

ORDINANCE NO. 2013-XX-XX

AN ORDINANCE AMENDING CHAPTER 38, "ELECTIONS," OF THE CODE OF ORDINANCES OF THE CITY OF MCKINNEY, TEXAS, THROUGH THE ADOPTION OF ARTICLE IV, "ELECTIONEERING," BY ADOPTING NEW SECTIONS 38-70 THROUGH 38-74, ESTABLISHING RULES AND REGULATIONS REGARDING ELECTIONEERING WITHIN THE CITY; DEFINING TERMS; CREATING OFFENSES FOR INDIVIDUALS VIOLATING RULES AND REGULATIONS; PROVIDING ENFORCMENT BY DESIGNATED OFFICIALS AND OFFICERS; REPEALING ALL CONFLICTING ORDINANCES; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR GOVERNMENTAL IMMUNITY; PROVIDING PENALTIES FOR VIOLATIONS OF THIS ORDINANCE; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the City of McKinney, Texas ("City") is a Home Rule City possessing the full power of local self-government pursuant to Article XI, Section 5 of the Texas Constitution, Section 51.072 of Texas Local Government Code, and its Home Rule Charter; and

WHEREAS, the City Council of the City of McKinney, Texas ("City Council"), 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 City limits; and

WHEREAS, the City Council now desires to amend the City's Code of Ordinances and establish certain rules and regulations that will govern the time, place, and manner of electioneering within the City; and

WHEREAS, the City Council finds that the adoption of this Ordinance 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 City of McKinney.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, THAT:

Section 1. All of the above premises are found to be true and correct and are incorporated into the body of this Ordinance as if copied in their entirety.

Section 2. From and after the effective date of this Ordinance, Chapter 38 of the Code of Ordinances of the City of McKinney, Texas, entitled "Elections," is hereby amended through the adoption of Article IV, and new Sections 38-70 through 38-74, entitled "Electioneering," to read as follows:

"ARTICLE IV. Electioneering

Sec. 38-70. Definitions. In this section:

- (a) *Electioneering* means the posting, use, or distribution of political signs or literature.
- (b) *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.

- (c) *Voting period* means for any day the period beginning when the polls open for voting and ending when the polls close or the last voter has voted, whichever is later, including any day in the Early Voting Period.

Sec. 38-71. Purpose and Scope

- (a) It is the purpose of this article:
 - (1) To establish an electioneering free zone within one hundred (100) feet of any outside door through which a voter may enter a City building containing a polling place during the voting period and the early voting period against persons electioneering for or against any candidate, measure, or political party.
 - (2) To protect the public health, safety, and welfare of the City.
 - (3) To protect the voter and the integrity of the election process.
- (b) The provisions of this article shall not be construed in violation of any other city ordinance, state or federal statute, or other applicable law.

Sec. 38-72. Administration

The provisions of this article shall be administered and enforced by the City Secretary, a designated election officer, or any law enforcement official. The maps attached hereto as Exhibit A delineate the areas governed by this Ordinance.

Sec. 38-73. Prohibited location, activities and conduct

- (a) It shall be unlawful if, during the voting period or the early voting period and within one hundred (100) feet of an outside door through which a voter may enter the City building in which a polling place is located, a person engaging in electioneering for or against any candidate, measure, or political party.
- (b) The following regulations are hereby adopted for the health, safety and welfare of the City's residents when a person engages in electioneering outside of the prohibited area identified in subsection (a):
 - (1) It shall be unlawful to damage, cut, carve, mark, remove, transplant, break, pick, or in any way injure, damage, destroy, or deface any real property improvements, personal property, equipment, irrigation systems, plants, or turf within or upon any City property in which a polling place is located. For the purpose of this section, plants shall be defined to include any vegetation, shrubs, bushes, trees, vines, hedges, grasses, or flowers.
 - (2) It shall be unlawful to obstruct firefighting or police activities on City property in which a polling place is located.
 - (3) It shall be unlawful to overload the public's capacity to receive information or increase the probability of traffic congestion and accidents by distracting attention or obstructing vision.
 - (4) It shall be unlawful to create a nuisance to persons on City property in which a polling place is located or to persons using adjacent public rights-of-way;

- (5) It shall be unlawful to place or post signs in the public rights-of-way.”

Sec. 38-74. Penalty

- (a) Any person violating any of the provisions or terms of this article shall be deemed guilty of a Class C misdemeanor and, upon conviction, shall be punished by a fine not to exceed the sum of \$500.00 for each offense, and each and every day such violation occurs or continues shall be deemed to constitute a separate offense. Allegation and evidence of a culpable mental state is not required for proof of any offense defined by this article.

Section 3. This Ordinance shall be cumulative of all other ordinances of the City and shall not repeal any of the provisions of said ordinances except in those instances where provisions of those ordinances are in direct conflict with the provisions of this Ordinance and such ordinances shall remain intact and are hereby ratified, verified and affirmed.

Section 4. If any section, article, paragraph, sentence, clause, phrase or word in this Ordinance, or application thereof to any person or circumstance, is held invalid or unconstitutional by a court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this Ordinance, and the City Council hereby declares it would have passed such remaining portions of this Ordinance despite such invalidity, which remaining portions shall remain in full force and effect.

Section 5. All of the regulations provided in this Ordinance are hereby declared to be governmental and for the health, safety and welfare of the general public and constitute performance of the City of McKinney’s governmental functions. The City does not waive its immunity in relation to any and all enforcement of this Ordinance. Any member of the City Council or any city official or employee charged with the enforcement of this Ordinance, acting for the City of McKinney in the discharge of his duties, shall not thereby render himself personally liable; and he is hereby relieved from all personal liability for any damage that might accrue to persons or property as a result of any act required or permitted in the discharge of his said duties.

Section 6. This Ordinance shall become effective from and after the date of its final passage and publication as provided by law, and it is accordingly so ordained.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, ON THIS _____ DAY OF OCTOBER, 2013.

CITY OF MCKINNEY, TEXAS

BRIAN LOUGHMILLER
Mayor

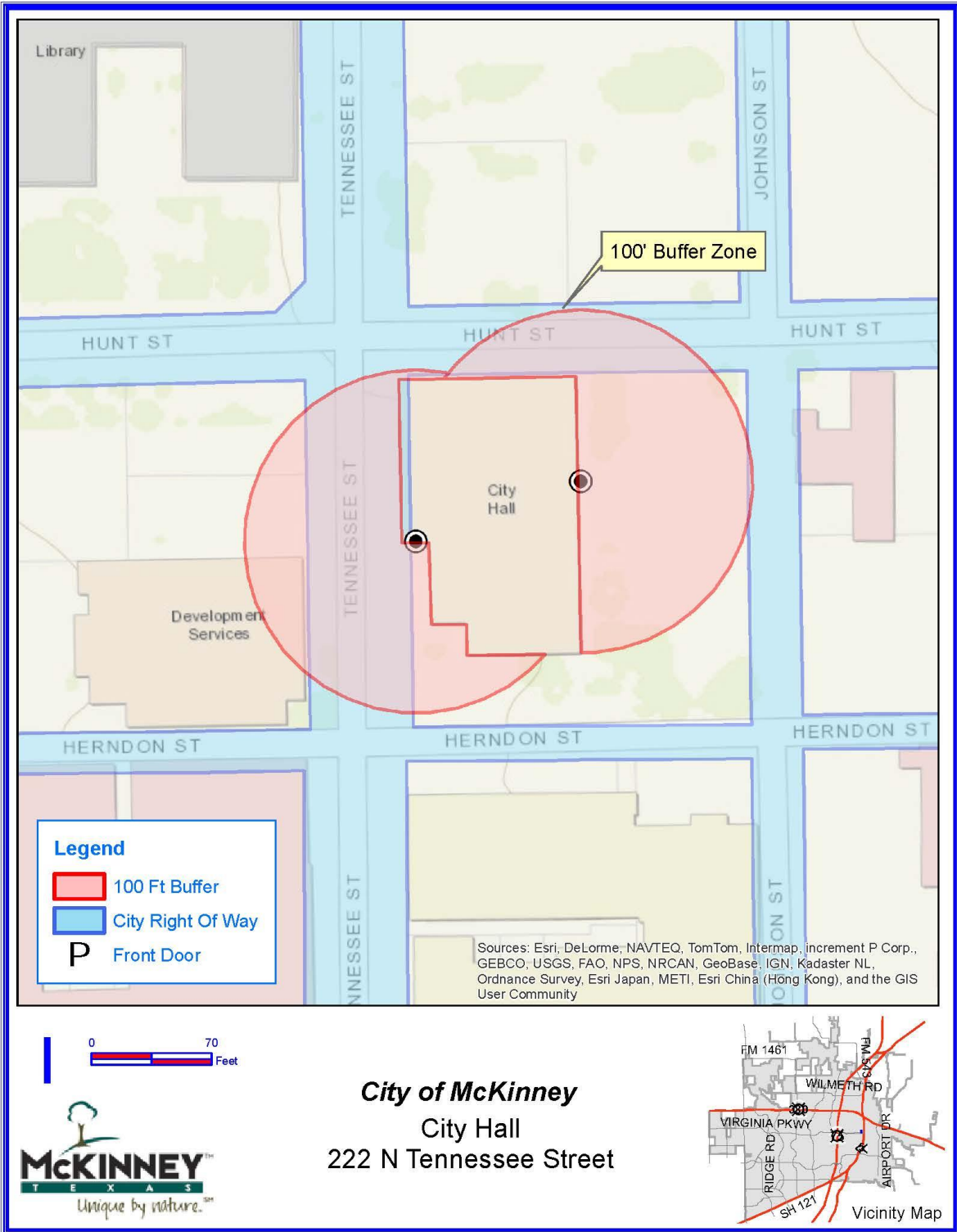
CORRECTLY ENROLLED:

SANDY HART, TRMC, MMC
City Secretary
BLANCA I. GARCIA
Assistant City Secretary

APPROVED AS TO FORM:

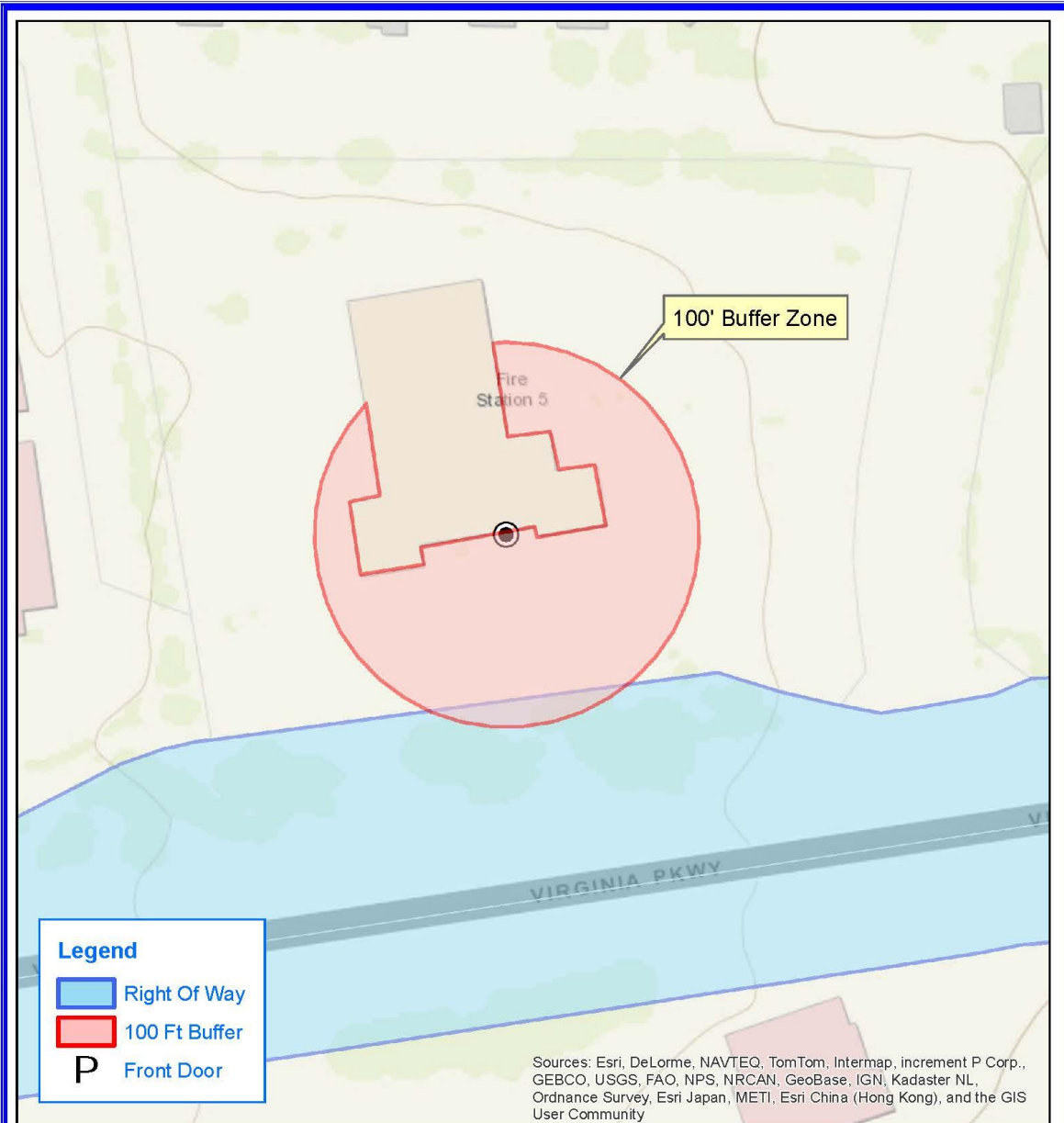
MARK S. HOUSER
City Attorney

EXHIBIT A



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DISCLAIMER: This map and information contained in it were developed exclusively for use by the City of McKinney. Any use or reliance on this map by anyone else is at that party's risk and without liability to the City of McKinney, its officials or employees for any discrepancies, errors, or variances which may exist.



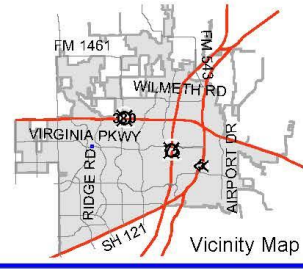
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- Right Of Way
- 100 Ft Buffer
- P** Front Door

Sources: Esri, DeLorme, NAVTEQ, TomTom, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), and the GIS User Community

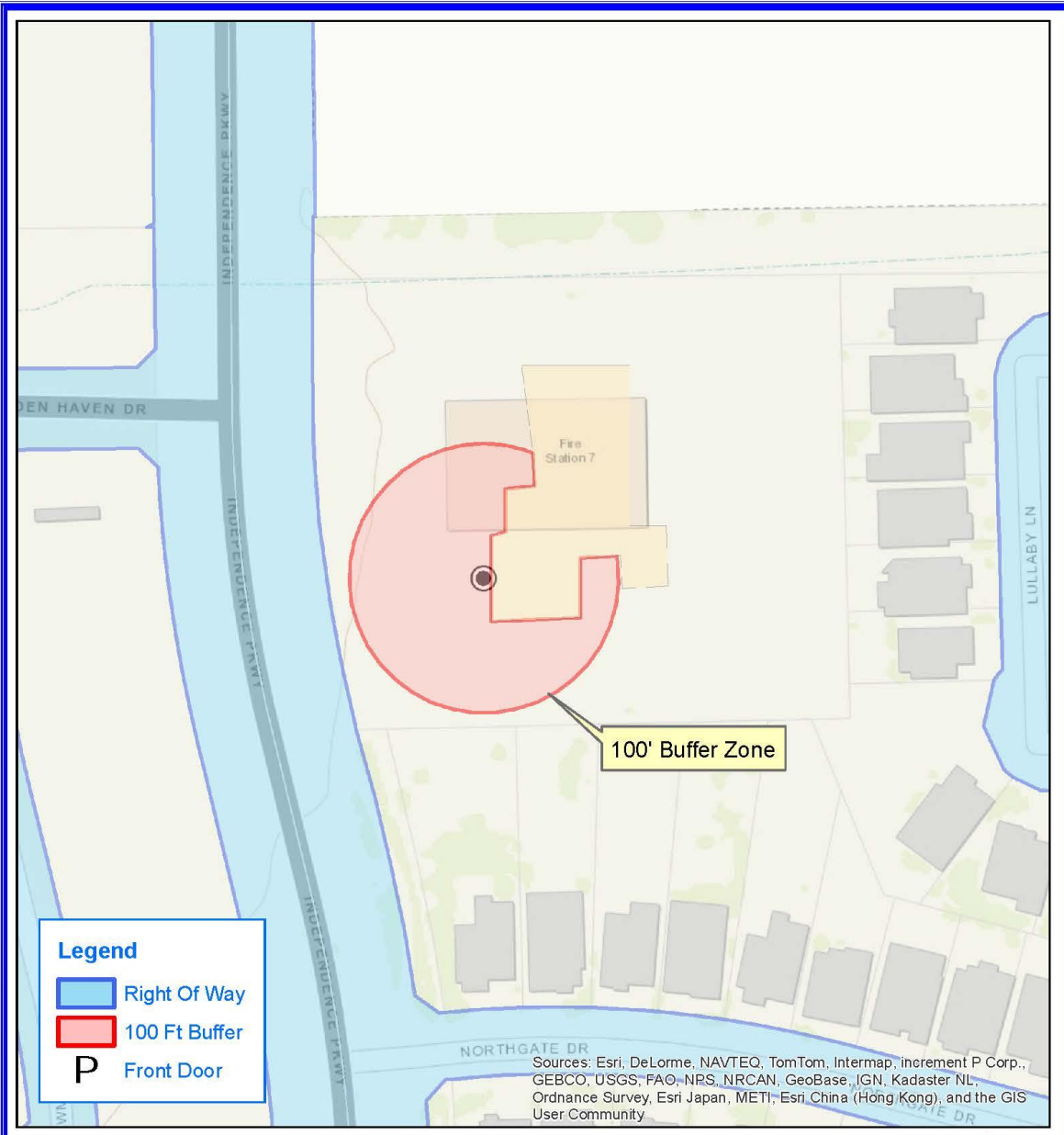


City of McKinney
Fire Station 5
6600 Virginia Pkwy



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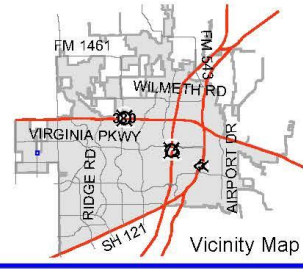


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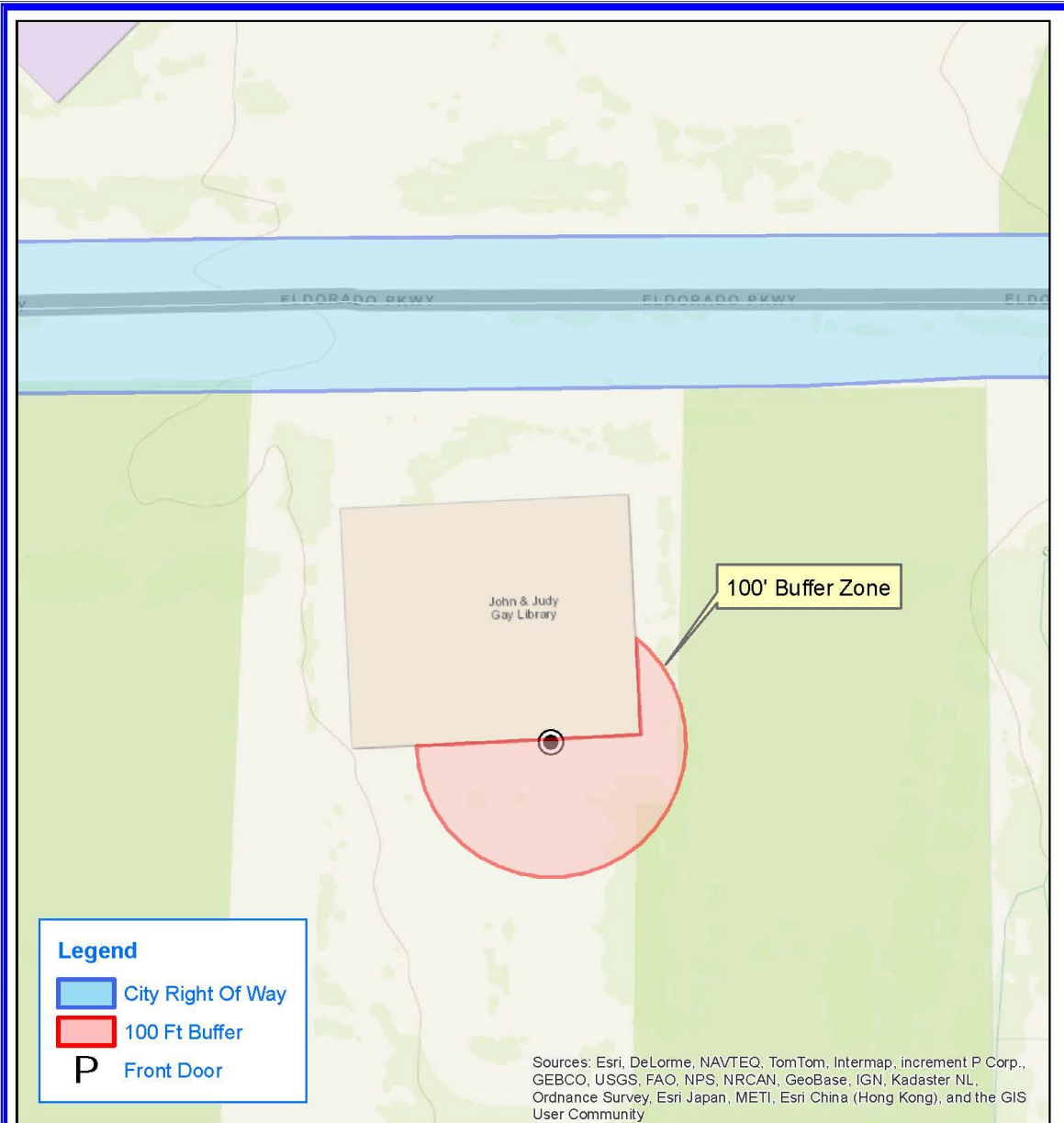
0 100 Feet

McKINNEY
TEXAS
Unique by nature.

City of McKinney
Fire Station 7
861 S Independence Pkwy



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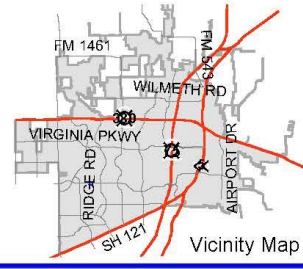
Legend

- City Right Of Way
- 100 Ft Buffer
- P Front Door

Sources: Esri, DeLorme, NAVTEQ, TomTom, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), and the GIS User Community

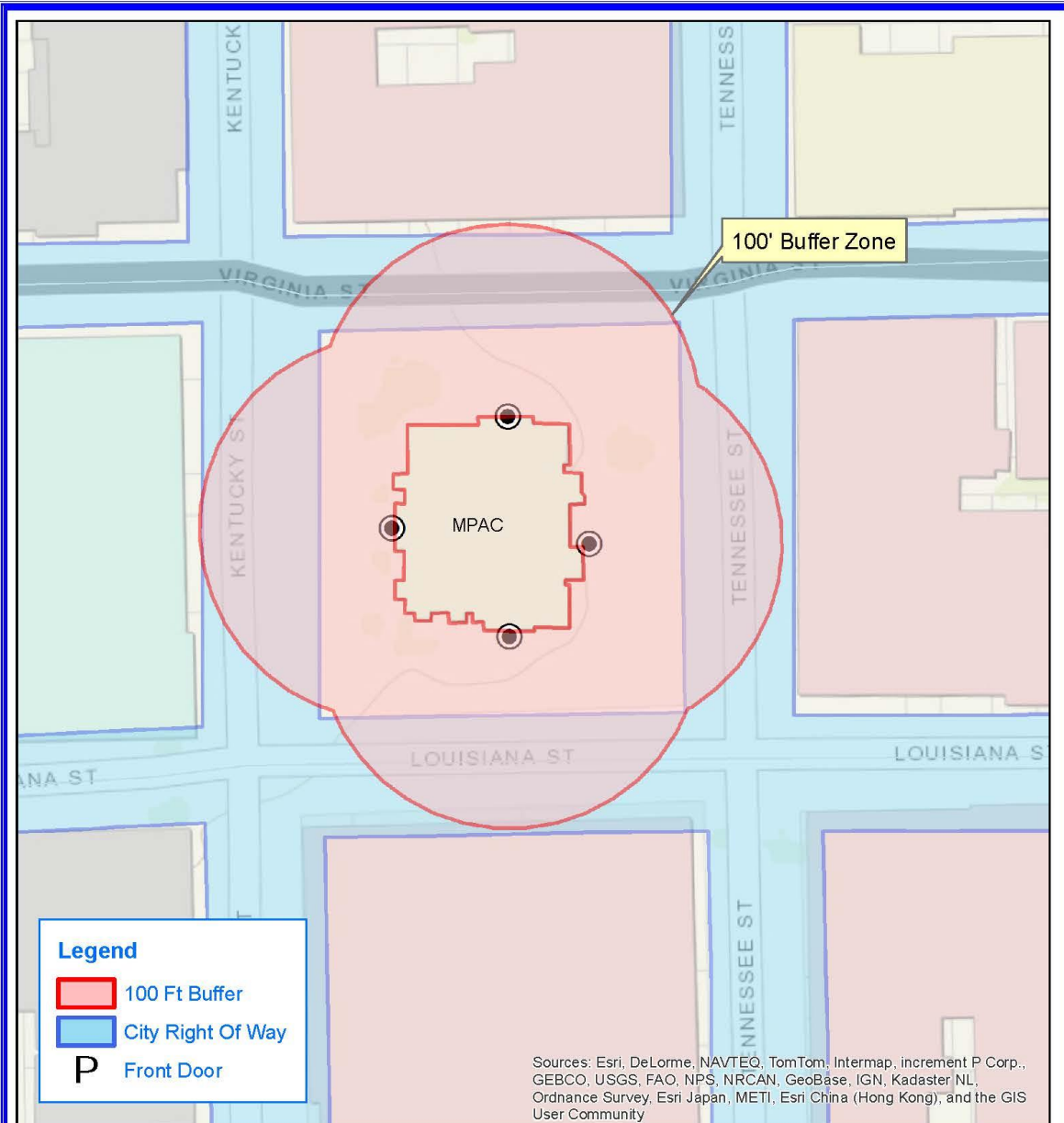


City of McKinney
John & Judy Gay Library
6861 W. Eldorado Pkwy



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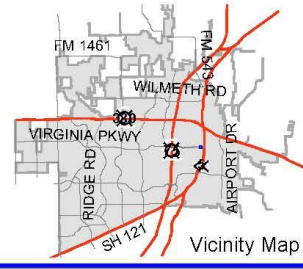
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- 100 Ft Buffer
- City Right Of Way
- P Front Door

Sources: Esri, DeLorme, NAVTEQ, TomTom, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), and the GIS User Community

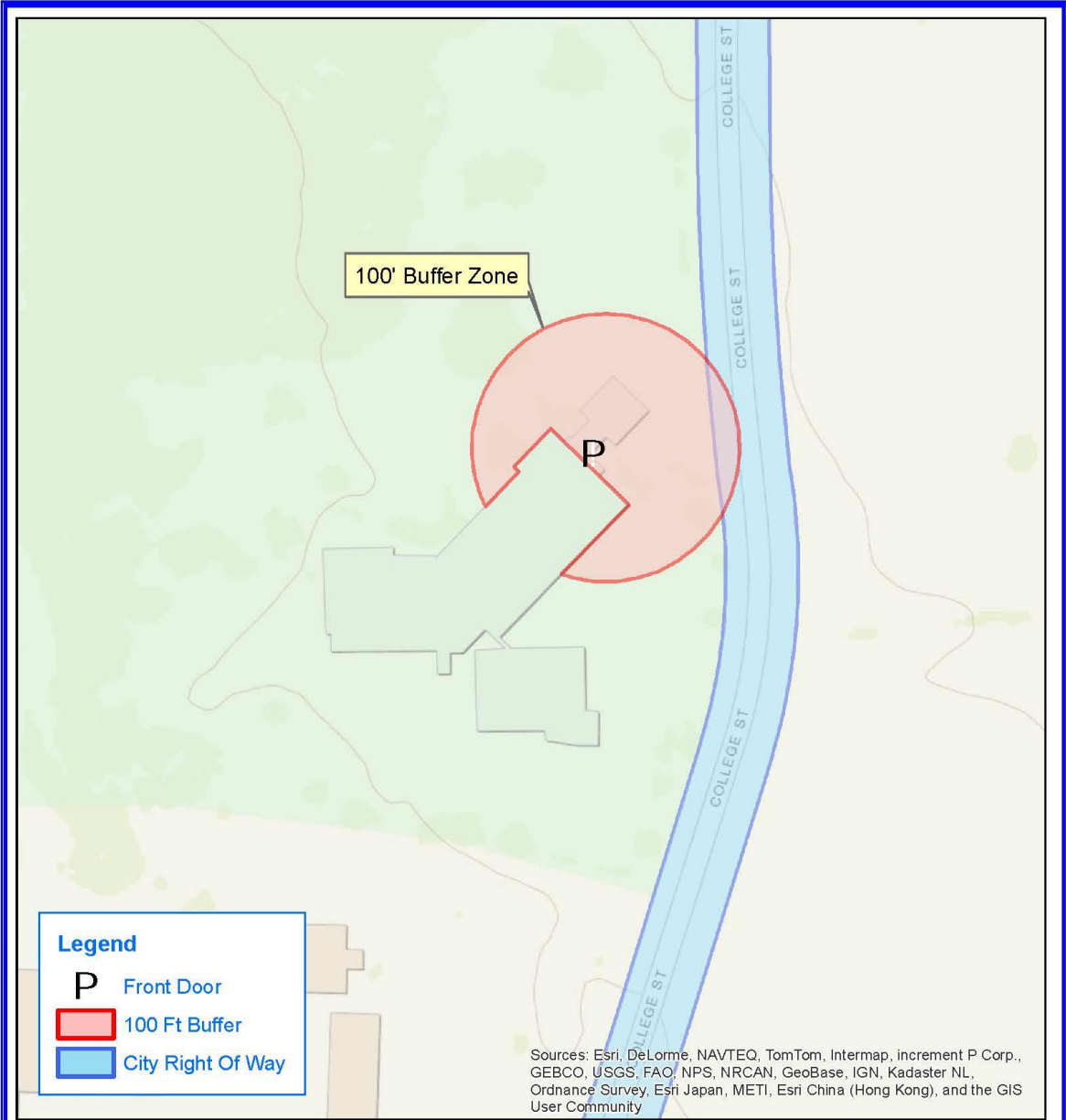


City of McKinney
MPAC
111 N Tennessee Street



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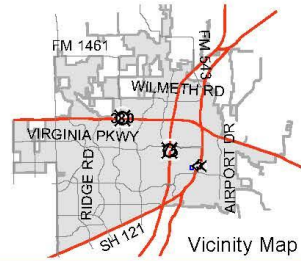
Legend

- P** Front Door
- 100 Ft Buffer
- City Right Of Way

Sources: Esri, DeLorme, NAVTEQ, TomTom, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), and the GIS User Community



City of McKinney
Senior Center
1400 S College Street



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