 LLOYD DRIVE	4804200005D	48265C0480F
LOMA	99-06-165A	11/25/1998	A PORTION OF WALTER FOSGATE SURVEY NO. 120 -- 621 GUADALUPE STREET	4804200005D	48265C0470F
LOMA	99-06-556A	02/17/1999	J.D. BROWN'S ADDITION, BLOCK 24 -- 717 WATER STREET	4804200005D	48265C0470F
LOMA	99-06-934A	04/12/1999	1835 SIDNEY BAKER -- PORTION OF B.F. CAGE SURVEY NO. 116, ABSTRACT NO. 108	4804200005D	48265C0480F
LOMA	99-06-2028A	10/22/1999	STARKEY MANOR NO. 12, BLOCK 1, LOT 1 -- 1216 JUNCTION HIGHWAY	4804200005D	48265C0470F

## FINAL SUMMARY OF MAP ACTIONS

Community: KERRVILLE, CITY OF

Community No: 480420

LOMC	Case No.	Date Issued	Project Identifier	Old Panel	New Panel
LOMA	01-06-819A	06/01/2001	2255 ARCADIA LOOP	48265C0165E	48265C0455F
LOMA	01-06-975A	05/30/2001	112 ARIZONA ASH DR.; GUADALUPE PLAZA, BLOCK 4, LOT 114	48265C0260E	48265C0490F
LOMR-F	01-06-1917A	12/07/2001	J.C. SHEFFIELD SURVEY NO. 121, ABSTRACT NO. 291, 6.58 ACRES	48265C0170E	48265C0460F
LOMA	02-06-819A	02/27/2002	LIME CREEK, BLOCK 3, LOT 9; 117 HOMESTEAD	48265C0165E	48265C0460F
LOMA	02-06-1563A	06/12/2002	A PORTION OF SURVEY 121, JOHN C. SHEFFIELD, ABSTRACT 291; 1221 JUNCTION HIGHWAY	48265C0170E	48265C0470F
LOMA	02-06-1330A	09/13/2002	HOLIDAY INN, LOT 1-A; 2145 SIDNEY BAKER STREET	48265C0170E	48265C0480F
LOMA	04-06-003A	11/12/2003	EDWARDS ADDITION, BLOCK 1, LOT 12 -- 912 GUADALUPE STREET	48265C0170E	48265C0470F
LOMR-F	05-06-1453A	06/03/2005	K-BOB SUBDIV, BLOCK 1, LOTS 3-5	48265C0170E	48265C0460F
LOMR-F	05-06-1650A	07/14/2005	SNOWFLAKE DONUT SHOP, K-BOB SUBDIV, BLOCK 1, LOT 2 & WEST RIVERSIDE SUBDIV, BLOCK 1, LOT 1-B -- STA	48265C0170E	48265C0460F
LOMR-F	05-06-1895A	08/30/2005	TOWN CREEK VILLAGE REPLAT, LOTS 1-3 -- 141 WATER STREET	48265C0170E	48265C0470F
LOMA	06-06-B209A	02/07/2006	State Highway Loop 534 (TX)	48265C0260E	48265C0490F
LOMR-F	06-06-B263A	02/21/2006	2001 South Highway 173 (TX)	48265C0260E	48265C0470F
LOMA	06-06-BE14A	07/27/2006	RICHESON SUBDIV 2, BLOCK 11, LOT 11 -- 907 BARRY DRIVE (TX)	48265C0170E	48265C0470F
LOMA	08-06-0566A	03/28/2008	2321 JUNCTION HIGHWAY -- 3.25 ACRES IN SURVEY NO. 125, ABSTRACT NO. 246	48265C0165E	48265C0455F
LOMR-F	08-06-2164A	07/22/2008	RIVER PLAZA SUBDIV, BLOCK 1, LOT 2-JR -- 1343 STATE HIGHWAY 173	48265C0260E	48265C0470F
LOMA	08-06-2672A	08/12/2008	PARK LANE APARTMENTS, BUILDINGS A-D -- 100 PARK LANE	48265C0170E 48265C0260E	48265C0470F
LOMR-F	09-06-2508A	08/11/2009	OVERSTREET PARK, BLOCK 1, LOTS 3-4 -- 1381, 1421 & 1433 JUNCTION HIGHWAY	48265C0170E	48265C0470F
LOMR-FW	10-06-1218A	04/27/2010	LOT 38, BLOCK 1, RIVERHILLS TOWNHOUSE TRACTS NO. 7 -- 2304 ROCK CREEK DRIVE	48265C0260E	48265C0470F

## FINAL SUMMARY OF MAP ACTIONS

Community: KERRVILLE, CITY OF

Community No: 480420

**3. LOMCs Superseded**

The modifications effected by the LOMCs listed below have not been reflected on the Final revised FIRM panels because they are being superseded by new detailed flood hazard information or the information available was not sufficient to make a determination. The reason each is being superseded is noted below. These LOMCs will no longer be in effect when the revised FIRM becomes effective.

LOMC	Case No.	Date Issued	Project Identifier	Reason Determination Will be Superseded
LOMA	199530681MBJ	01/07/1976	J.D. BROWN ADDITION, BLOCK 7	1

1. Insufficient information available to make a determination.
2. Lowest Adjacent Grade and Lowest Finished Floor are below the proposed Base Flood Elevation.
3. Lowest Ground Elevation is below the proposed Base Flood Elevation.
4. Revised hydrologic and hydraulic analyses.
5. Revised topographic information.

**4. LOMCs To Be Redetermined**

The LOMCs in Category 2 above will be revalidated through a single revalidation letter that reaffirms the validity of the determination in the previously issued LOMC. For LOMCs issued for multiple lots or structures where the determination for one or more of the lots or structures has changed, the LOMC cannot be revalidated through this administrative process. Therefore, we will review the data previously submitted for the LOMC requests listed below and issue a new determination for the affected properties after the effective date of the revised FIRM.

LOMC	Case No.	Date Issued	Project Identifier	Old Panel	New Panel
			NO CASES RECORDED		

**CITY OF KERRVILLE, TEXAS  
ORDINANCE NO. 2011-\_\_**

**AN ORDINANCE AMENDING CHAPTER 54 "FLOODS", ARTICLE II "FLOODPLAIN MANAGEMENT," OF THE CODE OF ORDINANCES OF THE CITY OF KERRVILLE, TEXAS, TO ADOPT THE FLOOD INSURANCE STUDY AND UPDATED FLOOD INSURANCE RATE MAPS ISSUED BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; ESTABLISHING AN EFFECTIVE DATE; ORDERING PUBLICATION; AND PROVIDING OTHER MATTERS RELATED TO THE SUBJECT**

**WHEREAS**, state law requires all Texas cities and counties to participate in the National Flood Insurance Program ("NFIP"); and

**WHEREAS**, in 2006, the Federal Emergency Management Agency ("FEMA"), pursuant to its Map Modernization Program ("Program"), began the process of updating and revising a Flood Insurance Study ("FIS") and Flood Insurance Rate Maps ("FIRMs") for areas within the City and Kerr County; and

**WHEREAS**, FEMA re-evaluated flood hazard areas, modernized its flood maps for areas with the greatest flood risk, and created and implemented the use of digital maps; and

**WHEREAS**, the City and Kerr County met with FEMA and were given an opportunity to review and comment upon preliminary FIRMs issued by FEMA; and

**WHEREAS**, due to some incorrect and incomplete data, the City and County rejected the preliminary FIRMs and the City Council adopted Resolution No. 48-2009, which officially protested FEMA's proposed maps; and

**WHEREAS**, FEMA eventually issued new FIRMs, which addressed the City's concerns, and recently issued a Letter of Final Determination ("LOFD") which provided that the FIS and FIRMs would become effective on March 3, 2011; and

**WHEREAS**, prior to March 3, 2011, the City is required, as a condition of continued eligibility in the NFIP, to adopt floodplain management regulations that meet the standards of the NFIP regulations, which standards are the minimum requirements and do not supersede any state or local requirements of a more stringent nature; and

**WHEREAS**, the City is also required to adopt the FIS and FIRMs; and

**WHEREAS**, City staff has contacted those property owners within the City whose property will be affected by the new FIS and FIRMs and hosted a public meeting, which included representatives from FEMA; and

WHEREAS, the City Council of the City of Kerrville, Texas, finds it to be in the public interest to adopt FEMA's most recent FIS and FIRMs and to amend the City's Code of Ordinances to reflect this adoption;

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

**SECTION ONE.** The City Council of the City of Kerrville, Texas, hereby adopts the most recent Flood Insurance Study and the Floodplain Insurance Rate Maps, as prepared by the Federal Emergency Management Agency and which study and maps will become effective on March 3, 2011.

**SECTION TWO.** Chapter 54 "Floods", Article II "Floodplain Management" of the Code or Ordinances of the City of Kerrville, Texas, is amended by amending Section 54-32 by adding the language that is underlined (added) and deleting the language that is bracketed and stricken (~~{deleted}~~) as follows:

**"Sec. 54-32. Definitions.**

⋮

*Base flood elevation* (BFE) means the water surface elevation associated with the base flood as defined in the flood insurance study approved by FEMA dated March 3, 2011 ~~{January 19, 2000, and effective on July 19, 2000}~~, any amendments approved by FEMA to such flood insurance study, or such other flood insurance study as may be later adopted and/or amended by FEMA.

⋮

Director means the Director of Engineering ~~{Director of Public Works}~~ of the City.

⋮

*100-year flood* means the flood that has a 1% chance of being [is] equaled or exceeded once every year ~~{in 100 years on the average}~~; equivalent to the one percent annual chance flood.

**SECTION THREE.** Chapter 54 "Floods", Article II "Floodplain Management" of the Code or Ordinances of the City of Kerrville, Texas, is amended by amending Section 54-33(b) by adding the language that is underlined (added) and deleting the language that is bracketed and stricken (~~{deleted}~~) as follows:

**"Sec. 54-33. General provisions.**

⋮

**"(b) Basis for establishing the areas of special flood hazard.** The areas of special flood hazard identified and defined in the following documents prepared by FEMA are hereby adopted by reference and incorporated as part of this article:

- (1) A scientific and engineering report entitled, *The Flood Insurance Study for Kerr County, Texas and Incorporated Areas*, effective March 3, 2011 ~~{effective July 19, 2000}~~;

- (2) Flood Insurance Rate Map Nos. 48265C0455F, 48265C0460F, 48265C0480F, 48265C0470F, 48265C0490F, 48265C0635F ~~[48265C0165E, 48265C0170E, 48265C0260E, and 48265C0275E]~~, effective on March 3 ~~[July 19, 2000].~~”

**SECTION FOUR.** Chapter 54 “Floods”, Article II “Floodplain Management” of the Code or Ordinances of the City of Kerrville, Texas, is amended by amending Section 54-34(a) by adding the language that is underlined (added) and deleting the language that is bracketed and stricken (~~deleted~~) as follows:

“(a) **Designation of the floodplain administrator.** The Director of Engineering or designee ~~[city engineer]~~ is hereby appointed the floodplain administrator to administer and implement the provisions of this article and other appropriate sections of Part 44 of the Code of Federal Regulations (National Flood Insurance Program Regulations) pertaining to floodplain management.”

**SECTION FIVE.** Chapter 54 “Floods”, Article II “Floodplain Management” of the Code or Ordinances of the City of Kerrville, Texas, is amended by amending Section 54-35(b)(3) by adding the language that is underlined (added) and deleting the language that is bracketed and stricken (~~deleted~~) as follows:

“(3) *Enclosures.* New construction and substantial improvements, with fully enclosed areas below the lowest floor that are usable solely for the parking of vehicles, building access, or storage in an area other than a basement and which are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement shall be certified by either a registered professional engineer or architect or meet or exceed the following minimum criteria:

a. A minimum of two openings on separate walls having a total net area of not less than 1 square inch for every square foot of enclosed area subject to flooding shall be provided.

b. The bottom of all openings shall be no higher than 1 foot above grade.

c. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters. ~~[No building enclosure, including building enclosures with breakaway walls, shall be constructed below the base flood elevation.]~~

**SECTION SIX.** The City Secretary is authorized and directed to submit this Ordinance 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 SEVEN.** 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 EIGHT.** 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 any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

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

**PASSED AND APPROVED ON FIRST READING, this the \_\_\_ day of \_\_\_\_\_, A.D., 2011.**

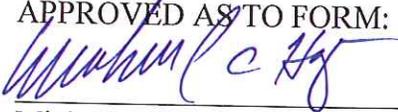
**PASSED AND APPROVED ON SECOND AND FINAL READING, this the \_\_\_ day of \_\_\_\_\_, A.D., 2011.**

\_\_\_\_\_  
David Wampler, Mayor

ATTEST:

\_\_\_\_\_  
Brenda G. Craig, City Secretary

APPROVED AS TO FORM:

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

# **Agenda Item:**

**(Staff)**

5A. Building board of adjustment and appeal's recommendation to amend the plumbing code to allow grey (recycled) water reuse systems.

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

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**SUBJECT:** Discussion and possible action on the Building Board of Adjustment and Appeal's (BBAA) recommendation to amend the City plumbing code to allow grey water reuse systems in the City of Kerrville

**FOR AGENDA OF:** February 22, 2011

**DATE SUBMITTED:** February 10, 2011

**SUBMITTED BY:** Kevin Coleman *KC* **CLEARANCES:** Kristine Ondrias *KLO*

**EXHIBITS:** Memo from Jeff Finley, Chief Building Official

**AGENDA MAILED TO:**

**APPROVED FOR SUBMITTAL BY CITY MANAGER:** *JF*

---

Expenditure	Current Balance	Amount	Account
Required:	in Account:	Budgeted:	Number:
\$	\$	\$	

**PAYMENT TO BE MADE TO:**

**REVIEWED BY THE DIRECTOR OF FINANCE:**

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**SUMMARY STATEMENT**

Under a citizen request under a prior agenda, the City Council considered a change in the City's building code to allow the installation of grey water reuse system in the City. Properly installed these systems provide for allow the safe reuse of grey water for either subsurface drip irrigation or to supply non-potable water to certain plumbing fixtures within structures. Installation of this type of system is not allowed under existing building and plumbing codes, and therefore no standards for their installation have been adopted.

Council discussion covered the technical issues with these systems, the effect on utility revenues or the effect on the quantity of effluent available for resale if grey water systems become prolific.

Council referred the issue to the Building Board of Adjustment and Appeal (BBAA) for recommendation on the code related issues. Review of the effects on utility revenue and effluent quantity was referred to staff.

**BBAA Recommendation**

BBAA has reviewed the applicable code issues at its January meeting. BBAA recommended an amendment to the plumbing code to allow grey water systems and recommended the adoption of TCEQ standards for those systems as the minimum standards required for installation. A code change would simply allow the use of grey water reuse systems, and would not create any requirement to install systems.

### Water Utility Revenue

Given the installation cost of a grey water system, staff assumes that only a limited number of systems will be installed in the near future. Moreover, most systems will be used only for subsurface irrigation of ornamental landscaping. Most owners will not invest in the added expense to allow use within the structures. Additionally, those property owners that do choose to invest in a grey water system will do so for environmental reasons. These owners, again limited in number, are not by nature heavy water users. These assumptions point to a limited effect on overall usage, or reduction in water utility revenues. That lost revenue would need to be balanced against the value of increased potable (treated) water diverted from irrigation use.

### Wastewater Utility Revenue

Given that City wastewater rates are based on water usage, grey water directed to reuse systems will have only limited effect on waste water utility revenues. That lost revenue would need to be balanced against the value of increased potable (treated) water diverted from irrigation use.

### Effluent Sales

Grey water directed to a reuse system could reduce the amount of effluent available for resale. Again, most owners will install systems used only for subsurface irrigation of ornamental landscaping, and will not invest in the added expense to reuse grey water within structures. Therefore, the installation of system over time will not significantly lessen the overall amount of effluent available for resale.

## **RECOMMENDED ACTION**

Provide staff direction to present ordinance changes needed to enact the Building Board of Adjustment and Appeal's recommendation.



**City of Kerrville**  
Building Inspections Division  
800 Junction Highway  
Kerrville, Texas 78028-5069  
830.792.8356 (O)  
830.792.0517 (F)  
jeff.finley@kerrvilletx.gov

TO: KRISTINE ONDRIAS, ASSISTANT CITY MANAGER  
MIKE HAYES, CITY ATTORNEY

VIA: KEVIN COLEMAN, DIRECTOR DEVELOPMENT SERVICES *KMC*

FROM: JEFF FINLEY, CHIEF BUILDING OFFICIAL *JF*

DATE: 02/07/2011

SUBJECT: ADOPTION OF GRAYWATER REUSE REGULATIONS

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On January 26, 2011, the Building Board of Adjustment met. On their agenda was review and consideration of graywater reuse standards as previously requested by the City Council.

After review of the available standards (standards published by the International Code Council (ICC) and the Texas Commission on Environmental Quality (TCEQ) and discussion of those standards by the board, a motion was made to recommend that the City Council adopt the TCEQ standards for graywater reuse. This recommendation was made based upon the boards feelings that the TCEQ standards are superior to the ICC standards and since the TCEQ's standards are the minimum allowed in the State of Texas it saves staff from having to interpret whether the ICC standard or the TCEQ standard is most restrictive and allows the city to avoid potential conflicts with the enforcement arm of TCEQ.

It would appear that what is now needed to adopt these standards would be an ordinance that allows the reuse of graywater in conjunction with TCEQ standards and adopting the TCEQ standards for graywater reuse as the City of Kerrville standards. A copy of the basic standards are attached to this memo.

After reviewing the City Code, my suggestion would be to open Chapter 26, Article IV, Plumbing Code and inserting a section that adopts the TCEQ standards as the standards for graywater reuse for all buildings and properties in the City of Kerrville.

If you have any questions, please let me know.

**SUBCHAPTER F: USE OF GRAYWATER SYSTEMS**

**§§210.81 - 210.85**

**Effective January 6, 2005**

**§210.81. Applicability.**

(a) This subchapter applies to graywater used for irrigation and other agricultural purposes; for domestic use; for commercial purposes; for industrial purposes; and for institutional purposes.

(b) Reclaimed water use is regulated by Subchapters A - E of this chapter (relating to General Provisions; General Requirements for the Production, Conveyance, and Use of Reclaimed Water; Quality Criteria and Specific Uses for Reclaimed Water; Alternative and Pre-Existing Reclaimed Water Systems; and Special Requirements for Use of Industrial Reclaimed Water).

(c) For the purpose of this subchapter, the term "Site" has the same meaning as defined in Chapter 305, Subchapter A of this title (relating to General Provisions).

Adopted December 15, 2004

Effective January 6, 2005

**§210.82. General Requirements.**

(a) Graywater is defined as wastewater from:

- (1) showers;
- (2) bathtubs;
- (3) handwashing lavatories;
- (4) sinks that are not used for disposal of hazardous or toxic ingredients;
- (5) sinks not used for food preparation or disposal; and
- (6) clothes-washing machines.

(b) Graywater does not include wastewater from the washing of material, including diapers, soiled with human excreta or wastewater that has come into contact with toilet waste.

(c) Construction of a graywater system, including storage and disposal systems, must comply with this chapter and any requirements of the local permitting authority.

Adopted December 15, 2004

Effective January 6, 2005

**§210.83. Criteria for the Domestic Use of Graywater.**

(a) An authorization is not required for the domestic use of less than 400 gallons of graywater each day if:

(1) the graywater originates from a private residence;

(2) the graywater system is designed so that 100% of the graywater can be diverted to an organized wastewater collection system during periods of non-use of the graywater system and the discharge from the graywater system must enter the organized wastewater system through two backwater valves or backwater preventers;

(3) the graywater is stored in tanks and the tanks:

(A) are clearly labeled as nonpotable water;

(B) must restrict access, especially to children;

(C) eliminate habitat for mosquitoes and other vectors;

(D) are able to be cleaned; and

(E) meet the structural requirements of §210.25(i) of this title (relating to Special Design Criteria for Reclaimed Water Systems);

(4) the graywater system uses piping that meets the piping requirement of §210.25 of this title;

(5) the graywater is applied at a rate that:

(A) will not result in ponding or pooling; or

(B) will not cause runoff across the property lines or onto any paved surface;

and

(6) the graywater is not disposed of using a spray distribution system.

(b) Builders of private residences are encouraged to:

(1) install plumbing in new housing to collect graywater from all allowable sources;

and

(2) design and install a subsurface graywater system around the foundation of new housing to minimize foundation movement or cracking.

(c) A graywater system as described in subsection (a) of this section may only be used:

cracking;

- (1) around the foundation of new housing to minimize foundation movement or

- (2) for gardening;

- (3) for composting; or

- (4) for landscaping at the private residence.

(d) The graywater system must not create a nuisance or damage the quality of surface water or groundwater.

(e) Homeowners who have been disposing wastewater from residential clothes-washing machines, otherwise known as laundry graywater, directly onto the ground before the effective date of this rule may continue disposing under the following conditions.

- (1) The disposal area must not create a public health nuisance.

- (2) Surface ponding must not occur in the disposal area.

- (3) The disposal area must support plant growth or be sodded with vegetative cover.

- (4) The disposal area must have limited access and use by residents and pets.

(5) Laundry graywater that has been in contact with human or animal waste must not be disposed onto the ground surface.

- (6) Laundry graywater must not be disposed to an area where the soil is wet.

- (7) A lint trap must be affixed to the end of the discharge line.

(f) Graywater systems that are altered, create a nuisance, or discharge graywater from any source other than clothes-washing machines are not authorized to discharge graywater under subsection (e) of this section.

Adopted December 15, 2004

Effective January 6, 2005

**§210.84. Criteria for Use of Graywater for Industrial, Commercial, or Institutional Purposes.**

(a) Authorization. If used in accordance with this subchapter, graywater used for an industrial, commercial, or institutional purpose does not require authorization from the commission.

(b) Graywater systems used for industrial, commercial, or institutional purposes must be designed so that 100% of the graywater can be diverted to an organized wastewater collection system during periods of non-use of the graywater system. The discharge from the graywater system must

enter the organized wastewater system through two backwater valves or backwater preventers.

(c) Graywater, as defined in §210.82(a) of this title (relating to General Requirements), may be used for the following activities.

(1) Process water.

(A) Graywater used for industrial, commercial, or institutional purposes must be treated to a standard that allows the graywater to be used in operational processes.

(B) Treatment described in subparagraph (A) of this paragraph does not require an authorization from the agency.

(2) Landscape maintenance. If graywater is used for landscape maintenance, the graywater must meet the following standards.

(A) If the graywater will be applied in areas where the public may come into contact with the graywater, the graywater must meet the following standards:

(i) Fecal coliform, 20 colony forming units (CFU)/100 milliliters (ml), geometric mean; or

(ii) Fecal coliform (not to exceed), 75 CFU/100 ml, single grab sample.

(B) If the graywater will be applied in areas where the public is not present during the time when irrigation activities occur or disposed of for other uses where the public would not come into contact with the graywater, the graywater must meet the following standards:

(i) Fecal coliform, 200 CFU/100 ml, geometric mean; or

(ii) Fecal coliform (not to exceed), 800 CFU/100 ml, single grab sample.

(3) Dust control. If graywater is used for dust control, the graywater must meet the standards in paragraph (2)(B) of this subsection.

(4) Toilet flushing. If graywater is used for toilet flushing:

(A) the fecal coliform levels must meet the limits in paragraph (2)(A) of this subsection; and

(B) all exposed piping and piping carrying graywater within a building must be either purple pipe or painted purple; all buried piping installed after the effective date of these rules must be either manufactured in purple, painted purple, taped with purple metallic tape, or bagged in

purple; and all exposed piping must be stenciled in white with a warning reading "NON-POTABLE WATER."

(5) Other uses. If graywater is used for other similar activities where the potential for unintentional human exposure may occur, the graywater must meet the fecal coliform limits in paragraph (2)(A) of this subsection.

(d) Graywater used for commercial, industrial, or institutional purposes must be monitored for fecal coliform at least monthly in areas where the public may come into contact with graywater and these records must be maintained at the site. These records must be readily available for inspection by the commission for a minimum of five years.

Adopted December 15, 2004

Effective January 6, 2005

**§210.85. Criteria for Use of Graywater for Irrigation and for Other Agricultural Purposes.**

(a) If used in accordance with this subchapter, graywater used for irrigation and other agricultural purposes does not require authorization from the commission.

(b) Graywater systems used for irrigation and other agricultural purposes must be designed so that 100% of the graywater can be diverted to an organized wastewater collection system during periods of non-use of the graywater system. The discharge from the graywater system must enter the organized wastewater system through two backwater valves or backwater preventers.

(c) Graywater, as defined in §210.82(a) of this title (relating to General Requirements), may be used for the following activities.

(1) Process water.

(A) Graywater used for irrigation and other agricultural purposes may be treated to a standard that allows the graywater to be used in operational processes.

(B) Treatment described in subparagraph (A) of this paragraph does not require an authorization from the commission.

(2) Landscape maintenance. If graywater is used for landscape maintenance, the graywater must meet the following standards.

(A) If the graywater will be applied in areas where the public may come into contact with the graywater, the graywater must meet the following standards:

(i) Fecal coliform, 20 colony forming units (CFU)/100 milliliters (ml), geometric mean; or

(ii) Fecal coliform (not to exceed), 75 CFU/100 ml, single grab

sample.

(B) If the graywater will be applied in areas where the public is not present during the time when irrigation activities occur or disposed of for other uses where the public would not come into contact with the graywater, the graywater must meet the following standards:

(i) Fecal coliform, 200 CFU/100 ml, geometric mean; or

(ii) Fecal coliform, 800 CFU/100 ml, single grab sample.

(3) Dust control. If graywater is used for dust control, the graywater must meet the standards in paragraph (2)(B) of this subsection.

(4) Irrigation of fields. If graywater is used to irrigate fields where edible crops are grown or fields that are pastures for milking animals, the graywater must meet the standards in paragraph (2)(A) of this subsection.

(5) Other uses. If graywater is used for other similar activities where the potential for unintentional human exposure may occur, the graywater must meet the fecal coliform limits in paragraph (2)(A) of this subsection.

(d) Graywater used for irrigation and for other agricultural purposes must be monitored for fecal coliform at least monthly in areas where the public may come into contact with graywater and the records must be maintained at the site. These records must be readily available for inspection by the commission for a minimum period of five years.

Adopted December 15, 2004

Effective January 6, 2005

**Agenda Item:**  
**(Staff)**

- 5B. Direction to staff regarding amendments to the city's sign regulations in the proposed central business district.

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

**SUBJECT:** Discussion of Sign Regulations in the Proposed Central Business District

**FOR AGENDA OF:** February 22, 2011 **DATE SUBMITTED:** February 11, 2011

**SUBMITTED BY:** Kevin Coleman  **CLEARANCES:** Kristine Ondrias 

**EXHIBITS:** Exhibit A – Ordinance 2003-07  
Exhibit B – Recommended changes to Section One - Ordinance 2003-07  
Exhibit C – Comparison Chart - Existing Sign Ordinance and  
Recommended Ordinance Amendments

**AGENDA MAILED TO:**

**APPROVED FOR SUBMITTAL BY CITY MANAGER:** 

<b>Expenditure</b>	<b>Current Balance</b>	<b>Amount</b>	<b>Account</b>
<b>Required:</b>	<b>in Account:</b>	<b>Budgeted:</b>	<b>Number:</b>
<b>\$</b>	<b>\$</b>	<b>\$</b>	

**PAYMENT TO BE MADE TO:**

**REVIEWED BY THE DIRECTOR OF FINANCE:**

**SUMMARY STATEMENT**

Adoption of the proposed Central Business District (CBD) into the zoning ordinance requires an amendment to the sign ordinance to clarify signage allowed within the new zoning district. This amendment creates the opportunity to assess appropriate signage within this and other critical, highly visible areas of town.

At a prior meeting, staff presented a series of amendments addressing CBD signage. Council directed staff to present the proposed changes to the stakeholders in this area.

Under this agenda item, staff will present a revised recommendation regarding CBD signage issues to City Council. Rather than develop a separate set of standards for the CBD as proposed previously, the revised recommendation would blend standards adopted under ordinance 2003-07 and applicable to areas along the SH 173 and Loop 534 corridors with previously proposed standards.

The proposed amendments are attached, and shown as amendments to Section One of Ordinance 2003-07.

In addition to tying the ordinance to the new CBD zone, the amended ordinance will:

- Loosen the definition of monument signs to give the owner greater flexibility in sign design;
- Clarify the application of the revised regulations to those properties that front SH

- 173, Loop 534 and the Guadalupe River zone;
- Extend the application of the revised regulations to newly developed commercial property on FM783, Holdsworth Drive, Spur 98, and SH16 south and within the Gateway district;
  - Prohibit roof signs in the same areas; and
  - Limit the timeframe banners can be used in these same areas.

Any existing signage in these areas would be brought into compliance with the proposed standards upon replacement of existing signage, or at change of use of the property.

Additionally, these guidelines will be used on a case by case basis to allow signage defined within any Planned Development District or Conditional Use Permit approved in the future to be approved by Council.

Upon Council review and initial input on the amendments proposed, the proposed amendments will be vetted through an informal public input session, and given that input, presented to Council, at time of adoption of the zoning district.

#### **RECOMMENDED ACTION**

Council is asked to review the proposed amendments and, after any needed discussion, direct staff to move forward with a public vetting process and ordinance adoption.

CITY OF KERRVILLE, TEXAS  
ORDINANCE NO. 2003-07

AN ORDINANCE AMENDING ORDINANCE NO. 85-59, SECTION 27 "SIGN REGULATIONS", AS AMENDED, BY AMENDING SUBSECTION 27.3 TO PROHIBIT OFF-PREMISE SIGNS FOR THOSE ZONING DISTRICTS LOCATED WITHIN THE AREAS OF STATE HIGHWAY LOOP 534 AND STATE HIGHWAY 173; REVISING REGULATIONS FOR ON-PREMISE SIGNS IN THE SAME AREAS; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; AND ORDERING PUBLICATION

WHEREAS, the City of Kerrville has adopted regulations governing the size, design, and location of signs within the City and its extraterritorial jurisdiction, said regulations being set forth in Section 27 "Sign Regulations" of Ordinance No. 85-59, as amended by Ordinance Nos. 86-17, 86-19, 87-17, 88-10, 88-17, 88-33, 97-08, and 2002-20 (hereafter collectively referred to as "Section 27, as amended" or "the Sign Regulations"); and

WHEREAS, City staff and the City's Planning and Zoning Commission have recently studied the issue of signs within the corridors of State Highway Loop 534 and State Highway 173; and

WHEREAS, both City staff and the City's Planning Zoning Commission have recommended changes to the Sign Regulations applicable to these areas, which will include prohibiting off-premise signs in such areas and revising the regulations for on-premise signs; and

WHEREAS, pursuant to Texas Local Government Code §§211.006 and 211.007, notice has been given to all parties in interest and citizens by publication in the official newspaper and otherwise, of a hearing to be held before the City Council on March 11, 2003, to consider the final report of the City of Kerrville Planning and Zoning Commission regarding its recommendations on the adoption of an ordinance amending Section 27, as amended, by adding new regulations affecting the location, size, and design of certain outdoor signs; and

WHEREAS, such public hearing was held in the Council Chambers beginning at approximately 6:30 p.m. on March 11, 2003, as advertised; and

WHEREAS, after a full hearing, at which all parties in interest and citizens were given an opportunity to be heard; and after receiving and considering the recommendations of the Planning and Zoning Commission and City staff; and after considering among other things, the character of the various areas of the City and the suitability of particular uses in each area; and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the City, the City Council finds it to be in the best interest of the health, safety, morals and general welfare of the City of Kerrville, Texas, to adopt a revision to the City's zoning regulations relating to the installation, maintenance, location, and design of signs within the City of Kerrville;

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

SECTION ONE. That Subsection 27.3 of Ordinance No. 85-59, as amended, shall be amended by adding a new Paragraph 3:

3. The following signs shall be permitted within the 25E, 26E, 27E, 28E, 29E, 30E, 33S, 35S, 36S, and GR Zoning Districts:
  - A. Banner sign, subject to the following regulations:
    - (1) The entire banner sign covers portions of (1) the outside wall of any building, or (2) a wall or fence which is built along the perimeter of the property, or along the perimeter of a substantial part of such property.
    - (2) The entire square footage of banner signs at one business location shall not exceed 80 square feet.
    - (3) The banner is, and remains in, good condition and without torn, or tattered portions.
  - B. Marquee sign;
  - C. Projecting sign;
  - D. Free-standing sign, subject to the following regulations:
    - (1) In the case of a single building or tenant, one (1) free-standing sign is permitted with the following criteria:
      - (a) Sign Area: The maximum allowable sign area shall be sixty-four (64.0) square feet.
      - (b) Sign Height: The maximum allowable height shall be eight feet (8.0') above the top of the adjacent street or driveway level;
      - (c) Location of Sign: The free-standing sign shall not be located closer than sixty feet (60.0') from another free-standing sign.
      - (d) Lighted Area: The free-standing sign shall be front lit with ground-mounted lights or backlit, but shall not be internally lit.

- (c) Sign Material: The free-standing sign shall be anchored in a native colored masonry or other similar material to the building(s) constructed on the property and framed on all four (4) sides by, at a minimum, six inches (6") of native colored masonry, or other material similar to the building(s) constructed on the property.
- (2) In the case of multiple buildings or tenants one (1) free-standing sign is permitted with the following criteria:
- (a) Sign Area: The maximum allowable sign area shall be one hundred (100.0) square feet.
  - (b) Sign Height: The maximum allowable height shall be fifteen feet (15.0') above the top of the adjacent street or driveway level.
  - (c) Location of Sign: The free-standing sign shall not be located closer than sixty feet (60.0') from any other free-standing sign.
  - (d) Lighted Area: The free-standing sign shall be front lit with ground-mounted lights or backlit, but shall not be internally lit.
  - (e) Sign Material: The free-standing sign shall be anchored in native colored masonry or other materials similar to the building(s) constructed on the property and framed on all four (4) sides by, at a minimum, six inches (6") of native colored masonry, or other material similar to the building(s) constructed on the property.

E. Off-premise signs are prohibited within the 25E, 26E, 27E, 28E, 29E, 30E, 33S, 35S, 36S, and GR Zoning Districts.

SECTION TWO. That based upon the addition of the new Paragraph 3 delineated above, Paragraphs 3 through 8 of Subsection 27.3 shall be renumbered to Paragraphs 4 through 9 respectively.

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 any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

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

PASSED AND APPROVED ON FIRST READING, this the 11<sup>th</sup> day of March, 2003.

PASSED AND APPROVED ON SECOND AND FINAL READING, this the 25<sup>th</sup> day of March, 2003.

\_\_\_\_\_  
Stephen P. Fine, Mayor

ATTEST:

\_\_\_\_\_  
Sheila L. Brand, City Clerk

APPROVED AS TO FORM:

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

SECTION ONE. That Subsection 27.3 of Ordinance No. 85-59, as amended, shall be amended by adding a new Paragraph 3:

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3. ~~The following signs shall be permitted on any non-residential property fronting SH 173, Loop 534, FM 783, Spur 98, SH 16 South, Holdsworth Drive, and on any non-residential property within the 25E, 26E, 27E, 28E, 29E, 30E, 33S, 35S, 36S, and GR-Guadalupe River, Gateway and CBD Zoning Districts:~~

A. Banner sign, subject to the following regulations:

- (1) The entire banner sign covers portions of (1) the outside wall of any building, or (2) a wall or fence which is built along the perimeter of the property, or along the perimeter of a substantial part of such property.
- (2) The entire square footage of banner signs at one business location shall not exceed 80 square feet.
- (3) The banner is, and remains in, good condition and without torn, or tattered portions.
- ~~(4) Allowed by permit, for up to 60 consecutive days or for a total of 120 days in any calendar year.~~

B. Marquee sign;

C. Projecting sign;

D. Free-standing sign, subject to the following regulations:

- (1) In the case of a single building or tenant, one (1) free-standing sign is permitted with the following criteria:
  - (a) Sign Area: The maximum allowable sign area shall be sixty-four (64.0) square feet.
  - (b) Sign Height: The maximum allowable height shall be eight feet (8.0') above the top of the adjacent street or driveway level;
  - (c) Location of Sign: The free-standing sign shall not be located closer than sixty feet (60.0') from another free-standing sign.
  - ~~(d) Lighted Area: The free-standing sign shall be front lit with ground-mounted lights or backlit, but shall not be internally lit.~~
  - (e) Sign ~~Design~~Material: The free-standing sign shall be anchored to a base at least 75% as wide as the sign and constructed of ~~in a native colored masonry or other similar material to the building(s)~~

~~constructed on the property and framed on all four (4) sides by, at a minimum, six inches (6") of native colored masonry, or other material similar to the building(s) constructed on the property or screened from view by maintained landscaping covering similar dimensions.~~

(2) In the case of multiple buildings or tenants one (1) free-standing sign is permitted with the following criteria:

(a) Sign Area: The maximum allowable sign area shall be one hundred (100.0) square feet.

(b) Sign Height: The maximum allowable height shall be fifteen feet (15.0') above the top of the adjacent street or driveway level.

(c) Location of Sign: The free-standing sign shall not be located closer than sixty feet (60.0') from any other free-standing sign.

~~(d) Lighted Area: The free-standing sign shall be front lit with ground-mounted lights or backlit, but shall not be internally lit.~~

(e) Sign Design Material: The free-standing sign shall be anchored to a base at least 75% as wide as the sign and constructed of in native colored masonry or other materials similar to the building(s) constructed on the property and framed on all four (4) sides by, at a minimum, six inches (6") of native colored masonry, or other material similar to the building(s) constructed on the property or screened from view by maintained landscaping covering similar dimensions.

E. Off-premise signs and roof signs are prohibited on any non-residential property fronting SH 173, Loop 534, FM 783, Spur 98, SH 16 South, Holdsworth Drive, and on any non-residential property within the 25E, 26E, 27E, 28E, 29E, 30E, 33S, 35S, 36S, and GR-Guadalupe River, Gateway and CBD Zoning Districts.

SECTION TWO. That based upon the addition of the new Paragraph 3 delineated above, Paragraphs 3 through 8 of Subsection 27.3 shall be renumbered to Paragraphs 4 through 9 respectively.

Comparison Chart

Existing Sign Ordinance and Recommended Ordinance Amendments



Applicable Area      Ordinance Currently Allows      Changes proposed - 09/28/10      Changes proposed - 02/22/11

**Zones C11, C12 and C18**

Pole signs allowed Monument signs allowed 100 sq. ft, height 30' greater with greater frontage Banners allowed Roof signs allowed Off premise signage allowed	No changes outside of CBD	No changes outside of CBD
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**Central Business District (CBD)**

Not addressed in ordinance	Poles signs prohibited Monument signs allowed 1 tenant - 64 sq. ft., hgt 8' 2+ tenants - 100 sq. ft., hgt 15' required rock base and frame internally lit signs prohibited Banners restricted by time Roof signage prohibited Off premise signage prohibited Non-governmental flag signs prohibited Wall and window signage restricted	Poles signs prohibited Monument signs allowed 1 tenant - 64 sq. ft., hgt 8' 2+ tenants - 100 sq. ft., hgt 15' designed to match building internally lit signs permitted Banners restricted by time Roof signage prohibited Off premise signage prohibited
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**SH 173/SH 534 and Guadalupe River (GR) zoning district**

Existing Ord. 2003-07 Poles signs prohibited Monument signage allowed 1 tenant - 64 sq. ft., hgt 8' 2+ tenants - 100 sq. ft., hgt 15' required rock base and frame internally lit signs prohibited Banners allowed Roof signage prohibited Off premise signage prohibited	Existing Ord. 2003-07 No changes - current ordinance	Poles signs prohibited Monument signage allowed 1 tenant - 64 sq. ft., hgt 8' 2+ tenants - 100 sq. ft., hgt 15' designed to match building internally lit signs permitted Banners restricted by time Roof signage prohibited Off premise signage prohibited
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# **Agenda Item:**

**(Staff)**

5C. Regulation and land use control of coin operated machines commonly known as "8 liners".

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

**SUBJECT:** Discuss and Possible Action on Regulation and Land Use Control of Coin Operated Machines

**FOR AGENDA OF:** February 22, 2011 **DATE SUBMITTED:** February 10, 2011

**SUBMITTED BY:** Kevin Coleman *KC* **CLEARANCES:** Kristine Ondrias *KO*

**EXHIBITS:** Excerpts from Chapter 2153; Texas Occupations Code

The State of Gambling Law in Texas; Texas District and County Attorneys Association

**AGENDA MAILED TO:**

**APPROVED FOR SUBMITTAL BY CITY MANAGER:** *JP*

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<b>Expenditure</b>	<b>Current Balance</b>	<b>Amount</b>	<b>Account</b>
<b>Required:</b>	<b>in Account:</b>	<b>Budgeted:</b>	<b>Number:</b>
\$	\$	\$	

**PAYMENT TO BE MADE TO:**

**REVIEWED BY THE DIRECTOR OF FINANCE:**

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**SUMMARY STATEMENT**

Development Services has recently had an inquiry about locating an eight liner gaming facility in the City. In researching the application of existing city codes, staff has determined that the use is generally allowed where any other arcade may be allowed.

Different than arcades which may or may not provide prizes to play, eight liners typically payout non-monetary prizes of some defined value (gifts cards, coupons, etc.). In cases throughout the state, operators have been found to skirt the state law that prohibits payoff greater than ten times the game cost. Enforcement against operators allowing illegal payoffs is a law enforcement issue handled by the law enforcement office with jurisdiction (in this case, the Kerrville Police Department).

To help facilitate that enforcement, many municipalities have adopted regulations that require the registration of owner/operators, require the registration of machines by local license, and/or restrict the use of these machines near schools, hospitals and churches. Other municipalities have addressed coin operations by defining the use within the zoning code and controlling the use where appropriate.

Per state law, any of these locally adopted restrictions can be applied to eight liner games and facilities, but only to the extent that the same regulations are applied to other coin operated amusement machines typically found in restaurant, theaters, taverns, etc. regardless of whether operators provide prizes to winning players.

While enforcement of operator violations related to illegal payoffs is a law enforcement issue, enforcement of any registration and/or zoning code requirements would be through the City Secretary and/or Development Services Department.

This issue is placed on this Council agenda for discussion. Staff will provide information on the options the Council may consider in order to regulate coin operated machines by local ordinance.

### **REGULATION HEIRARCHY**

State law:

- Prohibits the prize payoffs greater in excess of 10 times the cost of a single game of play.
- Exempts machines in nonprofit facilities and private residences from regulation.

Registration requirements adopted locally can require:

- An occupation license for operators of the facility.
- A per machine registration tag paid annually.
- Operator background checks prior to licensing/registration.

Locally adopted registration requirements are generally designed to allow local law enforcement to know the location, the number and the owner/operators of the games within their jurisdiction. Registration requirements would apply to existing and new locations.

Land use/zoning restrictions adopted locally can:

- Restrict placement of gaming machines within 300 feet of any school, church or hospital.
- Requiring game machines to be separated from non-gaming areas by partitions or walls.
- Require a Conditional Use Permit to allow the use, for either all facilities or only those that have more than a limited number of games on site.

Locally adopted land use/zoning restrictions would apply to locations established after adoption date.

### **RECOMMENDED ACTION**

Discuss issue as presented, and provide direction on level of local regulation Council wishes to consider in the future.

OCCUPATIONS CODE

TITLE 13. SPORTS, AMUSEMENTS, AND ENTERTAINMENT

SUBTITLE D. OTHER AMUSEMENTS AND ENTERTAINMENT

CHAPTER 2153. COIN-OPERATED MACHINES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2153.001. PURPOSE. The purpose of this chapter is to provide comprehensive and uniform statewide regulation of music and skill or pleasure coin-operated machines.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2153.002. DEFINITIONS. In this chapter:

(1) "Coin-operated machine" means any kind of machine or device operated by or with a coin or other United States currency, metal slug, token, electronic card, or check, including a music or skill or pleasure coin-operated machine.

(2) "Commissioner" means the Consumer Credit Commissioner.

(3) "Financial interest" includes a legal or equitable interest, including the ownership of shares or bonds of a corporation.

(4) "Music coin-operated machine" means any kind of coin-operated machine, including a phonograph, piano, or

graphophone, that:

(A) dispenses music or is used to dispense music;

(B) is operated by inserting a coin, metal slug, token, or check; and

(C) is not an amusement machine designed exclusively for a child.

(5) "Operator" means a person who exhibits or displays, or permits to be exhibited or displayed, a coin-operated machine in this state in a place of business that is not owned by the person.

(6) "Owner" means a person who owns a coin-operated machine in this state.

(7) "Person" includes an individual, association, trustee, receiver, partnership, corporation, or organization or a manager, agent, servant, or employee of an individual, association, trustee, receiver, partnership, corporation, or organization.

(8) "Service coin-operated machine" means any kind of machine or device, including a pay toilet or telephone, that dispenses only a service. The term does not include a machine or device that dispenses merchandise, music, skill, or pleasure.

(9) "Skill or pleasure coin-operated machine" means any kind of coin-operated machine that dispenses, or is used or

is capable of being used to dispense or afford, amusement, skill, or pleasure or is operated for any purpose, other than for dispensing only merchandise, music, or service. The term:

(A) includes a marble machine, marble table machine, marble shooting machine, miniature racetrack machine, miniature football machine, miniature golf machine, miniature bowling machine, billiard or pool game, or machine or device that dispenses merchandise or commodities or plays music in connection with or in addition to dispensing skill or pleasure; and

(B) does not include an amusement machine designed exclusively for a child.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.  
Amended by Acts 2001, 77th Leg., ch. 1263, Sec. 79, eff. Sept. 1, 2001.

Sec. 2153.003. CONSTRUCTION OF CHAPTER CONSISTENT WITH OTHER LAW. This chapter does not authorize or permit the keeping, exhibition, operation, display, or maintenance of a machine, device, or table prohibited by the constitution of this state or the Penal Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2153.004. EXEMPT MACHINES. This chapter does not

apply to:

- (1) a stamp vending machine;
- (2) a service coin-operated machine; or
- (3) if subject to an occupation or gross receipts

tax, a:

- (A) gas meter;
- (B) food vending machine;
- (C) confection vending machine;
- (D) beverage vending machine;
- (E) merchandise vending machine; or
- (F) cigarette vending machine.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2153.005. EXEMPT CORPORATIONS AND ASSOCIATIONS. (a)

A corporation or association owning, leasing, or renting a music or skill or pleasure coin-operated machine is exempt from Subchapter D if:

(1) the corporation or association is organized and operated exclusively for religious, charitable, educational, or benevolent purposes;

(2) the corporation's or association's net earnings do not inure to the benefit of a private shareholder or individual; and

(3) the corporation or association owns, leases, or

rents the coin-operated machine:

(A) for the corporation's or association's exclusive use; and

(B) to further a purpose of the corporation or association.

(b) A tax may not be assessed against a corporation or an association exempt under this section if assessment of the tax is prohibited by other law.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2153.006. PRIVATE OWNERSHIP EXEMPT. An individual who owns a music or skill or pleasure coin-operated machine for personal use and amusement in the individual's private residence is not required to obtain a license or pay a tax under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2153.007. EXEMPT COMMON CARRIERS. A person subject to regulation by the Railroad Commission of Texas is not required to obtain a license under this chapter if the person transports or stores in the course of the person's business a music or skill or pleasure coin-operated machine not owned by the person.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2153.008. EXEMPT OWNERS OR EXHIBITORS. A person who owns or exhibits a coin-operated machine is exempt from the licensing and recordkeeping requirements of this chapter if the person:

(1) operates or exhibits the coin-operated machine only on premises occupied by the person and in connection with the person's business;

(2) does not own a coin-operated machine subject to the tax imposed under this chapter and located on the business premises of another person; and

(3) does not have a direct or indirect financial interest in the music or skill or pleasure coin-operated machine industry, except for ownership of the coin-operated machine operated or exhibited on premises occupied by the person.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### SUBCHAPTER J. COUNTY AND MUNICIPAL REGULATION

Sec. 2153.451. IMPOSITION OF OCCUPATION TAX AUTHORIZED.

(a) A county or municipality may impose an occupation tax on a coin-operated machine in this state.

(b) The rate of the tax may not exceed one-fourth of the

rate of the tax imposed under Section 2153.401.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2153.452. ZONING. (a) For purposes of zoning, a political subdivision of this state shall treat the exhibition of a music or skill or pleasure coin-operated machine in the same manner as the political subdivision treats the principal use of the property where the machine is exhibited.

(b) Subsection (a) does not prohibit a municipality from restricting the exhibition of a coin-operated amusement machine within 300 feet of a church, school, or hospital.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2153.453. SEALING AUTHORIZED; RELEASE FEE. A county or municipality that imposes an occupation tax on a coin-operated machine may:

(1) seal a coin-operated machine if the tax imposed is not paid; and

(2) charge a fee of not more than \$5 for the release of a sealed coin-operated machine.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.



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- Join case summaries list
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- Case of the Week
- TDCAA News
- Issues in Prosecution

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## The state of gambling law in Texas

An update on gambling laws, poker tournaments (both private and charity), and dog-fighting

By Markus Kypreos

Former TDCAA Research Attorney, now in Fort Worth

While every state bordering Texas, as well as Mexico, has casinos within 50 miles of the Texas border, such establishments are illegal here. But district and county attorney's offices in Texas aren't exactly light on cases when it comes to gambling. Criminals continue to attempt more intricate schemes, including the use of technology, to protect themselves and (more importantly) to elude prohibitions in the Penal Code. Here is an overview of what is happening in the gambling arena.

### 8-Liners, video lottery terminals (VLTs), and slot machines

They may not be as sexy as underground poker rooms, but these cases are much more prevalent around the state. There has only been one Texas Court of Appeals case involving gambling in the last two years, and it concerned 8-liners. In *Pardue v. State*,<sup>1</sup> J.J.'s Game Room in Lacy Lakeview (near Waco) operated 8-liners, but instead of paying out cash to the players, it distributed gift cards to various stores, such as Wal-Mart, as rewards (a very common practice to circumvent the Penal Code). The owner of J.J.'s argued that under Texas Penal Code §47.02, gift card payouts qualify for the "fuzzy animal" defense to prosecution applicable to "noncash merchandise prizes, toys, or novelties that have a wholesale value available from a single play of the game or device of not more than 10 times the amount charged to play the game or device once or five dollars, whichever the lesser amount." The appeals court rejected her argument, and her conviction was affirmed.

Texas Penal Code §47.01(4) provides a hypertechnical definition of "gambling device" that has been the subject of litigation like this for over a decade. The key to the problem can be found in the exclusions from the definition, which include "any electronic, electromechanical, or mechanical contrivance designed, made, and adapted solely for bona fide amusement purposes if the contrivance rewards the player exclusively with noncash merchandise prizes, toys, or novelties, or a representation of value redeemable for those items, that have a wholesale value available from a single play of the game or device of not more than 10 times the amount charged to play the game or device once or \$5, whichever is less." Herein lies the difference between, say, illegal 8-liner operations and a video arcade that hands out candy and coffee mugs in exchange for tickets.

There appears to be a belief among game room operators that as long as they don't pay out cash, their operation is perfectly legal—or at least they won't raise suspicions with local authorities. This argument has been struck down several times, most clearly by the Texas Supreme Court in 2003, holding that "devices, known as '8-liners,' that dispense tickets redeemable for cash, even if used only for additional play, or for gift certificates redeemable at local retailers do not, as a matter of law, meet the gambling device exclusion under §47.01(4)(B).<sup>2</sup> *Pardue*, *One Super Cherry*, and *Hardy* are three good cases to review when presented with an 8-liner case involving a game room.

It's also important to note that the McLennan County Criminal District Attorney's Office charged the owner of J.J.'s with engaging in organized criminal activity as well, arguing that the employees, in combination with the owner, committed or conspired to commit the underlying offense of gambling promotion by handing out gift cards and earning bonuses for the performance of the business. The employees testified that they did not believe their activities were illegal and/or that the law was unclear. The court held that despite receiving instructions from an employer, an employee can still agree to collaborate to commit criminal activities.<sup>3</sup> The lesson here is that should your office ever be presented with an 8-liner case, always check to see if the owner/operator had at least two other employees who committed an overt act to satisfy the organized criminal activity statute.<sup>4</sup>

Eight-liner manufacturers and electronic gaming companies are pushing the limit in Texas. (See Potter County Attorney Scott Brumley's upcoming nuisance case against Aces Wired, a manufacturer and operator of electronic 8-liners). While the Texas Courts of Appeals and the Texas Attorney General seem to be in agreement on why these non-cash payouts are illegal, hundreds of thousands of dollars are spent on lobbying and personal meetings with state and county officials to convince them otherwise. Though operators of gaming rooms are using creative payouts and unconventional prizes to avoid prosecution under a very

specific gambling statute, now more than ever, prosecutors will need to use just as much ingenuity in applying the Penal Code to the ever-changing technologies and schemes of these operators. The more 8-liner cases that are affirmed by the Texas courts of appeal concerning non-cash and unconventional payouts, the easier it will be for prosecutors to overcome defendants' "gift card" arguments in the future.

### **Dog fighting**

As Michael Vick brought national attention to the underground sport of dog fighting, it's important to remember the available avenues of prosecution when presented with a dog fighting case. The obvious criminal offense relating to dog fighting falls under Texas Penal Code §42.10 (dog fighting). The punishments for this crime were revamped in the last legislative session. Specifically, 1) attending a dogfight as a spectator or 2) owning or training a dog with the intent that the dog be used in a dog fight changed from Class C misdemeanors to Class A offenses. Causing a dog to fight with another dog, participating in the earning of or operating a facility used for dog fighting, or using or permitting another to use any real estate (building, room, tent, arena, or other property) for a dog fight are now state jail felonies.

But don't forget that the motivation behind dog fighting is money. Organizers of these fights often serve as the "casino," taking wagers on the dogs and violating §47.02 by keeping a gambling place (§47.04) and committing the offense of gambling promotion (§47.03). Also, as described in the 8-liner analysis, should the operator of a dog fighting ring employ at least two others or have partners in organizing the fights, you may be able to prosecute them under the organized criminal activity statute (§71.02).

### **Poker**

It would seem the poker craze has somewhat died down. Attendance at the 2007 World Series of Poker Main Event dropped by 27 percent from 2006.<sup>5</sup> A large part of that decline is believed to be a result of the 2006 federal Unlawful Internet Gaming Enforcement Act (UIGEA) which prohibits the transfer of funds from a financial institution to an Internet gambling site. Many Internet gambling sites offered entry into the World Series of Poker as prizes; with the enforcement of the UIGEA, these sites saw a decline in online participation, as well as an inability on their part to offer as many entries.

Another consequence of the UIGEA is that it has forced poker players to seek other venues, often in private card rooms or clubs. On its face, a private card game in someone's home does not violate the Texas Penal Code, as long as the participants follow the exceptions listed under §47.02(b)(1-3), namely, that the gambling is in a private place, that no person received any economic benefit other than personal winnings, and except for the advantage of skill or luck, the risks of losing and the chances of winning were the same for all participants.

If you're a prosecutor in Houston or Dallas or the surrounding areas, you've probably experienced cases with SWAT raids of underground poker rooms. Those games in "back rooms" of public businesses are the easiest to prosecute because the defendant has clearly violated the private place exception; putting a bouncer in front of a curtain and monitoring who goes in and out doesn't make the establishment or room private when the business itself is open to the public.<sup>6</sup> Poker games in private residences are a little more difficult. It's conceivable that million-dollar hands could legally be played in the living room of someone's house, but such a scenario is unlikely. The higher the stakes, the more people want a piece of the action, whether it's for organizing the game, hosting, or promoting.

### **Poker in restaurants and bars**

The Texas Attorney General has stated that as long as participants do not risk money or anything of value to try to win any prize, the game is not illegal under §47.02, which is how bars and restaurants hold legal tournaments.<sup>7</sup> Texas Penal Code §47.02(a)(3) states that a person commits an offense if he plays and bets for money or other thing of value at any game played with cards, dice, balls, or any other gambling device.

On more than one occasion, I have been confronted, while playing poker, with the question of what purpose law enforcement serves when they crack down on high-stakes poker games. Whether gambling should be legalized in Texas is a separate argument from why gambling should be regulated. Regulation of gambling can be best supported by the necessity of the recent number of card room raids throughout Texas. Converting a home into a card room and inviting strangers to play is asking for trouble, especially when large amounts of money are involved. Further, those who operate the card rooms frequently charge or take a percentage of each hand as a fee for their hospitality, a clear violation of the §47.02(b) exception. A quick search of news stories relating to crime in poker rooms in Texas over the last few years shows that assaults, murders, and robberies related to the games themselves are all too common occurrences among these underground poker rooms.<sup>8</sup> Consider this a counterargument for the defendant who argues that the police are wasting time and taxpayer money by raiding their home, or 8-liner game rooms for that matter, to break up a friendly game that happens to have tens or hundreds of thousands of

dollars lying around in one place. Odds are the next time a person breaks down the defendant's door and is armed with a shotgun, he'll wish he was just being arrested.

### Charity poker

The Charitable Raffle Enabling Act in Chapter 2002 of the Texas Occupations Code will rarely, if ever, apply to Texas Hold 'Em fundraisers. Often, the business or association holding the event does not meet the requirements of a qualified organization (non-profits, fire departments, emergency medical services, and education). Even if the organization meets the stipulated requirements, the charity exception requires that a raffle be conducted to award prizes. Because a raffle is defined as "the award of one or more prizes by chance at a single occasion among a single pool or group of persons who have paid or promoted a thing of value for a ticket that represents a chance to win a prize,"<sup>9</sup> players are prohibited from receiving prizes based on how far they advance or what place they finish in a poker tournament. Additionally, the code prohibits cash as a prize. The Attorney General has also made it clear that even nonprofit organizations that sponsor a "poker run" violate gambling statutes.<sup>10</sup> Therefore, unless the raffle results are completely separate from the outcome of the poker tournament—begging the question, why play at all?—charities and other groups should not rely on Texas Hold 'Em tournaments to raise funds.

### Online gambling

As mentioned above, the UIGEA has significantly reduced the number of online casinos and available forums to gamble. Putting the UIGEA aside, Texas law still prohibits online wagering for a variety of reasons. First, sports wagering is clearly illegal under §47.02(a)(1), making a bet on the partial or final result of a game, contest, or the performance of a participant in a game or contest illegal. In addition, all sportsbooks charge a certain percentage for every wager made (commonly known as vig, juice, the take, the rake, commission, etc.). When the sportsbook takes that percentage of the wager, it receives an economic benefit, thus negating the defense under §47.02(b)(2).

A quick note on office pools is appropriate here because the same analysis applies: Technically, all office pools are illegal in Texas because you're wagering on the final result of a game or contest, a clear violation of §47.02(a)(1). The real issue is whether the exception applies, specifically whether your office is a private place. Office pools that don't involve the outcome of a game or contest are usually not illegal under the statute. For instance, wagering on how many smoke breaks a coworker in your office will take in the next four hours is perfectly legal and at times, entertaining. However, unless you shut your doors to the public in March for college basketball, April for the Masters, May when TDCAA Director of Operations John Brown races in the Congress Avenue Mile, June for the U.S. Open, fall for college football, and January for the Super Bowl, you will almost certainly run afoul of Texas gambling law.

When placing a bet online, a defendant may argue that the bet itself is placed in the confines of his home—a private place—and thus the exceptions under §47.02(b)(1-3) apply. Attorney General Opinion No. DM-344 addresses this argument directly and states:

"Just as a private residence would not be a 'private place' for purposes of the defense if the public has access to gambling there, neither would it be consistent with the defense here if, for example, anyone who knew the proper 'telephone number' and had a computer with a modem could join the games."

The opinion also notes that the physical presence of bettors at a game is not required. Most online poker sites operate in a similar way. Players log in and join any table they wish. Tables are open to the public as long as participants have registered and deposited money to gamble. Thus, using the analysis above, the privacy defense under §47.02 would not apply, and players violate the gambling statute by participating in online poker games.

Perhaps in an attempt to circumvent this law, most sites offer the opportunity to establish private rooms in which the creator can control who may participate in a game. While this act might be sufficient to establish privacy under §47.02(b)(1), it also defeats the purpose for many poker players simply looking for a game, those trying to make money in tournaments, or those trying to improve their skill in bigger games. Private rooms, as well as those open to the public, also usually cost each entrant a percentage of each hand raked or an entry fee, thus creating an economic benefit other than personal winnings and violating §47.02(b)(2).

### Conclusion

At the end of the day, gambling cases, while exciting, are not as easy to prosecute as they may initially seem. Prosecutors must overcome defendants' technology and creativity using a somewhat archaic and, at times, unhelpful Penal Code statute. Further, juries may be less than enthusiastic about convicting an operator of a game room or card room when, in their minds, no one was injured and no victims were involved. Of course, these operators are violating the law and making thousands, if not hundreds of thousands, of dollars off of their own illegal enterprise. It's only a matter of time before this criminal activity invites myriad

related crimes such as assaults, robberies, and murders, none of which are "victimless."

#### Endnotes

- 1 2008 Tex. App. LEXIS 2421 (Tex.App.—Texarkana, 2008).
- 2 State v. One Super Cherry Master 8-Liner Machine, 102 S.W.3d 132 (Tex. 2003)(citing Hardy v. State, 102 S.W.3d 123 (Tex. 2003)).
- 3 Pardue at 26.
- 4 Tex. Penal Code §71.02.
- 5 www.worldseriesofpoker.com.
- 6 See A.G. Opinion No. DM-112 explaining that "private place" as defined by §47.01(7) is a place "to which the public does not have access." See also A.G. Opinion No. DM-344 (1995) (holding that whether a place is private for such purposes has been determined by the scope of access by others. Citing Comer v. State, 10 S.W. 106 (1889) (private room at inn); Heath v. State, 276 S.W.2d 534 (Tex. Crim. App. 1955)). See also A.G. Opinion No. H-489 (1975) (whether the quarters of clubs or other organizations are "private places" for purposes of the gambling laws depends on whether the public in fact does not have access).
- 7 A.G. Opinion No. GA-0385 (2005).
- 8 Twenty-two trips to Las Vegas and counting, and I've never been assaulted, shot at, or robbed in a casino poker room ... coincidence?
- 9 Tex. Occupations Code §2002.002(1).
- 10 A.G. Opinion No. GA-0385 (2005).

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### Published in The Prosecutor, July-August 2008, Volume 38, No. 4

- Previous story: A horrific case of 'medical child abuse'
  - Next story: They pieced together a puzzle, and a disturbing picture emerged
- 

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# **Agenda Item:**

**(Staff)**

- 5D. Recommended amendments to the Code of Ordinances regarding park regulations.

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

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**SUBJECT:** Recommended amendments to the City Code of Ordinances related to park regulations

**FOR AGENDA OF:** February 22, 2011

**DATE SUBMITTED:** February 11, 2011

**SUBMITTED BY:** Malcolm Matthews  
Director of Parks and  
and Recreation

**CLEARANCES:** Kristine Ondrias  
Assistant City Manager

**EXHIBITS:** Summary of recommended amendments

**AGENDA MAILED TO:**

**APPROVED FOR SUBMITTAL BY CITY MANAGER:**

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

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

**REVIEWED BY THE FINANCE DIRECTOR:**

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**SUMMARY STATEMENT**

Certain park regulations require specific ordinances for operational, legal and law enforcement purposes. These generally include the hours that parks and facilities are open and closed to the public, what activities are prohibited, and any specific protective measures needed beyond administrative park rules and procedures. A few ordinances currently in the City Code are either not consistent with the historical, reasonable practice being implemented in the field or specific ordinance language needs updating. Upon review of our park related ordinances, City staff and the Parks and Recreation Advisory Board concur that certain ordinances be amended in order to provide the user public and City staff with consistent, effective, and enforceable rules.

These recommended changes have taken into account the following: 1) is current ordinance language not practical for park users or the City, 2) is ordinance language not being enforced for a justifiable reason, 3) are specifics in an ordinance outdated, or 4) are we better served transitioning all or part of an ordinance to an administrative park rule that can be adjusted periodically by staff based upon changing conditions. The recommended ordinance revisions address park hours of operation, updating vehicle restrictions in parks, transferring certain swimming pool regulations from ordinance to administrative rules, and the allowance or restriction of alcohol in certain parks. The attached summary provides the listing of recommended actions.

### **RECOMMENDED ACTION**

Council comments and direction to staff on the park related ordinance amendments are needed. Final recommended ordinance amendments will be brought to City Council for action on March 8th and March 22<sup>nd</sup>.

## Recommended Park Regulation and Ordinance Amendments

### 1. Park Hours of Operation

Ordinances making it unlawful to be in parks during late night and early morning dark hours assists law enforcement in combating criminal and inappropriate activities in local parks. The City Code of Ordinances currently stipulates a 7:30 a.m. park opening time which is not flexible enough for the changes in daylight hours throughout the year, nor does it take into account the park patrons that visit parks for early morning walks/runs. This will become more problematic as walking trails are constructed in Lytle Park, Carver Park, and the River Trail. The opening time for the city's parks should be set at *dawn*. This will allow for the changing seasons, bring this code more in-line with its intent, and allow activities such as walking in a park a legal activity prior to 7:30 a.m. The current curfew closing time of 11 p.m. is reasonable and enforceable. Existing ordinance language addresses Kerrville-Schreiner Park and the Pavilion at Louise Hays Park separately, neither of which are being recommended for change. Special events approved by City permit that extend beyond the curfew times are exempt, as well.

The current ordinance reads:

*Sec. 74-5 Park opening and closing hours.*

*(a) Except as provided hereafter and with the exception of the pavilion within Louise Hays Park and Kerrville Schreiner Park, all city parks and recreation areas shall be open daily to the public during the hours of 7:30 a.m. and 11:00 p.m. Each city park and recreation area shall be closed to the public from 11:00 p.m. to 7:30 a.m. and also as otherwise closed by orders of the director for the purpose of rehabilitation, cleaning, general supervision, or to protect the health, safety and welfare of the public.*

*(b) The Louise Hays Park pavilion may be used by the public or reserved for exclusive use pursuant to a written agreement with the city. The operating times for the pavilion, pursuant to written agreement or otherwise, shall be from 7:30 a.m. to 9:00 p.m. Sunday through Thursday, and from 7:30 a.m. to 10:00 p.m. on Friday or Saturday. Users of the pavilion, including those using the pavilion pursuant to a written agreement, shall remove all property and trash prior to the closing time. Following the closing time, no person is permitted to use or to remain within or enter the pavilion. Violators shall be subject to trespassing and the issuance of a citation.*

*(c) It shall be unlawful for any person to enter, loiter or remain within any city park and recreation area between the hours of 11:00 p.m. and 7:30 a.m., except as provided for in this section, which exceptions shall constitute an affirmative defense to violations of this section. The provisions of this section shall not apply to:*

*(1) Persons whose presence is authorized pursuant to a written city permit or agreement.*

*(2) Persons participating in or attending events, activities or programs previously approved or scheduled by the parks and recreation department and remaining in the locale until the event, activity or program has concluded; or*

(3) *Persons possessing a permit to camp in those areas duly designated for such activities by the director.*

*Sec. 74-9 Overnight camping, sleeping or parking.*

(1) *Sleep or park within any park between the hours of 11:00 p.m. and 7:30 a.m.*

**Proposed Action:** Amend Sections 74-5 (a) and (c) and 74-9 (1) by striking "7:30 a.m." and adding "dawn" which is defined "as one-half hour before sunrise". This definition is consistent with park operating hours in other park systems. There is no recommended change to the hours of operation of the LHP Pavilion or KSP.

## **2. Restricting Motor Vehicle Use in City Parks**

The City of Kerrville Code of Ordinances prohibits motor vehicles from being operated in all park areas not designated as a *roadway* or *parking area*. This ordinance also regulates the speed and manner motor vehicles are operated. The definition *motor vehicle* currently covers automobiles, motorcycles, all terrain vehicles, and mopeds. This language is outdated and limiting.

The current ordinance reads:

*Section 74-11 (a) & (b) Vehicles in parks:*

(a) *It shall be unlawful for any person to operate or place, or cause to be operated or placed, a motor vehicle, including, an automobile, motorcycle, all terrain vehicle or moped within any city park and recreation area except on designated roadways or parking areas. No person shall allow a motor vehicle which he owns to be operated or placed within any city park and recreation area except on designated roadways or parking areas. This subsection shall not apply to golf carts, wheelchairs, or vehicles being used strictly for the purpose of loading or unloading freight therein or in the construction, maintenance or repair of said city park and recreation areas or with the prior written approval of the director.*

(b) *It shall be unlawful for a person to operate any vehicle on any street, drive, roadway, or surface within any city park and recreation area at a speed which:*

(1) *Is greater than is reasonable or prudent, having due regard for the traffic and road conditions then existing;*

(2) *Endangers the safety of persons or property; or*

(3) *Exceeds the posted speed limit.*

(c) *No person shall park a vehicle within any city park and recreation area for the principal purpose of:*

(1) *Displaying such vehicles for sale; or*

(2) *Washing or repairing such vehicles except repairs necessitated by an emergency.*

(d) *It shall be unlawful for a person to operate a vehicle within any city park and recreation area:*

(1) *Between the hours of 11:00 p.m. and 7:30 a.m., except for emergency and necessary purposes; or*

(2) *In an indiscriminate or unnecessary manner, including "cruising."*

**Proposed Action:** Amend *Section (a)* by striking “moped” and adding “any motor-driven vehicle”. Also amend *Section (d)(1)* by striking “7:30 a.m.” and adding “dawn” for consistency.

### **3. City Swimming Pool and Swimming Areas - Age Related Restrictions**

There are several municipal pool administrative regulations that assist with management and safety. There is also an ordinance that identifies skill and age requirements for pool and swimming areas that are recommended for change in order to improve site management, safety, and realistic enforcement. Currently, the ordinance requires that all children **under 12, who are unable to swim**, be accompanied by a person of at least **14 years of age**. In practice, the policy at the pool has required an escort for all children under age 12, no matter if they are able to swim or not. Also, the practice has required the escort age be at least 17. Staff does not feel that the “unable to swim” language is pertinent, as patron age is more critical to management of the facility, lifeguarding, etc. and because staff does not have the capability to give a swim test to every pool patron related to this ordinance provision. Staff also feels that a 14 year old escort does not necessarily have the capacity to 1) provide adequate security for another child, and 2) be capable of controlling behavior of small children in this type of environment. Again, the practice at the facility has been different from the ordinance wording. [Spraygrounds are not classified as a swimming pool or swimming area.].

Regarding swimming areas, which includes the City riverfront parks where the public is allowed to swim, there is no reasonable method to verify age or skill levels because those locations are not staffed for water safety. Signs in these areas clearly state “swim at your own risk”.

The current ordinance reads:

*Sec. 74-6 Use of city swimming pools or swimming areas:*

*(a) It shall be unlawful for the parent, guardian or person in custody of any minor child who is **unable to swim** to allow, suffer or permit such child to go into any city swimming pool or swimming area unless such child is accompanied by a person not less than **14 years of age** who is capable of supervising and caring for such child, and who has agreed with such parent, guardian or person in custody of such child to be responsible for the safety of such child.*

*(b) For the purpose of this section, "a minor child who is unable to swim" is a child under the age of 12 years who is unable to complete, with reasonable ease, any beginner skills test officially endorsed or used by the American Red Cross.*

*(c) This section shall not apply to children who are participating in swimming classes being conducted by qualified swimming instructors.*

**Proposed Action:** It is recommended that the ordinance language for pools and swimming areas be removed because of not being able to realistically enforce the requirements and because there are sufficient administrative rules in place. There are

current controls which limit pool complex entry by under-age youth/escorts and which properly sign swim areas. For the reasons identified above, we will continue the pool regulation that escorts be at least 17 years of age.

#### **4. Alcohol Restrictions in Kerrville-Schreiner Park**

The City Code of Ordinances does not prohibit the possession or consumption of alcohol in any Kerrville municipal park except for a partial limitation in Kerrville-Schreiner Park (KSP) and at specific sports facilities. In KSP, the ordinance prohibits the consumption or display of alcohol, unless it is in an area where the individual possesses a permit.

The current ordinance reads:

*Section 74-19 (4) Kerrville-Schreiner Park:*

*It shall be unlawful to consume or display an open container of an alcoholic beverage; provided, however, that persons or groups that have paid the appropriate park fees and/or received the applicable permits, may privately consume such beverages within the areas of their vehicles, campsites and park facilities that they have been issued a permit to use.*

Since KSP Day Use permits are sold to the general public which allow access to the entire park, all facilities in the park have allowed alcohol. The city staff interpretation and enforcement of this ordinance language has, in effect, resulted in the same handling of alcohol in KSP as with any of the other city parks. For reference, this ordinance was originally adopted in 2004 when KSP was transitioned from a state park to a city park. Many of the regulations at KSP were carried over from the period when it was operated by the state, during which time alcohol consumption was prohibited at KSP.

**Proposed Action:** Recommend striking *Section 74-19(4)* of the code which will bring Kerrville-Schreiner Park in-line with all other city parks and will eliminate the vagueness associated with the current wording.

#### **5. Utilization of the Boardwalk Pavilion**

The addition of the Boardwalk Pavilion to the City inventory of facilities has created requests for rentals/events and the need to place controls on usage. The Boardwalk Pavilion was designed to be used by the general public and is managed under the same open hours as other City parks. However, like the Louise Hays Park Pavilion, specific hours of availability for rentals is needed which will minimize the impact of rentals on the adjacent private parking lot, private property, and businesses. Because the parking available for the pavilion is on private property and is intended for adjacent businesses, the time of rental availability is proposed to be from 6 p.m. to 9 p.m. on weekdays and from 1 p.m. to 9 p.m. on weekends and holidays. The event size shall be limited to up to 75 attendees per rental with only one rental per day.

These controls will minimize the impact of rentals on businesses and public access to those businesses during working hours.

Additionally, because of the impact to adjacent property, it is recommended that no alcohol be allowed during general open hours, unless authorized in writing through a rental or special event permit. Since the facility opened, alcohol related misconduct and litter have negatively impacted the facility and the adjacent private properties. Facility rental and event permits allow the City to collect and retain deposits and control event activity that may negatively affect property and enjoyment.

**Proposed Action:** Amend *Section 74-5* by adding the rental schedules for the Boardwalk Pavilion to be from 6 p.m. to 9 p.m. weekdays and from 1 p.m. to 9 p.m. on weekends/holidays and to restrict the consumption and display of alcohol on the boardwalk, pavilion, or adjacent public property, unless authorized in writing by rental or special event permit.

**Each recommended amendment effecting law enforcement has been coordinated with the Kerrville Police Department.**

**Agenda Item:**  
**(Councilmember Gross)**

5E. Update regarding Lower Colorado River Authority Transmission Services Corporation's (LCRA-TSC) application for the proposed McCamey D to Kendall to Gillespie CREZ project (PUC Docket No. 38354).

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

**SUBJECT:** Update regarding Lower Colorado River Authority Transmission Services Corporation application for the proposed McCamey D to Kendall to Gillespie CREZ project.

**FOR AGENDA OF:** February 22, 2011 **DATE SUBMITTED:** February 11, 2011

**SUBMITTED BY:** Todd Parton **CLEARANCES:**  
City Manager

**EXHIBITS:** None

**AGENDA MAILED TO:**

**APPROVED FOR SUBMITTAL BY CITY MANAGER:** 

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<b>Expenditure Required:</b>	<b>Current Balance in Account:</b>	<b>Amount Budgeted:</b>	<b>Account Number:</b>
<b>\$ 0</b>	<b>\$ 0</b>	<b>\$ 0</b>	

**PAYMENT TO BE MADE TO:**

**REVIEWED BY THE FINANCE DEPARTMENT:**

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**SUMMARY STATEMENT**

City Staff will provide on update regarding the CREZ Project.

**RECOMMENDED ACTION**

Discussion and possible action as may be necessary.

**Agenda Item:**  
**(Staff)**

- 5F. Interlocal agreements for services and joint operations between the City of Kerrville and Kerr County.



Staff is preparing a meeting schedule for phase 4 of the process, the subcommittee meeting process.

**RECOMMENDED ACTION**

Consider the proposed outline of services and provide any final direction to City staff.



**CITY OF KERRVILLE**  
**MAYOR AND CITY COUNCIL**  
800 Junction Highway  
Kerrville, Texas 78028  
830-257-8000 / [www.kerrvilletx.gov](http://www.kerrvilletx.gov)

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February 15, 2011

Honorable Pat Tinley  
County Judge  
Kerr County  
700 Main Street  
Kerrville, Texas 78028

Dear Judge Tinley,

Attached is a formal proposal outlining the general terms for new or revised agreements for joint City/County operations. This proposal is being submitted to the Commissioners' Court pursuant to the direction mutually agreed to by both parties at the joint meeting held last month.

At the joint meeting, the County requested that the City provide an outline of the services it would offer. This outline was then to be used as the basis for discussion and negotiation with the objective of having new or revised agreements finalized by March 31, 2011. In that meeting, the City also committed to providing program overviews which were delivered to the County via e-mail on February 10, 2011, and via hand delivery to each Commissioner on February 11, 2011. In addition, the City offered the Commissioners the opportunity to request additional information. With the exception of some specific information from the Police Department, all supplemental data has been provided. The Police Department is actively working to compile the balance of the information.

Contrary to comments made at the last meeting of the Commissioners' Court, the City Council has never taken the position that the City would not provide service in the future, where the financial contribution by the County adequately covers the cost to the City to provide those services beyond the City limits. City Council is proceeding in accordance with the process agreed to by both the City and the County. Again, the process agreed to is as follows:

1. Preparation and Distribution of Program Overviews (Complete);
2. Collection of Supplemental Data (Complete Except Police Department Data);
3. City of Kerrville Outline of Proposed Services for Fire Services, Emergency Medical Services, Library Operations, Animal Control Operations, and Airport Operations (Attached to this Memorandum);
4. Subcommittee Meetings;
5. Negotiation of Terms by March 31, 2011; and
6. Preparation and Execution of Final Contracts.

The City Council remains prepared to move into the subcommittee meeting phase. A tentative schedule will be forwarded to your office. The meeting schedule will anticipate addressing fire and emergency medical services first.

Please find enclosed two attachments. Attachment A contains an outline of joint services. Attachment B contains a preliminary estimate of cost distribution. These cost distributions are based upon the assumptions included in Attachment A.

We look forward to the next steps in the process. Please do not hesitate to contact me with any questions or if there is a change in the process previously agreed to.

Sincerely,

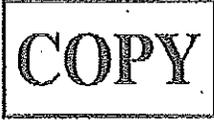
A handwritten signature in purple ink, appearing to read "David Wampler".

David Wampler  
Mayor

enclosures\

COPY

Attachment A



February 15, 2011

Proposal for Joint Operations between the City of Kerrville and Kerr County (Anticipates a 5-Year Initial Funding Commitment)

1. Library

- a. Annual Operations Expenses
  - i. Split Evenly between City and County
  - ii. Fixed Annual Allocation
    - 1. 10-Year Average of Audited Expenditures
    - 2. \$412,500 Each for Total of \$825,000
    - 3. Annual Escalator Benchmarked to CPI After Second Year of Funding
  - iii. Excludes Capital Expenditures, Major Building Maintenance and Depreciation
- b. Library Facilities
  - i. City Maintains Ownership of Building and Land
  - ii. City Bears Responsibility for Major Building Maintenance, Capital Improvements, and Depreciation
- c. Library Staff
  - i. Employees of the City of Kerrville
- d. Operations
  - i. Open 54 Hours and 7 Days/Week (Less Holidays)
  - ii. Current Programming to Remain
  - iii. Add Youth Services and Increase Staff with a Youth Services Librarian

**Recap: Total Annual Operating Expenses = \$825,000**  
**Annual Expenses Split 50/50 = \$412,500 Each to City and County**  
**Annual Expense Escalator benchmarked to CPI after Second Year**  
**Programming to Remain Consistent**

2. Airport

- a. Annual Operations Expenses
  - i. Split Evenly Between City and County
  - ii. Annual Allocation
    - 1. 2-Year Average of Audited Annual Expenditures Less Revenues
    - 2. \$200,000 Each for Total of \$400,000
    - 3. Annual Escalator Benchmarked to CPI After Second Year of Funding
- b. Capital Improvements
  - i. Split Evenly Between City and County
  - ii. Funding Provided After Bids Received
  - iii. Capital Improvements Limited to a CIP Approved Annually by both the City and the County
  - iv. No Capital Improvements Exceeding \$5,000 Allowed without Prior Approval of Both the City and the County
- c. Airport Board
  - i. Existing Board Structure Maintained

- ii. Current Management Contract Needs to be Evaluated and Amended w/the Following Specific Points Modified
  - 1. Current Terms of Agreement
    - a. Automatically Renewing Agreement (Annual Basis)
    - b. Termination For Cause
  - 2. Pricing of Agreement – Currently Contains No Provision for Charges for Services
- iii. Gifts – No Gifts of Land or Facilities May be Provided by the Airport Board without Prior Approval of both the City and the County

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**Recap:**      **Total Annual Operating Expenses = \$400,000**  
**Annual Expenses Split 50/50 = \$200,000 Each to City and County**  
**Annual Expense Escalator benchmarked to CPI after Second Year**  
**Airport Board Amendments**  
                   **Capital Improvements**  
                   **Gifts**

- 3. Fire and Emergency Medical Services
  - a. Combination Services Covered Under a Single Agreement
  - b. Annual County Funding Commitment
    - i. Pricing based on Total Costs to Provide Services
      - 1. County Utilization of Resources for Fire and EMS
      - 2. EMS Collections to be Applied as System Revenue w/Annual Pricing being Net Operational Expenses After Collections for EMS Services Less 2% of Net Collections for Administrative Expenses
    - ii. Basis for Pricing to Also Include Depreciation, Management Overhead, Workers Compensation Coverage, and Risk and Liability Insurance
  - c. Services Provided
    - i. Fire Operations
      - 1. Certified Fire Fighter Staffing w/Certified Equipment in First Responder Area
      - 2. Coverage Provided 24 Hours/Day and 7 Days/Week in First Responder Area
      - 3. County-Wide Emergency Management Services
      - 4. Emergency Rescue
        - a. Dive Team
        - b. Swift Water
        - c. Low Angle/High Angle Rope
        - d. Vehicle Recovery and Extrication
        - e. Body Recovery
        - f. Evidence Recovery
    - ii. Emergency Medical Services Operations
      - 1. ALS-MICU Level Services for Emergency and Non-Emergency Calls
      - 2. Coverage for Entire County
      - 3. Coverage Provided 24 Hours/Day and 7 Days/Week
      - 4. All Transfer Services in County
      - 5. Coordinate Kerr County First Responder Program
        - a. Administrative Services

- b. Medical Director Services by Board Certified—Emergency Medical Physician
- iii. Existing Levels of Service Maintained for Fire and EMS Operations
  - 1. Existing Manpower
  - 2. Existing Equipment
  - 3. Existing Protocols

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**Recap: Single Contract for Fire and EMS Services  
Annual Pricing Based on County Utilization  
Existing Levels of Service Maintained**

- 4. Animal Control
  - a. Annual Operations Expenses -- Covered Fully by County
  - b. City Revise Codes to be Consistent with County Codes (Animal Control Staff Provides Direction)
  - c. All Cases Filed in County Courts
  - d. No Minimum Service Level Requirement within the City of Kerrville
  - e. All Revenues from Animal Control Operations go to County
    - i. Citations
    - ii. Animal Registrations
    - iii. All Other Revenue Sources

**Recap: County Provides Full Services  
County Provides Full Funding  
County Maintains All Revenues  
City Codes Amended to Provide Single Set of Standards**

Attachment B

	FY11 Approved Budget		City of Kerrville 2/14/11		Total
	City of Kerrville	Kerr County	City of Kerrville	Kerr County	
Public Safety	\$5,858,044	\$432,885	\$5,390,930	\$900,000	\$6,290,930
Fire	\$3,575,048	\$190,550	\$3,315,598	\$500,000	\$3,815,598
EMS	\$2,282,997	\$242,335	\$2,075,332	\$400,000	\$2,475,332
Library	\$484,674	\$200,000	\$412,500	\$412,500	\$825,000
Airport	\$0	\$393,244	\$200,000	\$200,000	\$400,000
Animal Control	\$0	\$368,190	\$0	\$368,190	\$368,190
Total	\$6,342,719	\$1,394,319	\$6,003,430	\$1,880,690	

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**Agenda Item:**  
**(Staff)**

6A. Economic update.

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

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**SUBJECT:** Kerrville Budget/Economic Update

**FOR AGENDA OF:** February 22, 2011      **DATE SUBMITTED:** February 11, 2011

**SUBMITTED BY:** Mike Erwin   
Director of Finance      **CLEARANCES:** Todd Parton  
City Manager

**EXHIBITS:** Economic Update  
**AGENDA MAILED TO:**

**APPROVED FOR SUBMITTAL BY CITY MANAGER:** 

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<b>Expenditure</b>	<b>Current Balance</b>	<b>Amount</b>	<b>Account</b>
<b>Required:</b>	<b>in Account:</b>	<b>Budgeted:</b>	<b>Number:</b>
\$	\$	\$	

**PAYMENT TO BE MADE TO:**

**REVIEWED BY THE DIRECTOR OR FINANCE:**

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**SUMMARY STATEMENT**

The City of Kerrville staff will present and update Council on a biweekly basis as to the status of the City's budget and current economic trends affecting the City.

**RECOMMENDED ACTION**

No action required information purposes only.

CITY OF KERRVILLE  
ECONOMIC UPDATE AS OF FEBRUARY 16, 2011

	Current Month	Previous Month	1 Year Ago	Trend	Current Month
<b>National</b>					
Unemployment	9.00%	9.40%	9.70%	↓	January
Consumer Confidence	60.6	53.3	56.5	↑	January
1 year T-Bills	0.25%	0.19%	0.34%	↑	2/16/11

<b>State</b>					
Monthly Unemployment	8.00%	8.30%	8.00%	↓	December
Monthly Sales Tax	\$1,828.1m	\$1,807.9m	\$1,655.3m	↑	January

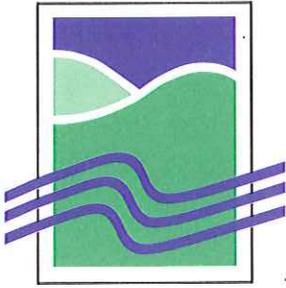
<b>Local</b>					
Monthly Unemployment (Kerr Co.)	5.90%	6.10%	5.90%	↓	December
Median Listing Price	\$198,500	\$200,000	\$220,000	↓	2/3/11
Monthly Sales Tax	\$481,321	\$390,103	\$473,674	↑	February
Monthly EIC Tax	\$240,661	\$195,030	\$236,837	↑	February
Monthly HOT	\$41,856	\$57,006	\$45,303	↓	January

	FY11 Budget	FY11 as of 12/31/2010	FY11 % Received	FY10 as of 12/31/2009	FY10 % Received
<b>General Fund</b>					
Tax Revenue	\$14,647,100	\$9,061,797	61.87%	\$8,528,233	56.65%
Property Tax	\$8,240,000	\$7,127,278	86.50%	\$6,785,923	80.13%
Sales Tax	\$4,500,000	\$1,512,457	33.61%	\$1,420,479	30.72%
Permits & Fees	\$402,450	\$129,655	32.22%	\$91,059	24.56%
Intergovernmental	\$707,013	\$313,040	44.28%	\$212,061	30.51%
Service Revenues	\$2,578,260	\$809,567	31.40%	\$931,833	28.14%
Grant Revenue	\$10,000	\$4,944	49.44%	\$10,525	105.25%
Fines & Forfeitures	\$477,710	\$193,328	40.47%	\$156,136	30.95%
Interest & Misc.	\$170,317	\$163,717	96.12%	\$169,429	36.82%
Transfers In	\$1,000,000	\$333,333	33.33%	\$597,967	47.43%
<b>Total General Fund</b>	<b>\$19,992,850</b>	<b>\$11,009,380</b>	<b>55.07%</b>	<b>\$10,697,243</b>	<b>49.37%</b>
<b>Water/Sewer Fund</b>					
Water Sales	\$4,400,000	\$1,590,183	36.14%	\$1,274,249	6.29%
Sewer Sales	\$3,760,000	\$1,166,082	31.01%	\$1,221,333	7.17%
Other Revenue	\$714,500	\$219,000	30.65%	\$231,971	34.65%
<b>Total Water &amp; Sewer Fund</b>	<b>\$8,874,500</b>	<b>\$2,975,265</b>	<b>33.53%</b>	<b>\$2,727,554</b>	<b>28.32%</b>

**Agenda Item:**  
**(Ray Watson)**

6B. Report by Kerrville Economic Development Corporation regarding the trip to Washington, D.C. February 10-12, 2011.





**CITY OF KERRVILLE**  
**MAYOR AND CITY COUNCIL**  
800 Junction Highway  
Kerrville, Texas 78028  
830-257-8000 / [www.kerrvilletx.gov](http://www.kerrvilletx.gov)

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February 9, 2011

The Honorable Lamar Smith  
Member of Congress  
U. S. House of Representatives  
2409 Rayburn HOB  
Washington, DC 20515-4321

Re: USDA-ARS KBUSLIRL

Dear Congressman Smith:

We are writing you to express our continued support of the United States Department of Agriculture-Agriculture Research Services Knipling-Bushland U. S. Livestock Insects Research Laboratory (KBUSLIRL). The research done at this laboratory has a direct impact on the safety and bio-security of the US food system. This facility is vital to the cattle industry starting with the cow-calf operators in central and south Texas to the 7.2 million cattle feed lot in north Texas. Research at this facility has directly impacted the viability and economic stability of the cattle industry providing economic stability locally and nationally. We write you to request funding for the construction of a new facility.

Thanks to your efforts, to date, there has been approximately \$5 million allocated towards a feasibility study and design and engineering phase for a new modern USDA laboratory in Kerr County, thus completing the first two stages. Only the construction stage remains for future completion. Kerr County, the City of Kerrville and the local business community have come together to purchase land valued at approximately \$1.2 million to expedite the construction of this new state of the art facility.

As you are well aware, the current facility sits on acreage which is too small for expansion and the facilities are both out-dated and inadequate. This facility is significant to our community as it employs 52 people with a total annual salary base of \$3.0 million. Placing aside the billions of dollars saved in the cattle industry nationally from the research done at this facility, it is important to look at the local economic impact that these scientists and support staff contribute to our community. The updated USDA facility is projected to increase both scientist and support staff, thus furthering the impact on our community.

We respectfully request your assistance to complete this project through full funding to complete the construction of the planned replacement to the KBUSLIRL facility in the amount of \$42.0 million.

Sincerely,

*/original signed/*

David Wampler, Mayor  
City of Kerrville

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Pat Tinley  
County Judge

**February 9, 2011**

### History

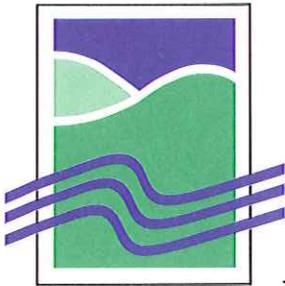
- 1946 First laboratory established on the Schwethelm Ranch
- 1962 Laboratory established on current site
- 2003 KEDF conducts a business retention survey; Identifies USDA is in need of an expanded facility
- 2005 Congressman Henry Bonilla secures funding for feasibility study
- 2006 Feasibility study complete
- 2006 First trip to DC to request funding for design and engineering
- 2007 All agriculture appropriations fail to gain support in the Senate; KEDF enters into a contract with Peterson Farm Road site; second visit to DC to request design and engineering; Appropriations, House and Senate approve \$1.4 million for the 2008 budget
- 2008 Congressman Lamar Smith held news conference at USDA laboratory to announce design and engineering funds; KEDF buys the 87 +/- acres on Peterson Farm Road; EIC/Council approves a funding agreement to pay principal and interest not to exceed \$525,000, land swap included.
- 2009-10 Engineering and design completed at an estimated cost of \$4 million

### Economic Impact

- Employees – total 52; 14 scientists/administrator; salary range of scientists \$57,400-\$74,600
- Total annual payroll- \$3,017,555
- Employee wages are placed in the 19% of total jobs in Kerrville/Kerr Country

### Growth Potential

- Expanding research lab for new projects specifically the stable fly and horn fly
- Potential to expand to the animal diseases specifically feral hogs
- Each project requires at least \$1 million in research funding
- Jobs added – 3 scientist, 5 support staff



**CITY OF KERRVILLE**  
**MAYOR AND CITY COUNCIL**  
800 Junction Highway  
Kerrville, Texas 78028  
830-257-8000 / [www.kerrvilletx.gov](http://www.kerrvilletx.gov)

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February 9, 2011

The Honorable Lamar Smith  
Member of Congress  
U. S. House of Representatives  
2409 Rayburn HOB  
Washington, DC 20515-4321

Re: IH-10 ACCESS IMPROVEMENTS

Dear Congressman Smith:

The City of Kerrville and Kerr County have invested millions of local dollars to take the initial steps to improve access and extend major utility lines within the IH-10 corridor in support of new regional development. However, an additional access point with service roads is vital to realize the ultimate commercial potential of this corridor. We respectfully request your assistance to construct an overpass with service roads to increase the economic stability of the City of Kerrville, Kerr County, and the region.

Kerrville is the economic hub for an area that stretches from the City of San Antonio to Junction and from Gillespie County to Del Rio, a nine county trade area. We are located approximately 50 miles from "The Rim," the nearest regional shopping center and our community is ideally situated as the next major retail and commercial hub for our trade area. Additional inventories of available land ready for commercial development are needed, especially with the projected growth in commercial lending over the near term. This project will open approximately 500 new acres for commercial development along IH-10. Once completed, development of these 500 acres will serve the needs of Kerr County as well as the surrounding counties.

It is estimated that the proposed improvements would cost approximately \$16.0 million dollars, inclusive of the interstate overpass (note drawing), feeder roads as well as interior development roads. We request your assistance in an effort to obtain \$8.0 to \$10.0 million dollars for this project.

The economic potential of this project to our region is significant. The initial phases alone are projected to supply approximately 250,000 sq/ft of new retail space on 50 acres of the land. This will add \$6.5 million dollars of new value to the ad valorem tax roles as well as \$1.0 million dollars to local sales tax

and \$3.0 million dollars to state sales tax. An estimated 5,000 new jobs would also be created with a local impact of \$140.0 million dollars. Your assistance in obtaining funding for this very vital project is greatly appreciated.

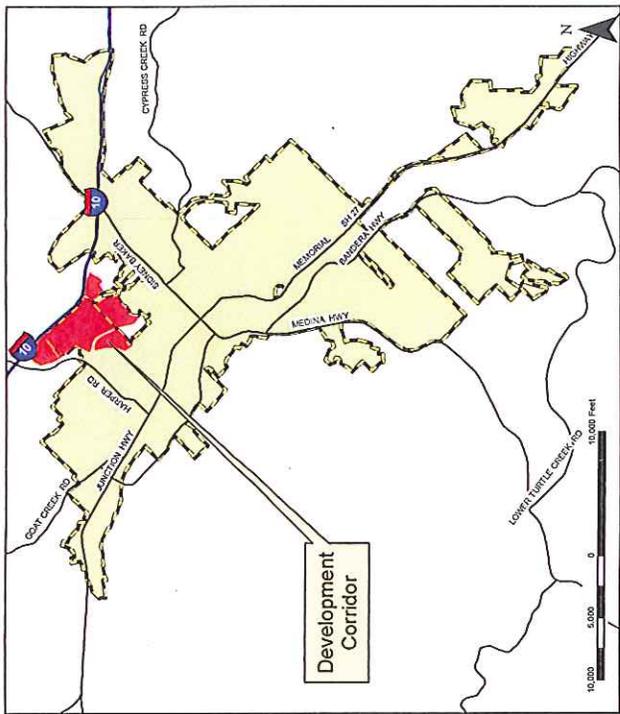
Sincerely,

*/original signed/*

David Wampler, Mayor  
City of Kerrville

*/original signed/*

Pat Tinley  
County Judge



- PROPOSED ROADS
- PROPOSED I-10 ACCESS
- INTERSTATE
- RAMP
- HWY
- ROAD
- DEVELOPMENT CORRIDOR

# I-10 Access for Town Creek Development

