

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
McALLEN DIVISION

HILDA GONZALEZ GARZA AND
ROSBELL BARRERA,
Plaintiffs,

V.

CIVIL ACTION NO. 7:18-CV-00046

STARR COUNTY, TEXAS;
OMAR ESCOBAR, in his official capacity
as District Attorney for the 229th Judicial
District; VICTOR CANALES JR.,
in his official capacity as County Attorney
for Starr County; ELOY VERA, in his
official capacity as County Judge for
Starr County; JAIME ALVAREZ, in his
official capacity as Starr County
Commissioner for Precinct 1; RAUL PEÑA,
III, in his official capacity as Starr County
Commissioner for Precinct 2; ELOY GARZA,
in his official capacity as Starr County
Commissioner for Precinct 3; RUBEN D.
SAENZ, in his official capacity for Starr
County Commissioner for Precinct 4;
RENE “ORTA” FUENTES, in his official
capacity as Sheriff for Starr County.

Defendants.

DEFENDANTS' MOTION TO DISMISS PURSUANT TO FED. R. CIV. P. 12(b)(6)

TO THE HONORABLE UNITED STATES DISTRICT COURT:

COME NOW, Defendants, STARR COUNTY, TEXAS; OMAR ESCOBAR, in his official capacity as District Attorney for the 229th Judicial District; VICTOR CANALES JR., in his official capacity as County Attorney for Starr County; ELOY VERA, in his official capacity as County Judge for Starr County; JAIME ALVAREZ, in his official capacity as Starr County Commissioner for Precinct 1; RAUL PEÑA, III, in his official capacity as Starr County Commissioner for Precinct 2; ELOY GARZA, in his official capacity as Starr County Commissioner for Precinct 3; RUBEN D. SAENZ, in his official capacity for Starr County Commissioner for Precinct 4; RENE “ORTA” FUENTES, in his official capacity as Sheriff for Starr County, and file this their Motion to Dismiss

Pursuant to Fed. R. Civ. P. 12(b)(6), and respectfully show unto the Court the following:

I. FACTUAL BACKGROUND

1. Plaintiffs complain about the Starr County Building and Property Use Policy [hereinafter “Use Policy”] and the Starr County Electioneering Regulations [hereinafter “Electioneering Regulations”] properly enacted by the Commissioners’ Court on June 25, 2018. They allege that the Use Policy and Electioneering Regulations violate the First Amendment and the Texas Elections Code, and constitute *ultra vires* acts. Plaintiffs allege their freedom of speech and right to freely assemble have been restricted and that they fear arrest or fines in exercising their First Amendment rights.

2. Starr County’s Use Policy states that County buildings and facilities are “to be primarily used for official county functions and their intended purposes.” (Ex. A at § 3(a)). Simply put, a courthouse is to be used as a courthouse, a park as a park, a hospital as a hospital, et cetera. However, the County has decided to make certain buildings and facilities available for private use through a permitting process which is set forth in the Use Policy and requires that an applicant complete, no less than thirty days before intended use, a *one* page form along with a “Release of Liability” and the tender of applicable after-hour fees and a deposit. *See* (Ex. A at §§ 3(b), 5, 6, 7, 8). The Use Policy also allows for the waiver of after-hour fees. (Ex. A at § 8(e)). The Use Policy also makes clear that there are exemptions and exclusions in the use of Starr County properties: facilities may not be reserved on County holidays, parking lots and parking zones may not be reserved, signs may not be affixed to buildings and on grounds, and the only facilities available for reservation are: Starr County Courthouse, Starr County Fairgrounds, El Cenizo Community Center, La Rosita Library, Starr County Annex Conference Room, and Zarate Park Community Center. (Ex. A at §§ 3(e), 11, 9(e) and Attach. A). When deemed necessary by the County, certain uses of County property will require the presence of a licensed peace officer or security services. (Ex. A at § 9(h)). The Use Policy specifically exempts from this permitting process all public spaces, including sidewalks, parks, cemeteries and memorials, and affirmatively states that “[p]eaceful picketing and leafletting in [these] public spaces is permissible.” (Ex. A at §§ 12(a), (c)). The Use Policy also excludes “passive

expressions of speech and access to buildings and facilities for personal business or to obtain county services” from the term “use.” (Ex. A at § 3(c)).

3. The Use Policy’s Attachment B sets out a more detailed policy concerning the use of the Starr County Courthouse. The Courthouse greens have been deemed public spaces “available at all times for public use.” (Ex. A at Attach. B, § (i)(d)). The posting of personal announcements at the Courthouse is limited to the area designated by Commissioners’ Court. (Ex. A at Attach. B, § (vi)). The Use Policy also prohibits setting signs or displays *into* the Courthouse greens. (Ex. A at Attach. B, § (i)(b), (c)). The County also reserves the right to impose additional restrictions on the use of the Courthouse “with the primary focus of maintaining and protecting the historical structure.” (Ex. A at Attach. B, § (xii)(a)).

4. Starr County’s Electioneering Regulations were enacted, in part, “to ensure that a polling place location is sufficiently available during a voting period” and “[t]o protect the voter and the integrity of the election process.” (Ex. B at § 1(c)). To that end, Starr County has prohibited loitering and actively engaging in electioneering on sidewalks leading up to the entry of buildings on properties serving as polling locations. (Ex. B at § 4(f)). Excluding limitations for firefighting and law enforcement, the protection of access to polling sites, and unimpeded access to rights of way and easements,¹ the Electioneering Regulations do not prohibit electioneering elsewhere outside the 100-foot buffer zone created by state law; all parks and grassy areas remain available for electioneering—their status as public spaces under the Use Policy is unaffected. *See generally* (Ex. B at § 4). Recognizing the limitations on space for electioneering at certain locations, Starr County has included an exception to the electioneering prohibition on sidewalks and other off-limit areas under the Use Policy by specifically creating “Designated Areas for Electioneering,” which allow electioneering on certain sidewalks and in a parking area. (Ex. B at § 2(b)).

II. STANDARD OF REVIEW

4. Plaintiffs have failed to state a claim for which relief can be granted. Accordingly, their

¹ Section 4(h) of the Electioneering Regulations includes a prohibition related to sound amplification devices, but merely incorporates the prohibition already in existence under Texas Election Code § 61.004.

lawsuit is ripe for dismissal under Federal Rule of Civil Procedure 12(b)(6). Under Rule 12(b)(6) of the Federal Rules of Civil Procedure, a complaint should be dismissed for failure to state a claim if it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957). Under this standard, a court may dismiss a complaint if the plaintiff cannot possibly prevail on his claims. *Clark v. Amoco Prod. Co.*, 794 F.2d 967, 970 (5th Cir. 1986); *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1973).

5. A district court should grant a motion to dismiss under Rule 12(b)(6) in two situations. First, “if it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim that would entitle him to relief,” dismissal is proper. *Scanlan v. Texas A & M University*, 343 F.3d 533, 536 (5th Cir. 2003). Second, “if the allegations, accepted as true, do not present a claim upon which relief legally can be obtained,” dismissal is also proper. *Adolph v. Fed. Emergency Mgmt. Agency of the United States*, 854 F.2d 732, 735 (5th Cir. 1988) (citations omitted). To survive a Rule 12(b)(6) motion, the complaint must contain “sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A claim has facial plausibility when the pleaded factual content allows the court, drawing upon its “judicial experience and common sense,” to reasonably infer that the defendant is liable for the misconduct alleged. *Id.* at 678 (citing *Twombly*, 550 U.S. at 556 (2007)). “Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” *Ashcroft*, 556 U.S. at 678 (citations omitted).

III. AUTHORITIES AND ARGUMENT

A. Dismissal of Individual Defendants

6. Plaintiffs have failed to allege any facts in support of a claim against District Attorney Omar Escobar, County Attorney Victor Canales, Jr., and Sheriff Rene “Orta” Fuentes that would entitle Plaintiffs to any relief. The Use Policy and Electioneering Regulations have been enacted by Starr County’s legislative body, which consists of the County Judge and the County Commissioners, and they are enforced by the County Judge. Defendants Escobar, Canales and Fuentes did not enact or enforce the complained of legislation. Therefore, these Defendants should be dismissed; Plaintiffs

can prove no set of facts in support of claims against these Defendants

B. Use Policy

i. Constitutionality of the Use Policy

7. Plaintiffs allege that the Use Policy violates their freedom of speech and their right to assemble peaceably. (Doc. 56, para. 110, 118). They contend the following in support of their claim:

- a. No reservations may be made on County holidays. (Doc. 56, para.2, 55, 73).
- b. The County imposes a “burdensome permit application process,” (Doc. 56, para.2), and its “onerous requirements” include that an applicant be at least 21 years-old, that he fill out a one-page form, that he tender a deposit and cover after-hour fees, that he execute a release, and that the application be notarized, (Doc. 56, para. 58, 59, 60, 61).
- c. The County Judge’s denial of an application cannot be appealed. (Doc. 56, para. 63).
- d. An application is needed to use the Courthouse greens. (Doc. 56, para. 63)
- e. The County Judge has “unfettered discretion” to determine the deposit amount for use of the Courthouse and to waive after-hour fees. (Doc. 56, para. 64-66)
- f. A peace officer or security services may be required to be present at an event. (Doc. 56, para. 67).
- g. The County retains the right to modify the Use Policy. (Doc. 56, para. 68).
- h. Unattended signs, specifically those with “wire legs,” may not be placed on grassy areas and lawns. (Doc. 56, para. 71)
- i. The County may impose additional restrictions for use of the County Courthouse “on a case by case basis.” (Doc. 56, para. 69).
- j. Personal or community notices to be posted in the Courthouse may only be posted in an area designated by the County. (Doc. 56, para. 70).
- k. Parking lots and parking zones cannot be used for anything other than parking. (Doc. 56, para. 77).

8. When considering enjoining the enforcement of a statute, ordinance or policy enacted by a democratically elected body, “every reasonable construction must be resorted to in order to save [it] from unconstitutionality.” *National Federation of Independent Business v. Sebelius*, 567 U.S. 519, 563 (2012) *quoted in Voting for Am., Inc. v. Andrade*, 488 F. App’x 890, 895 (5th Cir. 2012). Furthermore, the interpretation of those charged with enforcing an ordinance and policy must be accorded some meaningful weight. *Cf. Andrade*, 488 F. App’x at 895; *see Bellotti v. Baird*, 428 U.S. 132, 143 (1976). To construe ordinances, the courts consider first the language of the ordinance, using definitions prescribed by the legislative body and any technical or particular meaning of words; otherwise, the ordinance is construed according to the plain and common meaning of words, *unless* a contrary intention is apparent from the context or unless such a construction leads to absurd results. *City of Rockwall v. Hughes*, 246 S.W.3d 621, 625-26 (Tex. 2008) (citations omitted) (emphasis added). It is presumed that the legislative body “intended a just and reasonable result”. *City of Rockwall*, 246 S.W.3d at 626 (citation omitted).

9. In scrutinizing the Use Policy in this case, the Court must first determine the predominate purpose in enacting regulations involving the freedom of speech and the right to assemble peaceably. “If [] the government's predominate purpose is unrelated to the suppression of expression, such that the regulation can be justified without reference to the content of the regulated speech, then intermediate scrutiny applies.” *Fantasy Ranch, Inc. v. City of Arlington*, 459 F.3d 546, 554 (5th Cir. 2006) (quoting *Clark v. Cmty. for Creative Non-Violence*, 468 U.S. 288, 293 (1984)). “The principal inquiry in determining content neutrality, in speech cases generally and in time, place, or manner cases in particular, is whether the government has adopted a regulation of speech because of disagreement with the message it conveys.” *Ward*, 491 U.S. at 791. “A regulation that serves purposes unrelated to the content of expression is deemed neutral, even if it has an incidental effect on some speakers or messages but not others.” *Id.* In this case, the County decided to adopt the Use Policy to address the maintenance and safety concerns that arise from the use of County facilities at all times, regardless of polling stations and voting periods. The County’s Use Policy regulates the

use of County property without reference to the content of speech; it is neutral concerning any speaker's point of view. The Use Policy is a neutral policy of general applicability which allows the County to develop, maintain and control its facilities to support County operations and services, in addition to safeguarding the safety of employees and citizens, and mitigating blight, distraction and nuisance. No court has found that these are not compelling government interests. Therefore, intermediate scrutiny applies.

10. Under intermediate scrutiny, “[1)] the government may impose reasonable restrictions on the time, place, or manner of protected speech, provided [2)] the restrictions are justified without reference to the content of the regulated speech, [3)] that they are narrowly tailored to serve a significant governmental interest, and [4)] that they leave open ample alternative channels for communication of the information.” *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989) (quoting *Clark v. Community for Creative Non-Violence*, 468 U.S. 288, 293 (1984)) (internal quotations omitted). Here, 1) the County's Use Policy regulates activities on County property, 2) including but not limited to electioneering, 3) for the safety of pedestrians in parking zones, to allow County buildings to be used for their primary and intended purposes, and to maintain County property free from blight and nuisance, and 4) encourages the use of areas not otherwise available to citizens through a permit and protects freedom of speech and the right to assemble peaceably in traditional public fora.

11. Moreover, “the First Amendment does not guarantee access to government property simply because it is owned or controlled by the government.” *United States Postal Service v. Greenburgh Civic Assns.*, 453 U.S. 114, 129 (1981). Rather, the “existence of a right of access to public property and the standard by which limitations upon such a right must be evaluated differ depending on the character of the property at issue.” *Perry Education Assn. v. Perry Local Educators' Assn.*, 460 U.S. 37, 44 (1983). Plaintiffs argue that the restrictions on speech on all county property should be treated the same, but there is no precedent for such a position.

12. Public property which is not by tradition or designation a forum for public communication may be reserved by the State “for its intended purposes, communicative or otherwise, as long as the

regulation on speech is reasonable and not an effort to suppress expression merely because public officials oppose the speaker's view.” *Perry Education Assn.*, 460 U.S. at 46. Public forums include those places “which by long tradition or by government fiat have been devoted to assembly and debate,” such as parks, streets, and sidewalks. *Id.* at 45; *cf. Members of City Council v. Taxpayers for Vincent*, 466 U.S. 789, 814 (1984). “[O]n government property that has not been made a public forum, not all speech is equally situated, and the State may draw distinctions which relate to the special purpose for which the property is used.” *Id.* at 54. “There is little doubt that in some circumstances the government may ban the entry on to public property that is not a ‘public forum’ of all persons except those who have legitimate business on the premises. *United States v. Grace*, 461 U.S. 171, 178(1983). Moreover, “[t]he incidental restriction on expression which results from the City's attempt to [eliminate visual clutter] is considered justified as a reasonable regulation of the time, place, or manner of expression if it is narrowly tailored to serve that interest.” *Taxpayers for Vincent*, 466 U.S. at 808 (citations omitted).

13. None of the concerns identified by Plaintiffs rise to the level of constitutional violations. The Use Policy explicitly provides for the right to assemble peaceably and the freedom of speech in traditional public fora:

The term “use” in this Policy excludes passive expressions of speech
 (Ex. A at § 3(c)).

Sidewalks on County property and County Parks, Cemeteries and Memorials are considered “Public Spaces.” Permitting is NOT required for the use of Public Spaces.
 (Ex. A at § 12(a)).

Peaceful picketing and leafletting in Public Spaces is permissible.
 (Ex. A at § 12(c)).

And the application process for the Starr County facilities available for reservation passes constitutional muster.

14. The Starr County Courthouse and Courthouse Annex greens and sidewalks are available for public use, and the interior spaces of the Courthouse and the Annex conference room have been made available to public use so long as there is no conflict with the regular use of the spaces for Starr

County offices and courts. The Starr County Fairgrounds is an event center; which necessarily requires reservations and the orderly process which the application process outlined in the Use Policy provides. The La Rosita Library and the community centers at El Cenizo Park and Zarate Park are used for public events and is made available for public use, but it requires the orderly process outlined in the Use Policy.

15. Plaintiffs have alleged no facts that would support finding that the application process to use these spaces is unconstitutional. The Supreme Court has recognized that government, in order to regulate competing uses of public forums, may impose a permit requirement on those wishing to use the fora. *See Cox v. New Hampshire*, 312 U.S. 569, 575-76 (1941) (finding that considerations of time, place and manner to conserve the public convenience are permissible). “[S]tate imposed registration and permit requirements are not unconstitutional per se.” *Poe v. Humble*, 554 F. Supp. 233, 237 (S.D. Tex. 1983) (citing *Cantwell v. Connecticut*, 310 U.S. 296, 306 (1940); *International Society for Krishna Consciousness, Inc. v. City of Houston*, 689 F.2d 541 (5th Cir.1982)). In this case, Starr County has explicitly provided for the reservation of the facilities in the Use Policy’s Attachment A through the reservation and application process with the right to refuse use of the facilities only when “the proposed event conflicts with the intended use of a building, is in conflict with established policies or law, or is in conflict with any other confirmed reservation.” (Ex. A at § 3(a)). This time, place, and manner regulation is constitutionally permissible: it does not restrict or forbid speech based on its content, it is narrowly tailored to preserve County property by allowing use of premises for their intended purposes, and leaves ample alternatives for communication of information through the use of public spaces—all of which surround these facilities, *i.e.*, sidewalks and greens, and parks. This application process survives intermediate scrutiny.

16. Plaintiffs contend that the application process is “burdensome” and the requirements “onerous,” but allege no facts or present any law to support such conclusory statements. They contend that a *one* page application, with a notarized release of liability, (Ex. C), is a burden and that requiring a deposit that protects the County’s property interests and the assessment of after-hour fees to cover the salary of County employees to supervise and allow access to the premises is onerous.

But such contention is unsupported by facts or law. This simple process cannot be considered a burden considering that the County has to protect property, prevent or limit exposure to liability, determine the propriety of functions in certain fora, and allow for an orderly process to grant citizens access to County facilities. On the contrary, the Supreme Court and the Fifth Circuit Court of Appeals have held on numerous occasions that requesting basic information and requiring fees are permissible so long as they do not vary according to the applicant's speech. *See Forsyth County v Nationalist Movement*, 505 U.S. 123 (1992); *Poe v. Humble*, 554 F. Supp. 233, 237 (S.D. Tex. 1983) (finding "A municipality may constitutionally impose some informational registration requirements . . .").

17. Plaintiffs also contend that the prohibition of reservations on County holidays is a constitutional violation, but this time restriction is unrelated to the regulation of speech, is narrowly tailored to serve the governmental interest in preserving the resources that would have to be spent on keeping the facilities open and operating at a time when they would typically be closed, and Plaintiffs have sidewalks, parks and greens available for use. *Cf. Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989). This provision survives intermediate scrutiny.

18. Plaintiffs also mistakenly assume that the application process applies to the Courthouse greens, but the Use Policy deems the Courthouse greens as public spaces "available at all times for public use." (Ex. A at Attach. B, § (i)(d)). Plaintiffs' assertion is unfounded.

19. Plaintiffs complain that the County judge has "unfettered discretion." (Doc. 56, para. 63-66, 69). According to Plaintiffs this "unfettered discretion" includes the discretion to determine the deposit amount for use of the Courthouse, the discretion to waive after-hour fees, the discretion to impose additional restrictions, and the discretion to deny an application. But contrary to Plaintiffs' assertion, the Use Policy does not provide the County Judge with "unfettered discretion." The Use Policy provides the County Judge the discretion to waive fees if the community at large is receiving a valuable service in return. (Ex. A at § 8(e)). The Use Policy makes clear that the deposit amount for use of the Courthouse must be "based on the risk of damage or destruction to county property and its historical preservation." (Ex. A at Attach. B, § (xii)(a)). The Use Policy also reserves

the County's right to impose additional restrictions on the use of the Courthouse but such discretion must be exercised "with the primary focus of maintaining and protecting the historical structure." (Ex. A at Attach. B, § (xii)(a)). The Use Policy provides the guidance necessary for the County to exercise discretion. The exercise of discretion is unrelated to the regulation of speech, it is focused on the preservation of the Courthouse and making events available for the community that would otherwise not be available; this discretion is narrowly tailored to serve the governmental interest in preserving property and providing community services, and the potential restrictions of this limited use of discretion do not foreclose Plaintiffs' use of parks and greens. *Cf. Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989). These provisions survive intermediate scrutiny.

20. Plaintiffs also complain that the County may require a peace officer or security services to be present at an event. (Doc. 56, para. 67). But they fail to identify any facts or law that would support finding that such a requirement would be unconstitutional. Surely they will not argue that large demonstrations may at times require the presence of law enforcement to keep the peace. The County has the obligation to maintain the peace and dispatch law enforcement to any of its premises to maintain order and peace, and help preserve property. The undersigned has not found any legal precedent that would support finding such a provision would be unconstitutional.

21. Plaintiffs complain that the County retains the right to modify the Use Policy. (Doc. 56, para. 68). This language in the Use Policy is surplusage, because the County can always modify a legislative act, and Plaintiffs cannot enjoin such a right.

22. Despite the Court's pronouncement on the matter early in the case, Plaintiffs continue to assert that it is unconstitutional to declare that parking lots and parking zones cannot be used for anything other than parking. (Doc. 56, para. 77). Parking lots and parking zones are not traditional public fora and the County has specifically declared they are not public fora. Therefore, parking lots and parking zones may be reserved by the County for their intended purposes. *See Good News Club v. Milford Cent. Sch.*, 533 U.S. 98, 107 (2001) (quoting *Cornelius v. NAACP Legal Def. & Educ. Fund, Inc.*, 473 U.S. 788, 806 (1985)); *see also Perry Educ. Ass'n v. Perry Local Educator's Ass'n*, 460 U.S. 37, 46 (1983).

23. Finally, Plaintiffs contend that the prohibitions of placing unattended signs on grassy areas or lawns, and of posting personal or community notices in areas other than those designated by the County in the Courthouse are unconstitutional. (Doc. 56, para. 70-71). But the County's Use Policy does not prohibit peaceful picketing or leafletting on public spaces—it simply limits the particular use of certain signs to avoid having unattended signs littering greens and lawns—, and designates a space for posting of personal and community notices in the Courthouse to prevent clutter, littering, and damage to the interior of a historic building when individuals affix or attach signs to walls or doors. “The incidental restriction on expression which results from the City's attempt to [eliminate visual clutter] is considered justified as a reasonable regulation of the time, place, or manner of expression if it is narrowly tailored to serve that interest.” *Taxpayers for Vincent*, 466 U.S. at 808 (citations omitted). These restrictions cannot be considered unconstitutional.

ii. The Use Policy in light of the Texas Election Code

24. When County buildings are used as a polling place, the Texas Election Code prohibits electioneering within 100 feet of the entrance of the buildings. In this case, the County properties that are used as polling places are El Cenizo Park, La Rosita Community Center, La Victoria Community Center (or Zarate Park) and Starr County Courthouse. The Use Policy incidentally restricts the use of these properties outside the 100-foot buffer zone by prohibiting the use of parking lots at these locations and by prohibiting the staking of signs into the grounds, nothing more. These incidental restrictions, to the extent they regulate time, place and manner of electioneering, are reasonable. *Cf. Members of City Council v. Taxpayers for Vincent*, 466 U.S. 789, 814 (1984).

C. Electioneering Regulations

i. Constitutionality of the Electioneering Regulations

25. Plaintiffs allege that the Use Policy violates their freedom of speech and their right to assemble peaceably. (Doc. 56, para. 110, 118). They contend the following in support of their claim:

- a. Electioneering is prohibited on sidewalks, lawns, and grassy areas outside the 100-foot perimeter of a polling location. (Doc. 56, para.3).
- b. There are no “Designated Areas for Electioneering” at La Victoria Park. (Doc. 56, para.

89-90).

- c. Electioneering that obstructs fire truck sight lines is prohibited. (Doc. 56, para. 92).
- d. Electioneering on driveways is prohibited. (Doc. 56, para. 92).
- e. Electioneering that obstructs vision of drivers and increases traffic congestion is prohibited. (Doc. 56, para. 92).
- f. Electioneering on easements and rights-of-way is prohibited. (Doc. 56, para. 92).

26. In public fora, the County may enforce a content-based exclusion to communicative activity by showing “that its regulation is necessary to serve a compelling state interest and that it is narrowly drawn to achieve that end.” *Perry Educ. Ass’n v. Perry Local Educators’ Ass’n*, 460 U.S. 37, 45,(1983). The Electioneering Regulations have several purposes, including: to allow uninterrupted access to polling locations by restricting loitering and electioneering on certain sidewalks, to prevent the obstruction of firefighting and law enforcement activities, and to provide citizens with areas for electioneering when they would otherwise have no opportunity to electioneer absent an exception.

27. The County has a compelling interest in protecting voter access to polls by restricting active electioneering on sidewalks leading from the street and parking lots to the entrance of polling locations, and to protect citizen and employee access to buildings located on County property where voting takes place. *See* (Ex. B at § 4(f)). This restriction has been narrowly tailored by its application to polling locations and only during voting periods, and does not extend to lawns and grassy areas adjacent to sidewalks which provide areas for electioneering. *See generally* (Ex. B). This prohibition has also been narrowly tailored by allowing passive expressions of speech. *See* (Ex. B at § 4(f)). Furthermore, where this restriction extends to sidewalks that are not typically used for accessing polling locations or county buildings, the County has created an exception to the rule by creating Designated Areas of Electioneering on such sidewalks. *See* (Ex. B at §§ 2(b), 4(f)). This restriction does not apply to La Rosita Community Center because all sidewalks are within the 100-foot buffer zone under State law. *See* (Ex. B, La Rosita Map).

28. In La Victoria Park, the only sidewalks at issue are those leading to the entrance of the Community Center from the parking lot—more than 200-feet away from the polling location—and

the sidewalks adjacent to County buildings. *See* (Ex. B, La Victoria Map). The County has a compelling interest in providing citizens and employees unimpeded, safe access to the Community Center and County offices that are not serving as polling locations. Not only are most sidewalks at Zarate Park more than 200-feet away from the polling location, Zarate Park has large, open spaces in the vicinity of the designated polling location that provide plenty of opportunity to electioneer—outside the 100-foot buffer zone under State law. *See id.* Plaintiffs complain that there are no “Designated Areas for Electioneering” at Zarate Park, but none are necessary because there are no restrictions on electioneering on these expansive spaces at the park—the designation of areas for electioneering is an exception to the rules restricting active electioneering on certain sidewalks and parking zones. *See* (Ex. B at § 2(b)).

29. In El Cenizo, the sidewalks at issue are those at the entrance of the property and those that are just immediately outside the entrance of County offices. *See* (Ex. B, La Victoria Map). The County has a compelling interest in allowing citizens and employees unimpeded, safe access to the County offices that are not serving as polling locations. And the County has specifically excluded the sidewalks at the entrance of the property from this electioneering restriction by making them Designated Areas for Electioneering to provide citizens the opportunity to electioneer in a property where few areas for electioneering are available. *See id.*; *United States v. Kokinda*, 497 U.S. 720, 727 (1990) (distinguishing a sidewalk leading from a parking area to the front door from a sidewalk running parallel to a public street); *cf. Schirmer v. Edwards*, 2 F.3d 117, 121(5th Cir. 1993) (concluding that the government has a compelling interest in protecting its citizens’ right to vote and allowing a 600-foot electioneering-free buffer zone). Through the exception to the rule, the County has narrowly tailored the restriction on active speech.

30. Finally, as applied to the Starr County Courthouse, the sidewalks at issue are only those on the north and south side of the Courthouse, that lead from the main public parking areas in the north and south to the entrance of the polling location. *See* (Ex. B, Courthouse Map). The County has specifically excluded the sidewalks on the east and west of the Courthouse by making them Designated Areas for Electioneering, and has not prohibited electioneering on the Courthouse greens,

giving citizens ample space for electioneering and opportunities reaching voters on streets leading to the Courthouse and voters walking into the Courthouse. *See id.* The County has a compelling interest in providing uninterrupted access to polling locations, and has found that the best way to do so at the County Courthouse is by restricting active electioneering on the north and south sidewalks. This restriction has been narrowly tailored by allowing electioneering on other sidewalks and by not extending the prohibition to the green areas that are adjacent to the sidewalks that are covered by the restriction. The County has not prohibited electioneering on sidewalks that run parallel to public passageways that would not obstruct access to polling locations. *See United States v. Kokinda*, 497 U.S. 720, 727 (1990) (distinguishing a sidewalk leading from a parking area to the front door from a sidewalk running parallel to a public street); *cf. Schirmer v. Edwards*, 2 F.3d 117, 121(5th Cir. 1993) (concluding that the government has a compelling interest in protecting its citizens' right to vote and allowing a 600-foot electioneering-free buffer zone); *see also Burson v. Freeman*, 504 U.S. 191, 214-16 (1992) (Scalia, J., concurring) (stating that areas adjacent to functioning polling places are not quintessential public forums and that "sidewalks around polling places have traditionally *not* been devoted to assembly and debate).

31. As far as the restrictions on electioneering that obstructs fire truck sight lines and electioneering on driveways, (Ex. B at §§ 4(i), (j)), the County has a compelling interest in providing firefighters safe, unobstructed ingress and egress from fire stations, as well as protecting drivers that may be in the vicinity of the fire station during an emergency. The safe ingress and egress of buildings is also a compelling interest, and County officials should have the ability to re-direct electioneering activities that impede safe access to buildings. *Cf. Adderly v. Florida*, 385 U.S. 39, 47 (1966) (finding no unconstitutional deprivation of rights where sheriff objected to presence on part of jail grounds reserved for jail uses). There are several alternatives to electioneering on County properties that serve as polling locations, and the use of driveways would be unnecessary and unsafe. Plaintiffs cannot present any set of facts under which their electioneering activities within 15-feet of the fire station and driveways would outweigh the County's interest in the safety of citizens.

32. At two locations, El Cenizo and the Courthouse, the County has created Designated Areas

for Electioneering on sidewalks adjacent to public roadways. *See* (Ex. B, Maps of El Cenizo and Courthouse). These public roadways lead to parking lots at El Cenizo and the Courthouse, and vehicles approaching these parking lots must be attentive to entrances in order to access polling locations—and County offices—and maintain the natural flow of traffic. The drivers exiting the El Cenizo and Courthouse parking lots also need to have unobstructed views of traffic to safely merge onto the road. Furthermore, the drivers on the public roadway leading to and from El Cenizo may be traveling at speeds of 50 m.p.h.—the speed limit—and the County has an interest in ensuring that they not be distracted, especially when electioneering activities may obstruct the vision of vehicles entering or exiting parking lots. The County has a compelling interest in preventing unsafe obstructions to drivers and citizens traversing roads or sidewalks adjacent to County property used as polling locations during voting periods, and in ensuring the safety of all drivers and those that are attempting to enter County property. The County has restricted electioneering narrowly to that end. Plaintiffs have failed to allege any set of facts that would support finding a constitutional violation.

33. Finally, Plaintiffs complain that electioneering on easements and rights-of-way is prohibited. (Ex. B at § 4(m)). But the County cannot interfere with the use of easements and rights of way. By definition, easements and rights of way are privileges provided for others to use County property, and the County cannot impose a separate use, or rescind or abrogate the rights vested in the owner of an easement or right of way. On this basis, the County has the obligation to protect such rights by limiting electioneering. What's more, Plaintiffs have failed to identify any set of facts that would indicate they have or will suffer an injury related to such a restriction; they have failed to identify the easement or right of way that is so essential to their electioneering that they cannot otherwise carry out in the Designated Areas for Electioneering at La Rosita, El Cenizo and the Courthouse, or greens and lawns at the Courthouse and La Victoria.

34. The Electioneering Regulations have been narrowly tailored to address the County's compelling interests during voting periods and pass constitutional muster. Plaintiffs can prove no set of facts in support of their contention that their First Amendment rights have or will be violated by the enforcement of these regulations.

ii. The Electioneering Regulations in light of the Texas Election Code

35. Pursuant to Section 61.003(a-1) of the Texas Election Code, the County has the authority to “enact reasonable regulations concerning the time, place, and manner of electioneering.” The County has decided to do so through its Electioneering Regulations. Defendants hereby incorporate by reference Paragraphs 26 through 33, which support the reasonableness of the regulations enacted by Starr County. Moreover, Defendants would show that the Texas Secretary of State’s Election Advisory Opinion No. 2017-14 supports the County’s Electioneering Regulations by providing, as an example, the authority to “prohibit[] electioneering on sidewalks or driveways to keep them clear for pedestrians and traffic.” (Doc. 14, Ex. B). The Electioneering Regulations do precisely what the Texas Secretary of State has declared as reasonable under the Texas Election Code. Therefore, the Electioneering Regulations cannot violate the Texas Election Code.

D. The Commissioners acted within their authority, not *ultra vires*

36. To assert an *ultra vires* claim, a suit must not complain of a government officer’s exercise of discretion, but of “*either* an officer’s failure to perform a ministerial act *or* an officer’s exercise of [] *limited* discretion without reference to or in conflict with the constraints of the law.” *Houston Belt & Terminal Ry. Co. v. City of Houston*, 487 S.W.3d 154, 163 (Tex. 2016) (emphasis in original). Here, Plaintiffs have failed to identify the ministerial act(s) or exercise of limited discretion that are *ultra vires*.

IV. PRAYER

WHEREFORE, PREMISES CONSIDERED, Defendants, STARR COUNTY, TEXAS; OMAR ESCOBAR, in his official capacity as District Attorney for the 229th Judicial District; VICTOR CANALES JR., in his official capacity as County Attorney for Starr County; ELOY VERA, in his official capacity as County Judge for Starr County; JAIME ALVAREZ, in his official capacity as Starr County Commissioner for Precinct 1; RAUL PEÑA, III, in his official capacity as Starr County Commissioner for Precinct 2; ELOY GARZA, in his official capacity as Starr County Commissioner for Precinct 3; RUBEN D. SAENZ, in his official capacity for Starr County Commissioner for Precinct 4; RENE “ORTA” FUENTES, in his official capacity as Sheriff for Starr

County, pray that this Court grant their Motion to Dismiss, dismiss all of Plaintiffs' claims, order that Defendants recover all costs incurred herein, including attorney's fees, and grant that Defendants have such other and further relief, at law or in equity, to which they may show themselves to be justly entitled.

Respectfully submitted,

By: /s/ Ysmael D. Fonseca
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ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF CONFERENCE

Pursuant to LR 7.1 D, a certificate of conference is not required.

/s/ Ysmael D. Fonseca
Ysmael D. Fonseca

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of August, 2018, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

Via CM/ECF
Ms. Nina Peralez
Ms. Celina Moreno
Ms. Alejandra Avila
Mexican American Legal Defense
and Educational Fund
110 Broadway, Suite 300
San Antonio, TX 78205

Via CM/ECF
Mr. Efren C. Olivares
Ms. Rebecca Harrison Stevens
Texas Civil Rights Project
1017 W. Hackberry Ave.
Alamo, Texas 78516

Via CM/ECF
Mr. J.M. Alvarez
Alvarez Law Firm
50 N. Britton Ave.
Rio Grande City, Texas 78582

/s/ Ysmael D. Fonseca
Ysmael D. Fonseca

EXHIBIT “A”

STARR COUNTY

BUILDING AND PROPERTY USE POLICY

1. **Authorization.** The Starr County Commissioners' Court ("Commissioners' Court") is authorized to develop, maintain, and control its facilities in Starr County pursuant to the Texas Local Government Code, and other applicable statutes.

2. Purpose and Method.

(a) **General Purpose.** The purpose of this policy is to establish the guidelines and criteria under which Starr County can develop, maintain, and control its Facilities in order to support county operations, public service, and historical values. The Commissioners' Court recognizes that facilities are sometimes used for other public purposes, for which adequate parking and safe access must be maintained; blight, distraction, and nuisance must be mitigated in service to the whole community; and, the County must preserve the general health and welfare of the citizens of Starr County.

(b) **Method.** This Policy will establish the framework for clarifying necessary coordination between Commissioners' Court authority, Facilities coordination and designation, and Facilities Users.

(c) **Waiver and/or Modification of Requirements.** The Commissioners' Court retains the right to waive or modify any of the requirements of this Policy. Commissioners' Court may waive or modify the requirements of this Policy when:

- (i) It is necessary in order to serve the public interest;
- (ii) It will allow use which will continue to meet the intent of this Policy; and
- (iii) It will not violate any applicable statutory requirements.

(d) **Limitation.** The adoption of this policy does not:

- (i) limit the discretion of the Commissioners' Court to delegate to its employees the authority to determine whether or not the Commissioners' Court should consider a particular application for facilities use; or
- (ii) create any contract or other legal right in any person to have the Commissioners' Court consider or grant a specific application or request for facilities use.

3. Use of County Property

(a) The words "buildings" and "facilities" include structures and surrounding property belonging to Starr County. Starr County buildings and facilities are to be primarily used for official county functions and their intended purposes. It is intended that these facilities be used to the fullest extent for these primary purposes. However, the buildings and facilities listed in Attachment "A" may be made available to other users on a limited fee basis for events that support a public purpose, benefit, service, training or interest to Starr County residents that otherwise would not occur without the facility being available. Starr County has the right to refuse use of facilities to any group or person if the proposed event conflicts with the intended use of a building, is in conflict with established policies or laws, or is in conflict with any other confirmed reservation.

(b) To use the buildings and facilities listed in Attachment "A", the reservation and application process outlined herein must be followed in order to obtain a permit. Buildings and facilities that are excluded from Attachment A are not available for use by private citizens unless otherwise allowed under this Policy. Unless specifically authorized or otherwise exempted under this Policy, the unauthorized use of County property is strictly prohibited.

(c) The term "use" in this Policy excludes passive expressions of speech and access to buildings and facilities for personal business or to obtain county services. However, all persons on County property must observe and follow the Regulations for Use of Space in Section 9, below.

(d) In such cases where groups have a written agreement with the Commissioners' Court that addresses use of specific facilities or lands, the written agreement shall stand.

(e) County facilities are not available for reservation and permitting on County holidays. If the holiday falls on a Monday or Friday, the weekend preceding or the weekend following the holiday, respectively, shall be considered a holiday.

(f) It is an offense to puncture, damage, cut, carve, mark, remove, transplant, break, pick, or in any injure, damages, destroy, or deface any real property improvements, personal property, equipment, irrigation systems, plants, turf, asphalt or concrete within or upon any County property. For purpose of this section, plants shall be defined to include any vegetation, shrubs, bushes, trees, vines, hedges, grasses, or flowers.

4. Starr County Courthouse Historical Preservation

The Starr County Courthouse building in Rio Grande City will be maintained in a manner that preserves its historic designation with policy details described in Attachment "B" of this Policy.

5. Reservations

(a) Reservations for use of each facility will be accepted on a first come, first served basis. The reservation must be made through the application process below.

(b) No single group or individual will be given preference or priority so that the buildings are made available to serve the needs of as many different groups as possible. Equal access shall be given to all groups and individuals applying, and no group or individual shall be denied access because of considerations of race, sex, religious or political persuasion, or because of the political, religious, or social aims expressed by an individual or group, or by any group's members.

(c) The frequency with which one group may utilize a facility is at the discretion of the County.

(d) The County retains the right to refuse requests for use of non-departmental space or to cancel reservations before or while they are in effect if these regulations are not complied with, or if the space requested is needed for governmental functions. In reviewing requests for reservations, the County will consider the risk of damage or destruction to county property, the probability of interruption to the normal course of governmental functions, the historical value of any common areas, and the liability, risk and danger of injury posed to the public.

- (e) Reservations are not accepted more than 6 months in advance of the scheduled event.
- (f) Permission to use Starr County facilities shall not, in any way, constitute an endorsement of the group or individual, or their policies and activities.

6. Application Process

- (a) The Starr County Judge is the buildings and facility manager and shall consider all applications for use of County properties in accordance with this Policy. Permit Applications and copies of the Starr County Building Use Policy will be available at the Starr County Judge's Office.
- (b) Applications must be completed in full, notarized, and returned with any necessary fees and release of liability forms. Applications are not valid until all fees are paid.
- (c) Applications must be submitted to the Starr County Judge's Office not less than thirty (30) days prior to the intended use date. The Starr County Judge shall issue a permit for use of County property or a notice of denial within fifteen (15) days of receipt of the application, except when a specific deposit amount must be determined for use of the County Courthouse and when consideration of a waiver of fees is required. The County Judge shall determine a specific deposit amount for use of the County Courthouse and consider a request for waiver of fees within fifteen (15) days of the submission of an application. After determining a specific deposit amount for the County Courthouse or denying a waiver of fees, a permit may issue only upon payment of the required deposit and/or fees; an applicant's failure to pay the deposit and fees within fifteen (15) days of receiving notice of the amount due shall result in automatic denial of the application and will allow other applications to be considered for the facility's use on the intended use date.
- (d) Applicants must be at least 21 years of age.
- (e) The permit-holder must comply with the Regulations for Use of Space.

7. Liability

- (a) Any group or person reserving and submitting an application for use of a Starr County facility shall be required to execute a release of liability for negligence or any damages caused to the user, his guests, or his property during the time of the event or use of the facility.
- (b) Permit-holders are not allowed to assign their reserved time at a facility to another party unless written permission is given by the Starr County Judge.
- (c) None of the provisions in this Policy shall be considered a waiver of immunities or an intent of the County to modify the standards of care applicable to the County under State law.

8. Deposit and After-Hour Fees

- (a) After-hour fees of \$25/hour only apply to events that take place AFTER regular working hours of Monday through Friday, from 8:00am to 5:00pm. The fees are not consideration for rental of a facility; these fees cover the costs associated with ensuring County employees are available to supervise the facility and secure the premises after use.

(b) Refundable deposits of \$50 are payable at the time an application for use is filed. However, the use of the Starr County Courthouse may require a refundable deposit of up to \$1,000 based on the area of the Courthouse intended to be used and the type of use of such area; the Starr County Courthouse is a historical building and the County has an interest in its preservation—see Attachment “B” for specific guidelines and regulations concerning the use of the Starr County Courthouse. The amount of the deposit for use of an area at the Starr County Courthouse shall be determined by the Starr County Judge, and shall be payable upon approval of an application. Deposits may be refunded fourteen (14) days after the scheduled use of the facility unless the facility is left unclean or damages occur to the facility.

(c) After-hour fees will be returned if the reservation is cancelled within 72 hours prior to the scheduled use of the facility. After-hour fees may not be returned if the reservation is cancelled less than 72 hours prior to the scheduled use of the facility.

(d) Starr County will not charge a fee for use of a facility as an election polling place.

(e) The County Judge may elect to waive fees for use of County facilities if he determines that the County is receiving fair value by allowing the use of its facilities. To seek such a waiver, permit applicants must make their request in the Permit Application.

(f) The Starr County auditor shall develop or revise a county fiscal manual to provide for the proper deposit and accounting of any funds received for use of County facilities.

9. Regulations for Use of Space on County Property

(a) All citizens and permit-holders and their guests shall comply with the laws of the United States, and the State of Texas, and all Starr County rules, policies, and regulations. All persons in and on the property shall comply with official signs of a prohibitory or directory nature, and with the directions of security force personnel or other authorized individuals. Starr County has the right to have persons violating any provisions removed from the premises and to prosecute any and all violators to the fullest extent of the law.

(b) Citizens and permit-holders and their guests shall not engage in or permit disorderly conduct, or conduct which creates loud and unusual noise, or which obstructs the usual use of entrances, foyers, corridors, offices, elevators, stairways, and parking lots, or which otherwise tends to impede or disturb the public employees in the performance of their duties, or which otherwise impedes or disturbs the general public in transacting business or obtaining the services provided on property.

(c) Adults attending events on Starr County premises must keep their children with them at all times.

(d) Soliciting alms, contributions, or collecting private debts on County premises is prohibited. Commercial soliciting and vending and displaying or distributing commercial advertising on County premises are prohibited, except when in conjunction with an event approved by the Commissioners' Court.

(e) Unless otherwise allowed by this Policy, depositing or posting handbills, flyers, pamphlets, signs, posters, placards, or other literature, except Governmental notices and announcements, on the grounds, plants, poles, walkways, driveways, parking and maneuvering areas, exteriors of buildings, and other structures, or on the floors, walls, stairs, racks, counters, desks, writing

tables, window ledges, or furnishings in interior public areas on County premises is prohibited. For purpose of this section, plants shall be defined to include any vegetation, shrubs, bushes, trees, vines, hedges, grasses, or flowers.

(f) Hanging decorations on the grounds, plants, poles, walkways, driveways, parking and maneuvering areas, exteriors of buildings, and other structures, or on the floors, walls, stairs, racks, counters, desks, writing tables, window ledges, or furnishings in interior public areas on County premises which could damage the building in any way is prohibited unless written request is made and specifically approved in writing by the County. For purpose of this section, plants shall be defined to include any vegetation, shrubs, bushes, trees, vines, hedges, grasses, or flowers.

(g) During all activities and events, a County representative will be assigned to supervise the building. This employee is not responsible for performing any personal services in conjunction with any activity or event. Designated representatives from Starr County have the right to enter any portion of the room for any purpose whatsoever any time during the scheduled event or activity. At all times the room shall be under the charge and control of the appropriate Starr County Department or permit-holder.

(h) Permit-holders may be required to have a licensed peace officer, or Starr County contracted security services, at their event.

(i) Permit-holders shall be responsible for securing any permits or approvals required in connection with the event.

(j) Permit-holders shall not admit to the facility a larger number of persons than is permitted by the Starr County Fire Code.

(k) Permit-holders shall not place any additional locks on doors. The keys to all facilities shall remain in the possession of the County. Entrances and exits shall be locked and unlocked by an employee of Starr County in accordance with the time set forth in the agreement unless other arrangements are made and confirmed in writing.

(l) Permit-holders shall not use or permit smoking, use of tobacco, drug use, or alcoholic beverages in any County facility.

(m) Weapons, reproductions of weapons, and any items capable of being conceived as weapons (except those carried by peace officers) are forbidden from being brought onto Starr County property.

(n) Permit-holders and their guests shall not use or permit the premises to be used for sleeping or lodging purposes.

(o) Permit-holders will assure that persons attending a scheduled activity do not enter any of the offices in the facility.

(p) Stages, trailers, BBQ pits, awnings, shelters, tents, booths and other similar items are not allowed unless otherwise allowed by this Policy, Commissioners' Court, or the County Judge.

(q) Vehicles are not allowed on lawns, planted areas, sidewalks or walkways of County property.

(r) Pets are not allowed inside Starr County facilities with the exception of Disability Assistance dogs.

(s) Proper attire of shirts and shoes are required during use of all Starr County facilities.

(t) The specific guidelines and regulations in Attachment "B" control the use of the Starr County Courthouse in addition to those listed herein; Attachment "B" supersedes any regulation in this policy to the extent any conflict exists.

(u) If an emergency happens, a permit-holder will immediately dial 911, contact appropriate emergency services, evacuate the building if appropriate, and notify both the peace officer on duty and the Starr County representative. If the representative is not able to be contacted then the permit-holder will call: (956) 716-4800.

10. Furniture / Equipment

(a) Tables and chairs are available on a limited basis. If the permit-holder wishes to bring in additional furniture or equipment it must have non-mar feet only, and be delivered / picked up at the facility only during the scheduled time.

(b) No video, sound, or projection equipment is available for use.

(c) Some facilities have limited kitchen access. Kitchen tools and appliances are not available for use, and the kitchens must be left in the same condition, or better, as they were before the event.

11. Parking Lots and Parking Zones

Parking Lots and Parking Zones on County properties are to be used strictly for public and government automobile parking purposes and to effect the business of the Government buildings which they serve.

- (i) Parking Lot – A Parking Lot is a dedicated paved area delineated by road surface markings which are intended for parking vehicles.
- (ii) Parking Zones – A Parking Zone is an unpaved area designated for parking vehicles. The Parking Zones shall be those shown in Attachment "D". The solid lines in Attachment "D" identify an entire area that may be used for parking; the dotted lines in Attachment "D" identify the perimeters of specific areas that may be used for parking so long as roadways and driveways are not obstructed.
- (iii) Vehicles – Except for county or government vehicles serving an official purpose, only passenger vehicles including automobiles, buses, trucks, motorcycles, motor scooters, motorbikes, mopeds and other similar devices that can be used to transport persons shall be allowed to use the parking zones. Trailers, BBQ pits, chairs, tents, recreational vehicles and any other similar items or vehicles that are not passenger vehicles as defined herein are strictly prohibited.
- (iv) Right of Way -- Vehicles shall yield to pedestrians.
- (v) Passing – Passing is prohibited.
- (vi) Parking – Parking is strictly limited to spaces on pavement between painted lines in Parking Lots, in areas designated as Parking Zones in such a way that egress and ingress of other vehicles is not obstructed, or in any other temporary or permanent space where posted signs indicate parking is permissible. Any space not designated for

parking may not be used for parking. Parking with any part of the vehicle over the line is a violation. Vehicles may not be left overnight except those used in connection with a strict official or governmental purpose. All other vehicles are subject to towing.

(vii) Purpose – Persons may only park vehicles in county parking zones for so long as their primary purpose is to transact or effect any official business in the county buildings for which the parking zones serve. All others may be towed.

(viii) Vehicles may display political signs attached to the vehicles in accordance with the Texas Election Code.

12. Public Spaces

(a) Sidewalks on County property and County Parks, Cemeteries and Memorials are considered "Public Spaces." Permitting is NOT required for the use of Public Spaces.

(b) Soliciting alms and contributions, and commercial solicitation on Public Spaces is prohibited.

(c) Depositing or posting handbills, flyers, pamphlets, signs, posters, placards, or other literature, except for Government notices and announcements, in Public Spaces is prohibited. "Depositing" and "posting" does not include holding or distributing material. Peaceful picketing and leafletting in Public Spaces is permissible.

(d) Public Spaces are open to the public during specified hours of operation throughout the year, including County holidays; to the extent practicable, hours of operation will be posted at the main entrance of each location to provide citizens with notice of the same. Any Public Space lacking a notice of the hours of operation shall be considered to be open at all times—24 hours a day, 7 days a week, throughout the year. Some of the Public Spaces are listed in Attachment 'C' with their respective hours of operation; the County Judge shall update Attachment 'C' as needed to provide additional notice of the hours of operation for any County Park, Cemetery or Memorial. Anyone that wishes to use a Public Space during non-regular hours may avail himself of the permitting process outlined in this policy.

(e) Chairs, tables, tents, ice chests, and grills are allowed in County Parks. Tents, booths, tables, chairs and other similar items are allowed in County Memorials.

13. Cumulative

All policies of the County of Starr, Texas, adopted or un-adopted, in conflict with the provisions of this policy are hereby repealed and all other provisions not in conflict with the provisions of this policy shall remain in full force and effect.


14. Severable

Any word, phrase, paragraph, or section of this policy is severable and should any part of this policy be declared unconstitutional, illegal or invalid by any court of competent jurisdiction, such declaration shall not affect any remaining word, phrase, paragraph, or section.

This STARR COUNTY BUILDING AND PROPERTY USE POLICY is enacted on the 25th day of June, 2018, and supersedes previously enacted policies concerning the use of Starr County buildings and property.




Commissioner Jaime Alvarez
County Commissioner Precinct #1



Commissioner Roy Pena III
County Commissioner Precinct #2

Commissioner Eloy Garza
County Commissioner Precinct #3



Commissioner Ruben Saenz
County Commissioner Precinct #4



County Judge Eloy Vera

ATTACHMENT "A"

STARR COUNTY FACILITIES AVAILABLE FOR RESERVATION

1. Starr County Courthouse
2. Starr County Fairgrounds
3. El Cenizo Park Community Center
4. La Rosita Library
5. Starr County Annex Conference Room
6. Zarate Park Community Center

ATTACHMENT "B"

Starr County Courthouse Historical Preservation

The Starr County Courthouse building in Rio Grande City will be maintained in a manner that preserves its historic designation in compliance with the Texas Historical Commission.

(i) Courthouse Exterior.

- a. Use of electrical outlets are prohibited unless specifically authorized by the office of the Starr County Judge.
- b. No displays or exhibitions are to be set into the grass area surrounding the Courthouse.
- c. Fasteners, staking or drilling are not allowed on any concrete area or Courthouse greens.
- d. The Courthouse greens are available at all times for public use to the extent that there is no threat to the security of the Courthouse and the safety of County employees and citizens. Stages, trailers, BBQ pits, awnings, shelters, tents, booths, tables, chairs and other similar items are not allowed on the Courthouse greens.
- e. No permanent type markings are allowed on concrete, steps, landings, ramps or portico.
- f. Hanging of banners or signs from the county courthouse is prohibited unless approved by the Commissioners' Court and installed by courthouse maintenance personnel.
- g. Entrances and sidewalks shall not be obstructed.
- h. No signs or advertisements will be displayed on historically restored areas.

(ii) No Interference of County Business. Event sponsors should keep in mind that the County Courthouse and grounds are public and are used to conduct public business. Therefore, no event may:

- a. interfere with the regular use of the County Courthouse, Grounds or Site for transaction of County business;
- b. obstruct entrances or interrupt traffic flow through the building, grounds or site; or,
- c. obstruct the view of or access to firefighting equipment, fire alarm pull stations, fire hydrants or ADA accessibility to the grounds site or Courthouse entries;

(iii) Office and Directional Signs. All signage, directories, room designations and directional signs shall be discreet and consistent with the restoration design and style. Temporary signage may be free standing only. Additions, changes or modifications to existing signage shall be approved through the Commissioners' Court to insure consistency with historical design and style.

(iv) Attachments. Pictures, displays, chair rails, picture rails, utensils or any other item which affixes, either temporary or permanent, to any courthouse structure shall be installed only with the approval of the Commissioners' Court, County Judge or courthouse maintenance personnel

who have been instructed in Texas Historical Commission Guidelines. All temporary methods of attachment shall be removed in a manner causing no damage and leaving no residual fixture or material on the courthouse structure.

(v) **Windows.** Additions to windows, either structurally or cosmetically, shall be approved only by Commissioners' Court and upon written approval of the Texas Historical Commission. Consideration should be given to courthouse historic window roll down/up shades to present a uniform appearance when viewed from the outside street level.

(vi) **Signage and Notices.** Posting of legal notices shall be in an area designated by Commissioners' Court and shall be monitored on a regular basis to remove clutter and outdated notices. Personal notices, community event(s) announcements, funeral announcements, etc. will not be displayed except in areas designated by the Commissioners' Court.

(vii) **Plants.** Plants shall have sufficient drainage trays placed underneath to prevent water damage to floor surfaces, window sills and plates. Plant tendrils or branches shall not be caused to allow attachment, either naturally or artificially, to any courthouse structure.

(viii) **Floors and Walls.** To protect floors and extend the carpet and floor life, protective mats shall be under the rolling chairs in each office. Care shall be given when moving furniture and benches in hallways and offices of restored historic buildings to prevent scarring. Bumpers or other protective methods should be attached to chairs or other furniture which repeatedly contacts a wall to prevent gouging and marking.

(ix) **Storage.** The Commissioners' Court recognizes the importance, both legally and as good stewards, of the need for proper county records management and storage. Records storage shall be designated by Commissioners' Court and proper location assignments made. Office decorations, seasonal decorations, surplus equipment, salvage equipment and various miscellaneous items should not be placed into records storage areas. Common areas (those areas not inclusive of what is considered office space) shall not be repositories of records. Common areas are managed by courthouse maintenance staff and are not available for storage outside of the use for maintenance purposes.

(x) **Main Courtrooms.** District Courts shall have first scheduling preference over use of the Main Courtrooms including the Judge's Chambers, and Jury Rooms. The County Court and County Court at Law shall have second scheduling preference. The respective judges of the District Courts and County Courts shall be the primary contact points for scheduling of the Main Courtrooms. While the Main Courtrooms may be scheduled for use by non-county functions, the county reserves the right to cancel any non-county functions when use of the courtroom for official business is necessary or when meetings do not conform to county policy.

(xi) **Other Meeting Rooms.** The Starr County Judge is assigned maintenance responsibility for the Starr County Courthouse, and shall have the overall responsibility for reservations, interior/exterior locations, and meeting room use in those common areas other than the courtrooms.

(xii) **Public Use Request.** Groups or individuals who desire authorization to use the courthouse or grounds shall complete a Starr County Courthouse Public Use Request form.

a. Deposit. Any group(s) or individual(s) who are approved to use the property may be required to tender a deposit ranging from \$0 - \$1,000 prior to use based on the risk of damage or

destruction to county property and its historical preservation, and shall be charged for actual damages and/or clean-up costs associated with the use. The County may impose additional restrictions and regulations for approved use on a case by case basis, with the primary focus of maintaining and protecting the historical structure.

b. Agreement to Policy. Any group(s) or individual(s) who are approved for use of the property will be provided a copy of this Policy and must agree to all of its terms and conditions.

c. Common Areas are defined as hallways, elevator, bath rooms, and lawns.

d. Year-long or regularly scheduled meetings will not be booked for non-county functions as such scheduling restricts the county's ability in planning and scheduling of its official duties.

e. Limited Attendance. Attendance at any meeting shall be limited by fire and safety regulations.

f. No smoking allowed inside the courthouse proper.

g. Equipment Approval. Electrical equipment, sound equipment, chairs, podiums, tents, stages or other equipment required for an event, including plans for the supply and use of electricity during the event, must be inspected and approved by the Facility Manager, but furnished and installed by the requesting party. Items not approved by the Facility Manager may not be used

h. Setup Change Request. Any requested change in the setup of the reserved room shall be included in the application prior to the event.

i. It is the responsibility of all requesting parties to obtain necessary permission from the City of Rio Grande City and TxDOT to block off any streets for their grounds and site usage.

j. The usage of portable restrooms is the sole responsibility of the requesting party. Staging for these portable restrooms will only be allowed at the street side of the curb. It is the responsibility that all portable restrooms be kept clean and sanitized.

k. Probing or excavation, including the use of metal detectors, on the Grounds and Site is prohibited at all times.

l. Neither the County nor its officials, employees or agents are liable for any injury which may occur to any person during any event on the Courthouse Grounds or Site. To ensure this purpose is served, any person requesting to conduct an event on the Courthouse Grounds is required to execute an indemnity agreement holding the County harmless from any claims arising from the requested event and agreeing to defend and indemnify the County with respect to any such claim.

m. Security requirements are the responsibility of the organizers, and must be approved by the County Sheriff Department prior to the event.

n. The organizers will be fully responsible for any damage to County property, or for any personal injury, caused by the described activity, or occurring as the proximate result of the activity. To ensure this purpose is served, any person requesting to conduct an event on the Courthouse Grounds may be required to obtain, and provide a copy or proof of casualty and liability insurance naming the County as a beneficiary in an amount to be determined by the County Commissioners' Court based on the anticipated event, its projected attendance and the

risks associated with the event, as well as foreseeable damage it might cause to the Courthouse Grounds or the Courthouse.

o. Upon completion of the event, organizers will be held responsible for the clean-up of the entire Grounds and/or Site. Any deposit will be refunded following inspection of the area to determine that the area has been adequately cleaned. The organizer(s) may be present at this inspection by contacting the office of the Starr County Judge.

ATTACHMENT "C"

COUNTY PARKS

1. Precinct #1 Parks:
 - a. Clemente Alaniz Garceno Park
Garceno Loop, Garceno, Texas
OPEN: 24 Hours/7 Days a Week
 - b. La Rosita Park (behind Commissioner's Office)
4192 W. Hwy 83, Rio Grande City, Texas 78582
OPEN: 24 Hours/7 Days a Week
 - c. Escobares Park (next to JP Pct.#8)
5095 Old Escobares Hwy 83, Roma, Texas 78584
OPEN: 24 Hours/7 Days a Week
2. Precinct #2 Parks:
 - a. Salineno Park
70 Salineno Rd., Salineno, Texas 78585
OPEN: 24 Hours/7 Days a Week
 - b. Roma Community Park (next to library in Roma)
867 Morelos St., Roma, Texas 78584
OPEN: 24 Hours/7 Days a Week
3. Precinct #3 Parks:
 - a. Lino & Eloy Zarate Park in La Victoria
532 Gabriela St., Rio Grande City, Texas 78582
OPEN: 24 Hours/7 Days a Week
 - b. Alto Bonito Park (next to Alto Bonito Elementary)
779 N. FM 2360, Rio Grande City, Texas 78582
OPEN: 7:00 a.m. – 10:00 p.m./7 Days a Week
 - c. La Casita Park (behind Pct.#3 Commissioner's Office)
6163 FM 1430, Rio Grande City, Texas 78582
OPEN: 7:00 a.m. -10:00 p.m./7 Days a Week
4. Precinct #4 Parks:
 - a. Fort Ringgold Park
1 Fort Ringgold St., Rio Grande City, Texas 78582
OPEN: 8:00 a.m. – 9:00 p.m./7 Days a Week
 - b. Starr County San Antonio Street Park
Corner of San Antonio St. and Eisenhower St., Rio Grande City, Texas 78582
OPEN: 24 Hours/7 Days a Week
 - c. Abel N. Gonzalez Park
5101 FM 1017, San Isidro, Texas 78588
OPEN: 8:00 a.m. – 5:00 p.m./Monday - Friday
(on-call employee will open for walking/exercise after hours)

ATTACHMENT "D"

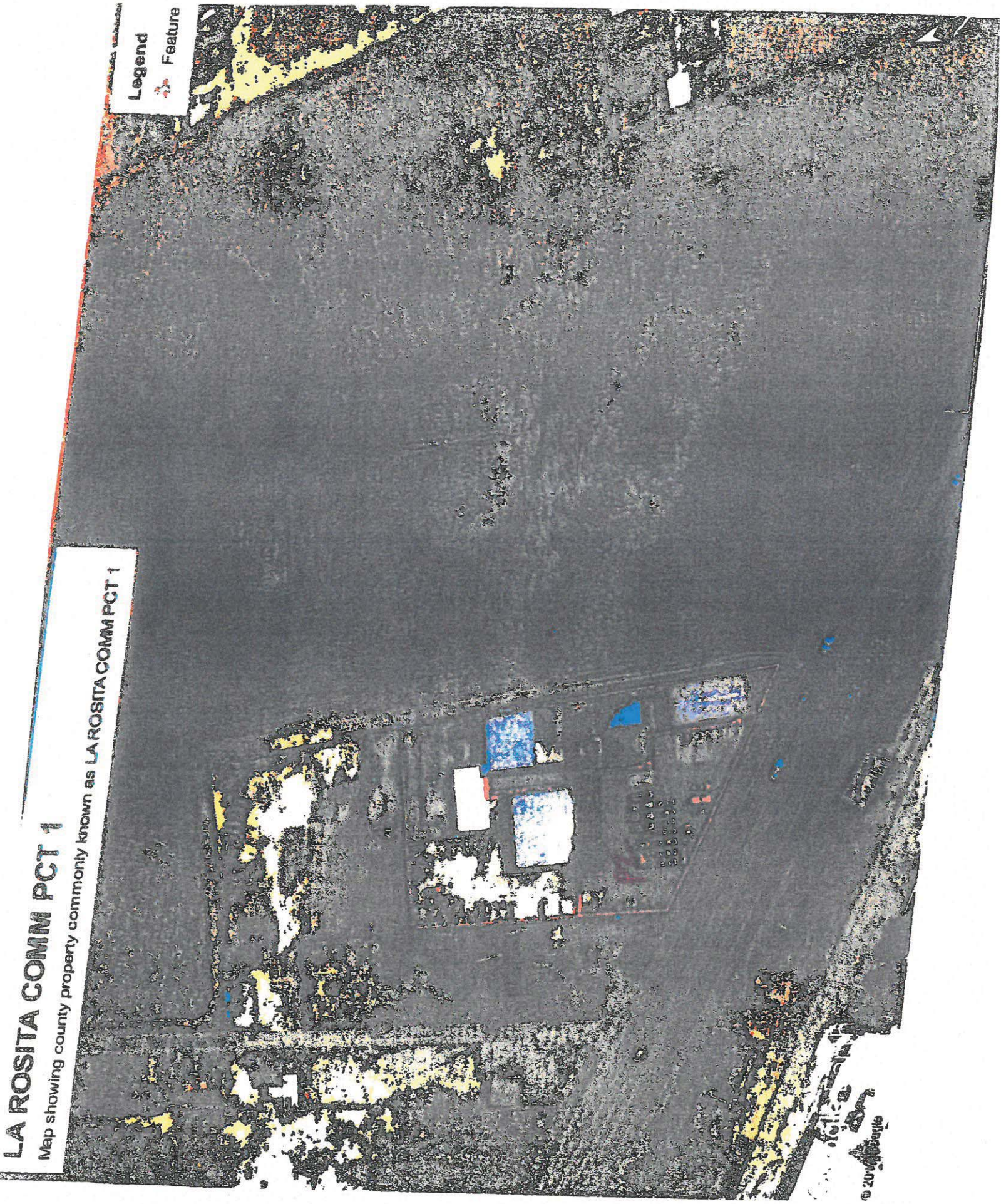
Maps showing outlines of Parking Zones by the designation "PZ".





Legend
Feature

LA ROSITA COMM PCT 1
Map showing county property commonly known as LA ROSITA COMM PCT 1



© 2011 Google

Legend
Feature

STARR COUNTY ANNEX
Map showing county property commonly known as Starr County Courthouse Annex



3167
Google Earth

Clemente Alaniz Garceno Park

Legend



Google Earth

© 2013 Google
© 2013 INEGI

Escobares Park

Write a description for your map.

Legend

 Escobares City Hall

Google Earth

© 2018 Google

© 2018 Google

US Dept of State/Google



Salineno Park

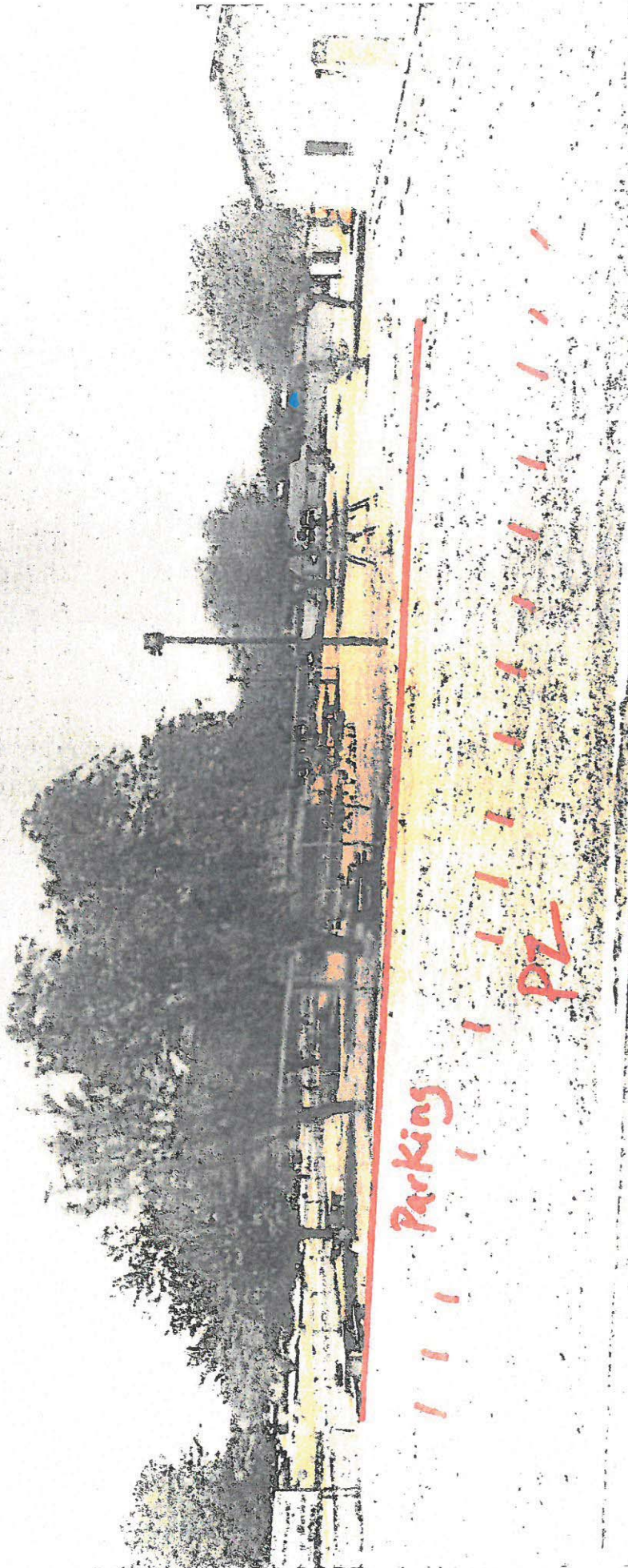
Write a description for your map.

Legend



Roma Community Park

Legend



Google Earth

© 2018 Google
© 2018 INEGI

776 ft



Lino & Eloy Zarate Park

Legend

Gabriela St

PZ

PZ - Loder in Dad

Google Earth

©2018 Google
9/2018/1561

200 ft

Alto Bonito Park

Legend

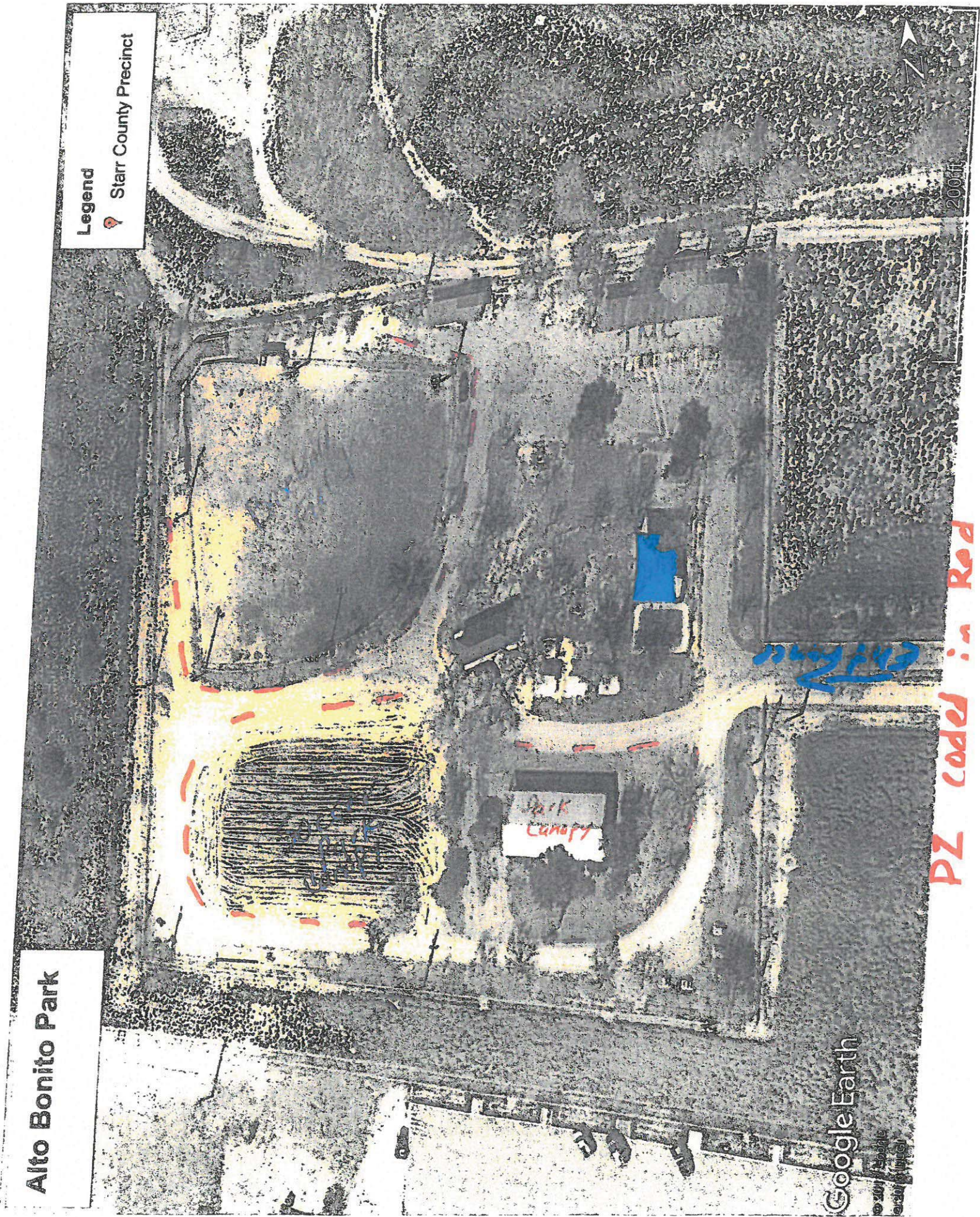
Starr County Precinct

Google Earth

© 2018 Google
Earth Engine

PZ coded in Red

200 ft



La Casita Park

Legend

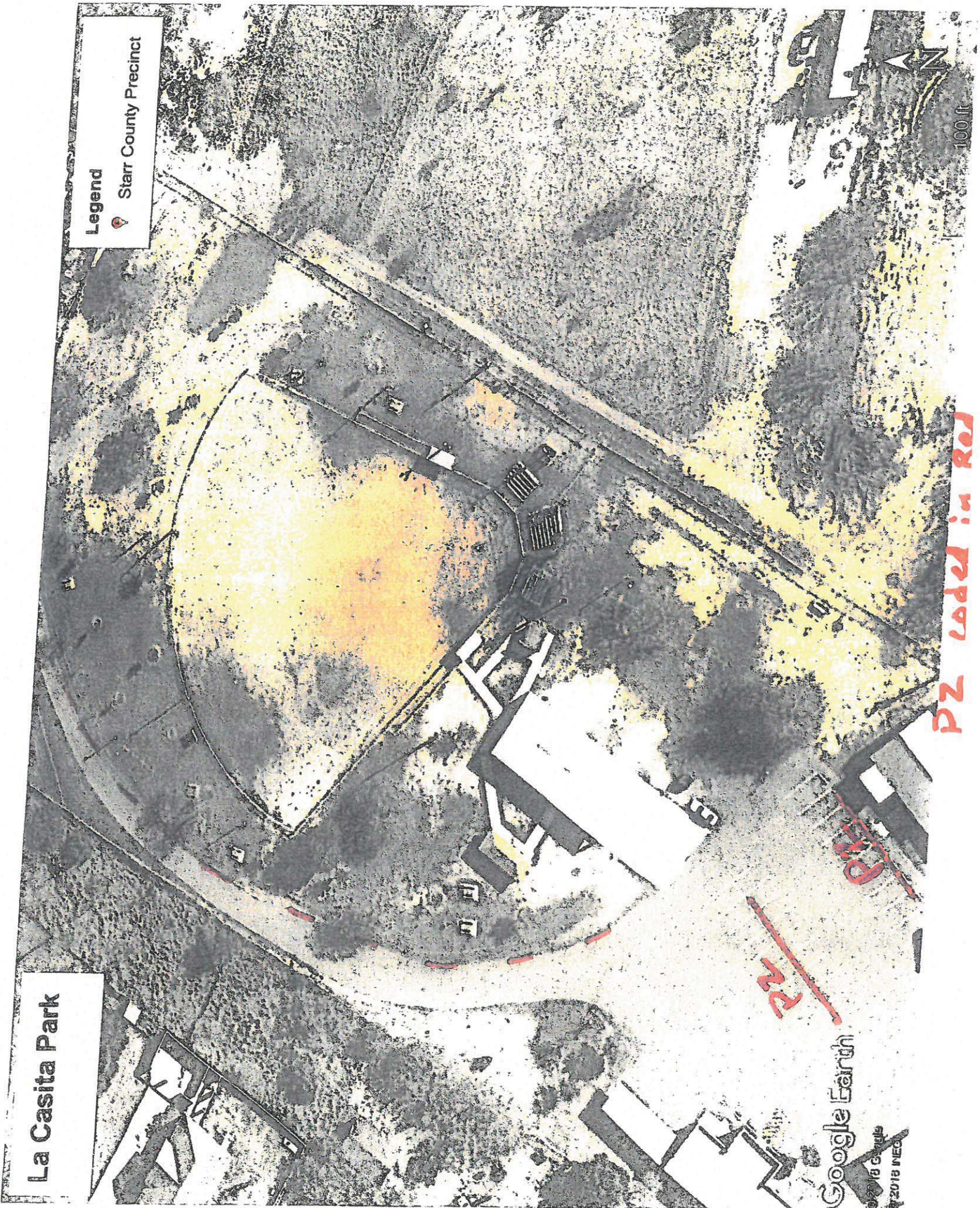
Starr County Precinct

Google Earth

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All rights reserved.

PZ Loded in Red

100 ft



Fort Ringgold Park

Legend

- Fort Ringgold County Park
- Fort Ringgold County Park

Parkway

Google Earth

© 2019 Google
© 2018 NASA

200 ft

Starr County San Antonio St. Park

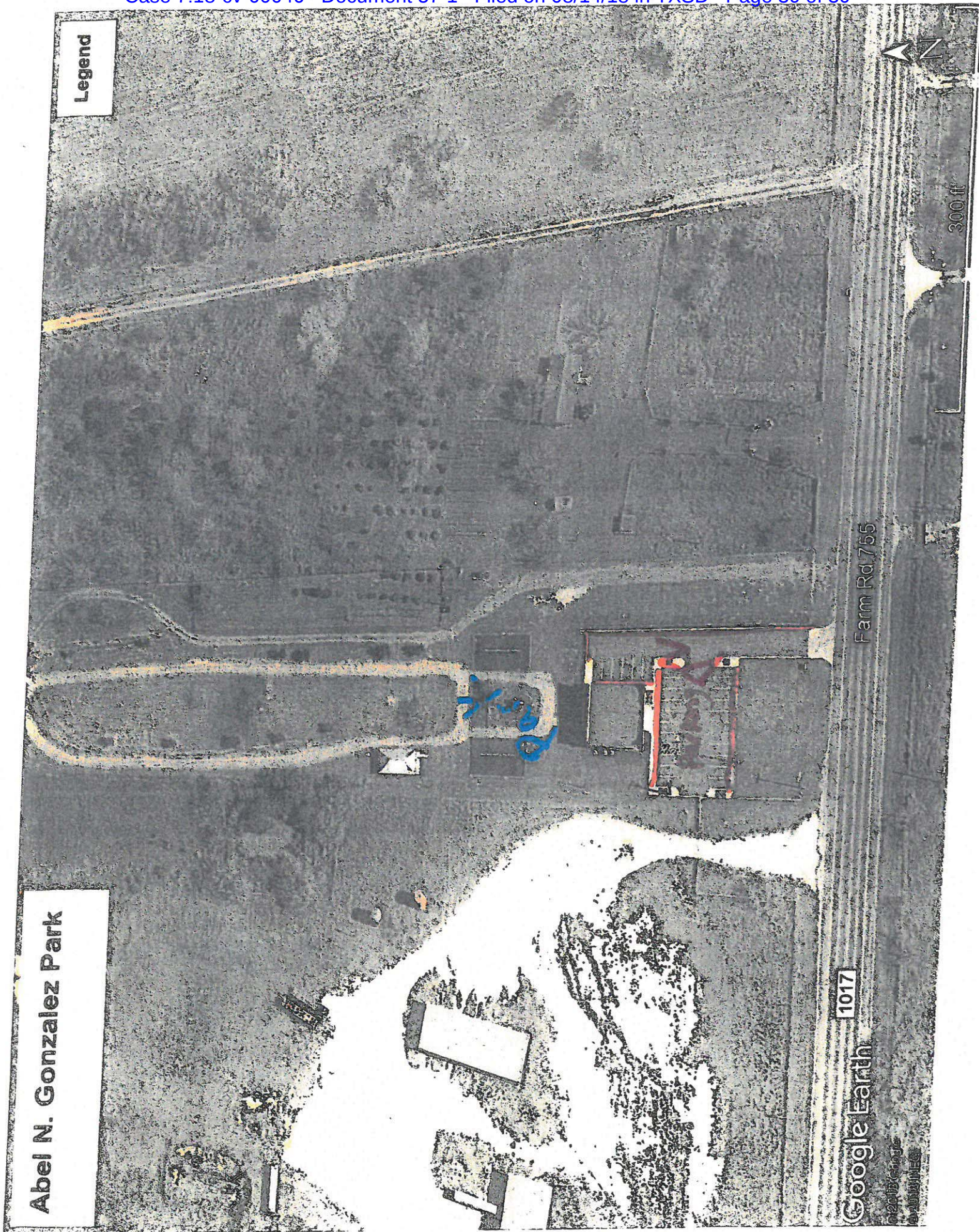
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Google Earth

© 2018 Google
© 2018 WES

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EXHIBIT “B”

STARR COUNTY

ELECTIONEERING REGULATIONS

1. Purpose and Scope.

- (a) The County of Starr, Texas ("County"), has authority, pursuant to Section 61.003 and Section 85.036 of the Texas Election Code, to enact reasonable regulations concerning the time, place, and manner of electioneering within the County limits; and the County now desires to adopt and establish certain rules and regulations that will govern the time, place, and manner of electioneering within County property. The County finds that the adoption of this policy is in the best interests of its citizens and serves a public purpose, and protects the health, safety, and welfare of the citizens of the County of Starr.
- (b) These Electioneering Regulations apply only to County property used as polling locations during a voting period. The County properties used as polling locations are identified in Exhibit A to these Regulations.
- (c) It is the purpose of these Regulations:
 - (1) To provide reasonable regulations for electioneering on County - owned or -controlled public property when such property is used as a polling place location during a voting period.
 - (2) To establish an electioneering-free zone within one hundred feet (100') of any outside door through which a voter may enter a County building containing a polling place during any voting period.
 - (3) To prevent damage to public property and to ensure that a polling place location is sufficiently available during a voting period for those who use the facilities other than for election purposes.
 - (4) To protect the public health, safety, and welfare of the County.
 - (5) To protect the voter and the integrity of the election process.
- (b) These Regulations shall not be construed in violation of County policy, state or federal statute, or other applicable law. Any word, phrase, paragraph, or section of these Regulations is severable and should any part be declared unconstitutional, illegal or invalid by any court of competent jurisdiction, such declaration shall not affect any remaining word, phrase, paragraph or section.

2. **Definitions**

(a) "Early voting period" means:

- (1) The period for early voting by personal appearance as prescribed by the Texas Election Code or by other applicable state law.
- (2) If because of the date for which an election is ordered it is not possible to begin early voting by personal appearance on the prescribed date, the early voting period shall begin on the earliest date practicable after the prescribed date as set by the authority ordering the election.

(b) "Designated Area for Electioneering" means those areas shown on Exhibit A identified in green as areas specifically designated for electioneering which would otherwise be prohibited for Electioneering under the County's Building and Property Use Policy or other sections in these Regulations.

(c) "Electioneering" means the posting, use, or distribution of political signs, literature, or material.

(d) "Political" means supporting or opposing a candidate, political party, or measure appearing on the ballot.

(e) "Post" or "Posting" means to display a political sign, including attaching or affixing it to a surface, holding it by hand, or staking it into the ground. T posts are not allowed on any County-owned or -controlled property.

(f) "Posting period" means:

- (1) The period during which political signs may be placed at any County-owned or -controlled polling location, i.e., placement beginning twenty-four (24) hours before an early voting period begins and removal no later than twenty-four (24) hours after an early voting period closes.
- (2) The period during which political signs may be placed at any County-owned or -controlled polling location, i.e., placement beginning twenty-four (24) hours before election day voting begins and removal no later than twenty-four (24) hours after election day voting closes.

(g) "Prohibited area" means the area pursuant to Texas Election Code §§ 85.036(a) and 61.003(a), as amended, in which electioneering is prohibited during the time an early voting place or election day voting

place is open for the conduct of early voting or election day voting, respectively.

- (h) "Voting period" means the period beginning when the polls open for voting and ending when the polls close or the last voter has voted, whichever is later, on election day and any day in an early voting period. The period for a run-off election shall be considered to be a separate voting period.

3. **Administration.**

The provisions of this policy shall be administered and enforced by the Starr County Judge, a designated election officer, a code enforcement official, or any law enforcement official.

4. **Prohibited Activities and Conduct.**

- (a) It shall be unlawful for any person to - leave or place an unattended sign on County-owned or -controlled property, including within a Designated Area for Electioneering, outside a posting period.
- (b) It shall be unlawful for any person to engage in electioneering during any voting period within a Prohibited Area.
- (c) It shall be unlawful to place or use T-posts -on any County-owned or -controlled property.
- (d) It shall be unlawful for any person to park or leave a motor vehicle, or other vehicle or device customarily used for transportation, with or without an occupant, which displays a political sign during any voting period within a Prohibited Area.
- (e) When using parking lots, County employees, staff, and contractors shall park the furthest away from the entrance of a polling location during voting periods to allow voters to park closer to the polling location.
- (f) It shall be unlawful for any person to loiter or electioneer on sidewalks and interfere with citizen access to polling locations unless the sidewalks are a specifically Designated Area for Electioneering. This prohibition does not apply to passive expressions of speech such as wearing clothing, hats or pins which may be considered electioneering.

- (g) It shall be unlawful for any person within a Designated Area for Electioneering to use, post or distribute signs that are more than two-foot by two-foot (2' x 2').
- (h) It shall be unlawful for any person to use a sound amplification device within 1,000 feet of any polling place during any voting period.
- (i) It shall be unlawful to electioneer within fifteen (15) feet from the curb of any County fire station driveway so that it obstructs sight lines as trucks and other vehicles pull in and out of the station. The Fire Chief or his/her designee at each respective County Commissioner Precinct may require that individuals and signs be relocated if it is determined that they hinder normal Fire Department operations.
- (j) It shall be unlawful for any person to engage in electioneering on any driveway of a County- owned or -controlled polling place location or in any area that the Fire Chief or his/her designee determines is unsafe for safe ingress and egress of citizens or County employees and staff from County-owned or –controlled buildings.
- (k) It shall be unlawful to obstruct firefighting or police activities on County-owned or -controlled property.
- (l) It shall be unlawful for electioneering activities to distract the attention or obstruct the vision of drivers, and increase the probability of traffic congestion on or surrounding County-owned or –controlled property.
- (m) It shall be unlawful to place or post political signs in public easements or rights-of-way.
- (n) The regulations set forth in this section shall not apply to any County-authorized signs, literature, materials, or other messages on County-owned or -controlled property.


5. **Penalty.**

- (a) Any person who violates any provision or section of these Regulations shall be deemed guilty of a Class C Misdemeanor.
- (b) In addition to the imposition of any criminal penalty, the County, without prior notification, may remove or dispose of any sign, in its entirety, which is located or placed on County-owned or –controlled property in violation of this policy.

These STARR COUNTY ELECTIONEERING REGULATIONS are enacted on the 25th day of June, 2018.

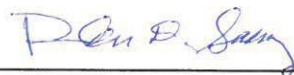


Commissioner Jaime Alvarez
County Commissioner Precinct #1



Commissioner Roy Pena III
County Commissioner Precinct #2

Commissioner Eloy Garza
County Commissioner Precinct #3



Commissioner Ruben Saenz
County Commissioner Precinct #4



County Judge Eloy Vera



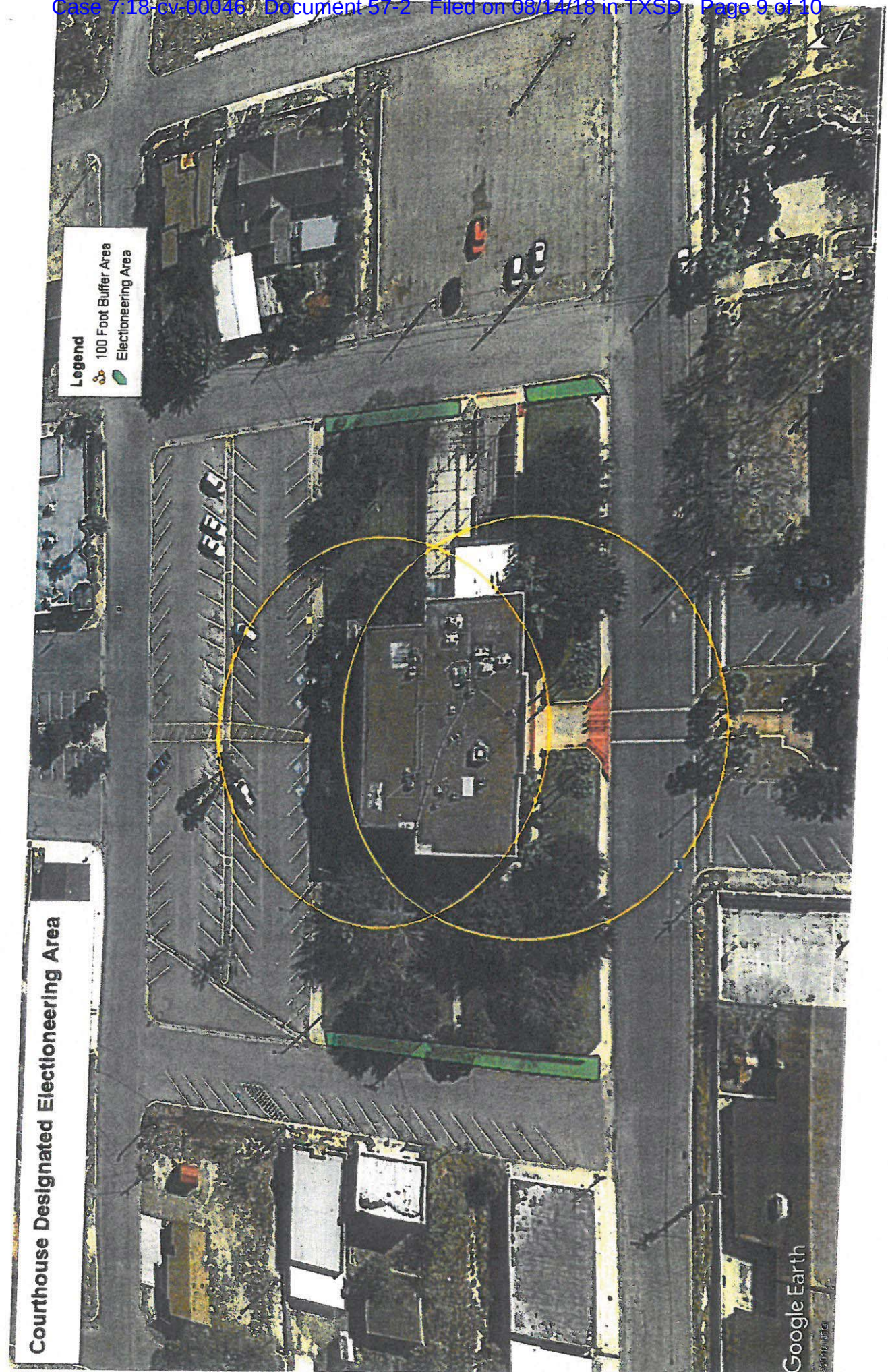
La Rosita Designated Electioneering Area

Legend

- 100 Foot Buffer Area
- Electioneering Area

Google Earth







REQUEST FOR USE OF STARR COUNTY FACILITIES

Facility Requested: _____

Date(s) Requested for Reservation: _____

I would like to have the facility open at _____ .m. and closed at _____ .m.

The facility will be used for the following purpose(s):

It is hereby understood and agreed that the below named individual will assume responsibility for the repair or replacement of any Starr County premises and/or equipment which might be damaged during the reservation period. It is also understood that the security deposit may be forfeited for failure to comply with the Starr County Building and Property Use Policy. By signing, the applicant acknowledges receiving a copy of the Starr County Building and Property Use Policy, and understanding and agreeing to all terms therein.

Applicant: _____

Signed by: _____

(If signed on behalf of an organization, print name and title of signatory.)

Address: _____

Phone Number: _____

After-Hour Fees: _____ Deposit: _____

(If you are seeking a waiver of fees/deposit, write -0- and indicate why on the back of this form.)

**Please return form, deposit and applicable fees to: Starr County Judge's Office
100 FM 3167
Rio Grande City, TX 78582**

Date Received: _____ By: _____ Approved/Unapproved

Special requirements:

RELEASE OF LIABILITY

Starr County grants permission to _____
hereinafter, permit-holder, to use _____
hereinafter, the premises, on the following dates: _____
starting at _____ .m. and ending at _____ .m. for the following purpose(s):

Starr County shall not be liable for any personal injury or property damage occurring on or to the premises or to any persons in or on the premises, whether negligent or otherwise. Permit-holder shall not make any claim against Starr County for any loss or damage described in this section.

Permit-holder understands and agrees to take the premises as he finds them. **Permit-holder hereby agrees to indemnify, defend, hold harmless and release Starr County, and its officers, agents, and employees, from any and all causes of action, claims and demands, including claims for contribution and indemnity, for, upon or by reason of any damage, loss or injury, which hereafter may be sustained by any actions or omissions arising out of or resulting from any and all use of the premises. Permit-holder further agrees to indemnify Starr County for any reasonable and necessary attorney's fees incurred in defense of such actions and claims.**

This release, extends and applies to, and also covers and includes, all unknown, unforeseen, unanticipated and unsuspected injuries, damages, loss and liability and the consequences thereof. The provisions of any state, federal, local law or statute providing in substance that releases shall not extend to claims, demands, injuries or damages which are unknown or unsuspected to exist at the time, to the person executing such release, are hereby expressly waived.

The statements and agreements herein are not merely recital but are contractual in character.

Permit-holder: _____

Signed by: _____
(If signed on behalf of an organization, print name and title of signatory.)

Date: _____

STATE OF TEXAS §
 §
COUNTY OF STARR §

ACKNOWLEDGMENT

Before me, the undersigned authority, in and for said state and county, on this day personally appeared _____ known to me to be the person whose name is subscribed to the within instrument and, being by me first duly sworn on oath, states that he executed the same for the purposes and consideration therein expressed; that he has read it, fully understood its meaning and effect, knows it contains an unconditional release in full, and that he voluntarily executed it as such.

Given under my hand and seal of office on this the ____ day of _____, 20____.

NOTARY PUBLIC – STATE OF TEXAS