

## REGULAR CITY COUNCIL MEETING MINUTES

The City Council of the City of Kyle, Texas met in Regular Session on March 21, 2017 at Kyle City Hall with the following persons present:

Mayor Todd Webster	Robert Kleeman
Mayor Pro Tem Damon Fogley	Orlando Henderson
Council Member Travis Mitchell	Larry Simone
Council Member Becky Selbera	Gordon Wybo
Council Member Shane Arabie	Madalyn Raymond
Council Member David Wilson	Alfred Zambrano
Council Member Daphne Tenorio	Arturo Nava
Scott Sellers, City Manager	Jerry Kolacny
James Earp, Assistant City Manager	Michael W. O'Brien
Frank Garza, City Attorney	Brad Wittington
Jerry Hendrix, Chief of Staff	Leslie Moore
Jennifer Vetrano, City Secretary	Rick Coleman
Leon Barba, City Engineer	
Diana Torres, Economic Dev Director	
Perwez Moheet, Finance Director	
Andy Alejandro, Accounting Manager	
Danielle Harvey, IT Technician	
Marco Forti, IT Technician	
Howard Koontz, Community Dev Director	
Jeff Barnett, Chief of Police	
Pedro Hernandez, Police Captain	
Stephanie Robinson, Police Records Supervisor	
Harper Wilder, Director of Public Works	
Jason Biemer, Div. Mgr. – Treatment Operations	

### I. Call Meeting To Order

Mayor Webster called the meeting to order at 7:05 p.m. Mayor Webster asked the secretary to call roll.

Present were: Mayor Webster, Council Member Mitchell, Council Member Selbera, Council Member Arabie, Council Member Wilson, Mayor Pro Tem Fogley, and Council Member Tenorio. A quorum was present.

### II. Approval of minutes

Mayor Webster brought forward Approval of the Minutes.

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1. City Council Regular Meeting Minutes - February 21, 2017. ~ *Jennifer Vetrano, City Secretary*  
Item No. 1 Attachments
2. City Council Regular Meeting Minutes - March 7, 2017. ~ *Jennifer Vetrano, City Secretary*  
Item No. 2 Attachments

Mayor Pro Tem Fogley moved to approve the City Council Regular Meeting Minutes of February 21, 2017 and March 7, 2017. Council Member Tenorio seconded the motion. All votes aye; motion carried 7-0.

III. Citizen Comment Period with City Council. The City Council welcomes comments from Citizens early in the agenda of regular meetings. Those wishing to speak are encouraged to sign in before the meeting begins. Speakers may be provided with an opportunity to speak during this time period on any agenda item or any other matter concerning city business, and they must observe the three-minute time limit.

Mayor Webster opened citizen comments at 7:06 p.m.

Robert Kleeman spoke on behalf of Scott and Lana Nance. He spoke in opposition of Agenda Item No. 19. He requested a postponement on behalf of the Nances with regards to issues such as the alignment of utilities along FM 150. He spoke about the Nance-Bradshaw Development Agreement including full annexation into the city, while the agreement before Council tonight is to postpone annexation for 25 years. He stated his clients would like the Council to consider the FM 150 road alignment through the upcoming EIS process. His clients would like time to meet with staff.

Orlando Henderson was called to speak. He spoke about an issue he had with the Utilities Department. He stated he has lived in the city for 19 years and had listed his cell phone as the best way to contact him. He recently got a new cell phone number and was charged \$50 for a reconnect fee. Mr. Henderson stated he was also billed \$38 for a line fee, and clarified that these fees are not related to his service. He stated the fee is too high.

Larry Simone was called to speak. He spoke about a senior citizen program for Kyle in the future. He mentioned the Kyle Area Senior Zone, and described some of the activities they have. He mentioned a lack of signage at the Historic Kyle City Hall, which is used for the Senior Center. Mr. Simone asked that as the city grows, please do not forget the seniors, and consider a formal office or program for the city.

Gordon Wybo was called to speak in opposition to Agenda Item No. 18. He spoke about small business in Kyle, and that the ordinance cherry picks which businesses get to do business in Kyle.

Madalyn Raymond was called to speak. She spoke about her participation in organizations as the Editor in Chief of a news magazine, The Nation, active participant in UIL Journalism, National Honor Society, and Spanish Honor Society and stated that she has been in Girl Scouts

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for 11 years. Ms. Raymond is currently working on a project related to scoliosis. She asked the Council to reach out to their contacts, contact their local legislators about this issue, and join her Facebook page, Get Ahead of the Curve.

Alfred Zambrano was called to speak. He registered to speak against Agenda Item No. 18. His concern was that the city would be picking and choosing which businesses could come to Kyle.

Arturo Nava was called to speak. He registered in opposition to Agenda Item No. 15. He stated that he found out the white signs along Old Stagecoach and Scott Street were in response to action by the Planning & Zoning Commission. Mr. Nava stated that they have noticed increased traffic down Old Stagecoach correlating with the city's growth. He stated the residents in that area live a tranquil life, they are mostly senior citizens, and this item is to bring retail services to this area. He commented that the signs were written small and he had to stop to read it.

Jerry Kolacny was called to speak. He spoke about articles in the newspaper regarding allegations against Council Member Tenorio, and followed by allegations against Council Member Mitchell. He stated that Council Member Tenorio had to go to the problematic effect of having her personal lawyer in attendance. Mr. Kolacny stated that as a citizen he would like to know where these charges are coming from, and asked whether the City has an Ethics Board to look into these items. He stated there are too many executive sessions taking place and asked the city to be more transparent.

With no one else wishing to speak, and no objections to closing citizen comments, Mayor Webster closed citizen comments at 7:32 p.m.

#### IV. Presentation

3. Progress report on all road bond projects including latest project cost estimates. ~ *Leon Barba, P.E., City Engineer*  
Item No. 3 Cover Sheet

Mayor Webster brought forward Item No. 3 for discussion. Mr. Barba presented the item.

4. Presentation on Goforth, Bunton, and Philomena. ~ *J. Scott Sellers, City Manager*  
Item No. 4 Attachments

Mayor Webster brought forward Item No. 4 for discussion. Mr. Sellers presented the item.

#### V. Consent Agenda

Mayor Webster commented that it is not necessary to pull an item if the desire is to simply comment on an item. He stated that comments could be taken during discussion on the motion. Mayor Webster stated that he pulls Item No. 11 and asked if there were any other items to be pulled from the Consent Agenda. Mayor Pro Tem Fogley pulled Item No. 9. With no objections, Mayor Webster brought forward Item Nos. 5, 6, 7, 8, and 10.

5. A Resolution of the City Council of the City of Kyle, Texas authorizing the acceptance of a grant in the amount of \$25,200.00 from the Office of the Governor, Criminal Justice

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Division, for the purpose of funding the conversion to the National Incident Based Reporting System for the Fiscal Year 2017. ~ *Jeff Barnett, Chief of Police*

Item No. 5 Attachments

6. Authorize award and execution of a Purchase Order to BENTLEY SYSTEMS, INC., Exton, PA, in an amount not to exceed \$41,884.04 for user license and annual subscription fee for WaterGEMS and SewerGEMS modeling software. ~ *Leon Barba, P.E., City Engineer*

Item No. 6 Attachments

7. Authorize award and execution of a Purchase Order to BLUEBONNET MOTORS, INC., New Braunfels, TX, a contracted member of the LCRA BuyBoard contract #3286, in an amount not to exceed \$28,367.31. for the purchase of a new F150 4X4 work truck for the Public Works Department. ~ *Harper Wilder, Director of Public Works*

Item No. 7 Attachments

8. Authorize award and execution of a Purchase Order to CALDWELL COUNTRY CHEVROLET, Caldwell, TX, a member of BuyBoard contract #430-13, in an amount not to exceed \$49,921.00 for the purchase of a new 3500HD 4X4 work truck for the Public Works Department. ~ *Harper Wilder, Director of Public Works*

Item No. 8 Attachments

10. Authorize award and execution of a Purchase Order to WASTEWATER TRANSPORT SERVICES, Austin TX, in an amount not to exceed \$30,127.50 for the cleaning of one of the aeration basins at the City's wastewater treatment plant. ~ *Harper Wilder, Director of Public Works*

Item No. 10 Attachments

Council Member Wilson moved to approve Consent Agenda Item Nos. 5, 6, 7, 8, and 10. Council Member Selbera seconded the motion. All votes aye; motion carried 7-0.

9. Authorize award and execution of a Purchase Order to FREIGHTLINER OF AUSTIN, Austin, TX, a member of BuyBoard contract #521-16, in an amount not to exceed \$389,399.00 for the purchase of a new Vactor truck for the Public Works Department. ~ *Harper Wilder, Director of Public Works*

Item No. 9 Attachments

Mayor Webster brought forward Item No. 9 and gave the floor to Mayor Pro Tem Fogley. He asked about what this truck does and whether there is a warranty. Mr. Wilder stated that Public Works will be able to water excavate, and it will be used at the treatment plant because of the tall walls. Council Member Mitchell asked within the last year if we have had to use this type of equipment to maintain our current infrastructure. Mr. Wilder stated that since October 2015 the city has spent \$163,731 on contracted services for a Vactor truck.

Mayor Pro Tem Fogley moved to authorize award and execution of a Purchase Order to Freightliner of Austin, Austin, TX, a member of BuyBoard contract #521-16, in an amount not to exceed \$389,399.00 for the purchase of a new Vactor truck for the Public Works Department. Council Member Wilson seconded the motion. All votes aye; motion carried 7-0.

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11. Approve a development agreement pursuant to Sections 43.035 and 212.172 of the Texas Local Government Code, between the City of Kyle and Tim Miller and Ann Berghammer. ~ *Howard J. Koontz, Director of Planning and Community Development*  
Item No. 11 Attachments

Mayor Webster brought forward Item No. 11 and asked Mr. Sellers to speak about the item. Mr. Sellers explained that last year the City had several development agreements from the southwest area of the city to preserve the right to be in the county for 15 years by agriculture exemption. He stated the development agreement that is the subject of this item had a clause invalidating the development agreement if it was not signed and notarized within a very short time frame. He stated that it was signed, but there was a delay in the notary.

Mayor Webster moved to table indefinitely a development agreement pursuant to Sections 43.035 and 212.172 of the Texas Local Government Code, between the City of Kyle and Tim Miller and Ann Berghammer. Council Member Wilson seconded the motion. All votes aye; motion carried 7-0.

### VI. Consider and Possible Action

12. Review and acceptance of City's Comprehensive Annual Financial report (CAFR) and Independent Auditors' Report for fiscal year ended September 30, 2016. ~ *Perwez A. Moheet, CPA, Director of Finance and Michael W. O'Brien, CPA, Partner, Padgett Stratemann & Co., Certified Public Accountants*  
Item No. 12 Attachments

Mayor Webster brought forward Item No. 12 for discussion. Mr. Moheet presented the item. He then introduced Michael W. O'Brien, partner with Padgett Stratemann who explained the auditing process.

Council Member Wilson moved to approve the City's Comprehensive Annual Financial report (CAFR) and Independent Auditors' Report for fiscal year ended September 30, 2016. Council Member Tenorio seconded the motion. All votes aye; motion carried 7-0.

13. [Postponed 2/21/2017] Consider and possible action regarding an amended and restated development agreement for the Sunset Hills Subdivision. ~ *Howard J. Koontz, Director of Planning and Community Development*  
*Planning and Zoning Commission voted 6-0 to recommend that the development agreement go forward to City Council.*  
Item No. 13 Attachments

Mayor Webster brought forward Item No. 13 for discussion. Mr. Koontz presented the item. Mayor Webster suggested postponing action on the development agreement to consider the public hearing in Item No. 14. There were no objections.

14. [Postponed 2/21/2017] (First Reading) An Ordinance amending Chapter 53 (Zoning) of the City of Kyle, Texas, for the purpose of rezoning approximately 52.990 acres of land from Single Family Residential-2 'R-1-2' to Single Family Detached Residential 'R-1-A'

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for property located on the north side of Bebee Road, 1/4 mile west of Dacy Lane, in Hays County, Texas. (The Meadows at Kyle II, Ltd. (Sunset Hills) - Z-16- 009). ~ *Howard J. Koontz, Director of Planning and Community Development*  
*Planning and Zoning Commission voted 6-0 to recommended to rezone the property to R-1-3.*

- PUBLIC HEARING

Item No. 14 Attachments

Mayor Webster brought forward Item No. 14 for discussion. Mr. Koontz presented the item.

Mayor Webster brought forward the previously left-open public hearing at 8:31 p.m.

Brad Wittington, the applicant, spoke. He stated that the owner of the property, Gary Duncan, could not attend, but wrote a letter, which was presented to Council. He provided a history of this project, and spoke of the changes, and the work by city staff. He read a summary of the letter written by Gary Duncan Investments. He spoke of wastewater challenges for this project. Council Member Arabie asked Mr. Sellers how Council would approve a development agreement and zoning with no solution at this point to the wastewater issues.

With no one else wishing to speak, and no objections to closing the public hearing, Mayor Webster closed the public hearing at 8:45 p.m.

Mr. Sellers addressed Council Member Arabie's question, mentioning that it is a development agreement related question. Discussion moved back to Item No. 13. Mr. Sellers provided a summary of the history of the wastewater discussions. Mr. Sellers stated staff's recommendation is to use the gravity alignment option number one and re-enter negotiations with the property owner who had previously backed out. If that is not feasible, then the City will look towards pumping east to Dacy with the line needing to be upsized as option number two. Mr. Sellers stated that with the development agreement, the city would have committed to provide wastewater services through some given option. He stated that all three, the third being a lift station, will work, it is just a matter of costs for each.

Council Member Tenorio moved to approve an amended and restated development agreement for the Sunset Hills Subdivision with the revised Exhibit D. Mayor Webster seconded the motion.

There was discussion on the motion. Council Member Arabie stated that he believes Council needs to provide direction to staff and a bargaining point so that the agreement does not cause the City to bear the cost. He said Council should consider what would benefit the city as a whole. Council Member Arabie stated he is looking to limit the option to having a gravity feed as a contingency. Council Member Wilson agreed with Council Member Arabie's comment. Council Member Mitchell stated there is a question of who pays for option two, should option one not move forward. He stated, that with options two and three on the table, there is a potential to expend significant funds to make this project happen, but with option one there is not the expense to the city.

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Mayor Webster called for a roll call vote. Mayor Webster voted aye, Council Member Wilson voted nay, Council Member Mitchell voted nay, Mayor Pro Tem Fogley voted nay, Council Member Tenorio voted aye, Council Member Selbera voted nay, and Council Member Arabie voted nay. Motion failed 2-5.

Mayor Webster brought back Agenda Item No. 14 for discussion. Council Member Arabie asked that the development agreement from Agenda Item No. 13 be discussed in executive session. He did not make a motion, but asked that it be included on the motion to convene into executive session.

Council Member Selbera moved to postpone Agenda Item No. 14 until Item No. 13 can be considered in executive session. Council Member Wilson seconded the motion. All votes aye; motion carried 7-0.

15. (First Reading) An Ordinance amending Chapter 53 (Zoning) of the City of Kyle, Texas, for the purpose of assigning original zoning to approximately (Tract 1: 27.66 acres of land) (Tract 2: 4.19 acres of land) from Agriculture 'AG; to Retail Service District 'RS' for properties located at (Tract 1: 900 and 1000 Scott Street) (Tract 2: 1101 Old Stagecoach Road), in Hays County, Texas. (MooreRood Properties, LLC - Z-17-003). ~ *Howard J. Koontz, Director of Planning and Community Development*  
*Planning and Zoning Commission voted 5-1 to recommend approval.*

- PUBLIC HEARING

Item No. 15 Attachments

Mayor Webster brought forward Item No. 15 for discussion. Mr. Koontz presented the item.

Mayor Webster opened the public hearing at 9:04 p.m.

Leslie Moore, the applicant, spoke. He stated that he is seeking a conforming zoning change. He mentioned that they conform to the city's ordinances, including noise, and try to avoid any conflict with surrounding neighbors. Mr. Earp added that the applicant is looking to expand the facilities at the property to continue to grow their business.

With no one else wishing to speak, and no objections to closing the public hearing, Mayor Webster closed the public hearing at 9:07 p.m.

Council Member Wilson moved to approve an Ordinance amending Chapter 53 (Zoning) of the City of Kyle, Texas, for the purpose of assigning original zoning to approximately (Tract 1: 27.66 acres of land) (Tract 2: 4.19 acres of land) from Agriculture 'AG; to Retail Service District 'RS' for properties located at (Tract 1: 900 and 1000 Scott Street) (Tract 2: 1101 Old Stagecoach Road), in Hays County, Texas. Council Member Arabie seconded the motion.

There was discussion on the motion. Mayor Webster stated that the change is necessary, and the permissible uses are consistent with the use of the property. Council Member Wilson stated that the property owner is trying to come into compliance with the annexation requirements.

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Motion carried 6-1 with Council Member Selbera dissenting.

16. (First Reading) An Ordinance amending Chapter 53 (Zoning) of the City of Kyle, Texas, for the purpose of rezoning approximately 1.67 acres of land from Retail Service District 'RS' to a dual zoning of Retail Service District 'RS' and Entertainment 'E' for property located at 107 E. Center Street, in Hays County, Texas. (South Center Street Holdings, LLC. Z-17-004). ~ *Howard J. Koontz, Director of Planning and Community Development*

*Planning and Zoning Commission voted 6-0 to recommend approval.*

- PUBLIC HEARING

Item No. 16 Attachments

Mayor Webster brought forward Item No. 16 for discussion. Mr. Koontz presented the item.

Mayor Webster opened the public hearing at 9:14 p.m.

Jerry Kolacny spoke in opposition to dual zoning. He stated that he had asked Planning & Zoning Commission what other locations have E zoning who responded the only other one is the racetrack. He stated this zoning change would bring a piece of the racetrack to the downtown. Mr. Kolacny continued that this is not a quality development that needs to be in this particular location. He believes that this will bring noise, nuisance, and possibly crime to the area, which is inappropriate. He does not believe this development will improve the quality of the downtown area.

With no one else wishing to speak, and no objections to closing the public hearing, Mayor Webster closed the public hearing at 9:17 p.m.

Mayor Pro Tem Fogley moved to approve an Ordinance amending Chapter 53 (Zoning) of the City of Kyle, Texas, for the purpose of rezoning approximately 1.67 acres of land from Retail Service District 'RS' to a dual zoning of Retail Service District 'RS' and Entertainment 'E' for property located at 107 E. Center Street, in Hays County, Texas. Council Member Mitchell seconded the motion.

There was discussion on the motion. Council Member Tenorio asked why they do not zone E alone rather than having dual zoning. Mr. Koontz stated that if hypothetically, R/S has 30 uses, and E has 12, the applicant wants 42 allowable uses. He continued that R/S is primarily for uses indoors and the applicant is seeking E, which by right has occasional uses for outdoors. Mr. Earp stated that while the Council has not seen many of these, the entertainment use was intended to be used in special circumstances when it was warranted as a dual use.

All votes aye; motion carried 7-0. There were no objections to having the ordinance finally passed.

17. (First Reading) An Ordinance amending Chapter 53 (Zoning) of the City of Kyle, Texas, for the purpose of assigning original zoning to approximately 13.52 acres of land from Agriculture 'AG' to Construction Manufacturing 'CM' for property located on IH-35 at

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CR 208, in Hays County, Texas. (Rodolfo and Guadalupe Martinez and Mary Ann Mendoza Z-17-005). ~ *Howard J. Koontz, Director of Planning and Community Development*

*Planning and Zoning Commission voted 6-0 to recommend denial.*

- PUBLIC HEARING

Item No. 17 Attachments

Mayor Webster brought forward Item No. 17 for discussion. Mr. Koontz presented the item.

Mayor Webster opened the public hearing at 9:23 p.m. With no one wishing to speak, and no objections to closing the public hearing, Mayor Webster closed the public hearing at 9:23 p.m.

Council Member Arabie moved to deny an Ordinance amending Chapter 53 (Zoning) of the City of Kyle, Texas, for the purpose of assigning original zoning to approximately 13.52 acres of land from Agriculture 'AG' to Construction Manufacturing 'CM' for property located on IH-35 at CR 208, in Hays County, Texas. Council Member Tenorio seconded the motion. All votes aye; motion carried 7-0.

18. (First Reading) An ordinance of the City of Kyle, Texas, amending Section 53-899 "I-35 Overlay District Development Standards.", of Chapter 53 "Zoning", of the City of Kyle Code of Ordinances, by removing the allowance for outdoor display and sales of new and used vehicles (as described herein), from the I-35 Overlay District Development Standards. ~ *Howard J. Koontz, Director of Planning and Community Development*  
*Planning and Zoning Commission voted 5-1 to recommend approval.*

- PUBLIC HEARING

Item No. 18 Attachments

Mayor Webster brought forward Item No. 18 for discussion. Council Member Mitchell stated a conflict of interest because his property stands to be affected by this ordinance. Council Member Tenorio stated a conflict of interest due to her family property being within 1200 feet of the overlay and is up for lease. Both council members left the dais at 9:27 p.m. Mr. Koontz presented the item.

Mayor Webster opened the public hearing at 9:40 p.m.

Gordon Wybo spoke stated that he understands wanting to keep the city looking nice, but he said this makes it financially impossible for businesses to locate here. He said these businesses are not done this way with all inventory under glass because it is expensive to do it that way.

Jerry Kolacny approached to speak. He said the Council is exaggerating the tax revenue for this item. He mentioned several car lots in San Marcos and spoke of the natural progression that has taken place there. Mr. Kolacny spoke of car lots in Buda and south Austin along I-35 and said it does not seem to have hurt those cities. He stated that he does not see any issue with having a variety of businesses in Kyle.

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With no one else wishing to speak, and no objections to closing the public hearing, Mayor Webster closed the public hearing at 9:55 p.m.

Mr. Koontz stated that he would like to add the word “display” to the first redline sentence so that it reads, "All motor vehicle and trailer sales, display, rental, or leasing are prohibited from operating outdoors."

Council Member Arabie moved to approve an Ordinance of the City of Kyle, Texas, amending Section 53-899 "I- 35 Overlay District Development Standards.", of Chapter 53 "Zoning", of the City of Kyle Code of Ordinances, by removing the allowance for outdoor display and sales of new and used vehicles (as described herein), from the I-35 Overlay District Development Standards, with the additional insertion of the word "display" after the word "sales" and before the word "rentals" in section D(1). Council Member Selbera seconded the motion.

There was discussion on the motion. Mayor Webster stated that he struggled with this because he wanted to strike a balance, and through conditional use, the Council maintains flexibility. He stated that the I-35 Overlay has had an impact on not only aesthetics, but also sense of place, and he is supportive of the ordinance.

All votes aye; motion carried 5-0 with Council Members Mitchell and Tenorio recusing themselves.

19. Consider and possible action regarding a Development Agreement with Blanco River Ranch. ~ *James R. Earp, Assistant City Manager*  
Item No. 19 Attachments

Mayor Webster brought forward Item No. 19 for discussion. He stated that a council member requested to get the advice of the City Attorney before taking action on this item. There were no objections to postponing the item.

20. Approve a deposit reimbursement agreement with UNION PACIFIC RAILROAD COMPANY (UPRR) for the City to reimburse UPRR for the cost of review and approval of City's preliminary engineering and other related services in an amount not to exceed \$100,000.00 associated with the implementation of railroad quiet zones on Center Street, South Street, Opal Lane and Roland Lane and direct staff to bring back a budget amendment to provide required funding. ~ *J. Scott Sellers, City Manager*  
Item No. 20 Attachments

Mayor Webster brought forward Item No. 20 for discussion. Mr. Sellers presented the item.

Council Member Mitchell and Council Member Tenorio returned to the dais at 10:05 p.m.

Council Member Wilson moved to approve a deposit reimbursement agreement with UNION PACIFIC RAILROAD COMPANY (UPRR) for the City to reimburse UPRR for the cost of review and approval of City's preliminary engineering and other related services in an amount not to exceed \$100,000.00 associated with the implementation of railroad quiet zones on Center

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Street, South Street, Opal Lane and Roland Lane and direct staff to bring back a budget amendment to provide required funding. Council Member Arabie seconded the motion.

There was discussion on the motion. Mayor Webster mentioned for clarity and transparency's sake, this is a separate item from the preliminary engineering for the railroad siding item. Council Member Mitchell asked why a budget amendment is necessary, and with this being a long-term project, why it was not budgeted. Mr. Sellers explained that first the City had to ensure that the quiet zone would score high enough to qualify for the program. The second issue, he explained, was that the Roland and Opal crossings would need a lot more work, and the City was not prepared to bring anything forward because of the expense. He continued that with the development that is coming in and agreed to partner on this project it has become financially feasible. Mr. Sellers stated that the City did not anticipate this project coming forward this fiscal year, but the development has made it a priority.

Motion carried 6-1 with Council Member Mitchell dissenting.

21. Consider and possible action to approve an electronic sign permit for Rick Coleman regarding double-sided changeable electronic variable message sign "CEVMS" on-premise billboard. ~ *Howard J. Koontz, Director of Planning and Community Development*  
Item No. 21 Attachments

Mayor Webster brought forward Item No. 21 for discussion. Mr. Coleman made a statement that whatever Council decides, he will not try to appeal. Mayor Webster clarified that he waives his right to go to the sign review board. Mr. Koontz presented the item. Mr. Sellers was asked to give a staff recommendation. Mr. Sellers stated that he has been on the record in the past with support for the sign. He stated that from a marketing standpoint it would be to the City's advantage with regard to displaying a city sign every sixth rotation at the gateway to the city. He also mentioned that this would be a dual sided sign so the city would reserve one-sixth of the rotation on each side. Mayor Webster asked whether the full motion use was a must-have. Mr. Coleman stated that the full motion was originally intended for use for the racetrack, which is no longer operating. He continued that as his property develops into a future use, he would like the opportunity to request full motion at a later date.

Council Member Tenorio moved to approve an electronic sign permit for Rick Coleman regarding double-sided changeable electronic variable message sign "CEVMS" on-premise billboard. Mayor Pro Tem Fogley seconded the motion.

Council Member Tenorio moved to amend her motion to approve without full motion display use, with the ability to bring forward a request for full motion at a later time. Mayor Pro Tem Fogley seconded the motion.

Mr. Sellers stated the current ordinance does not allow this action, and the motion needs to be stated as a variance from City Code. Council Member Tenorio withdrew her motions.

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Mayor Webster moved to approve an electronic sign permit as a variance for Rick Coleman regarding a double-sided changeable electronic variable message sign "CEVMS" on-premise billboard as a static sign. Council Member Selbera seconded the motion.

There was discussion on the motion. Council Member Arabie asked for clarification on the variance. He asked whether the height reduction would interfere with current electricity lines. Mr. Sellers stated that TxDOT would have jurisdiction on the location approval. Council Member Mitchell stated his opposition to this item, related to his opposition to billboards in Kyle.

Motion carried 5-2 with Council Members Mitchell and Arabie dissenting.

22. General discussion regarding Old Post Road. ~ *Damon Fogley, Mayor Pro Tem*  
Item No. 22 Cover Sheet

Mayor Webster brought forward Item No. 22 for discussion and gave the floor to Mayor Pro Tem Fogley. Mr. Sellers provided a status report on the item. Mr. Barba spoke about options for rehabilitating the road. No action was taken.

### VII. City Manager's Report

23. Update on various capital improvement projects, road projects, building program, and/or general operational activities where no action is required. ~ *J. Scott Sellers, City Manager*
- Budget and CIP Project Updates FY 2017
  - Proposed Budget Retreat with Council - May 6, 2017
- Item No. 23 Cover Sheet

Mr. Sellers asked Council to check their schedules for a May 6, 2017 Budget Retreat with staff from 8:00 a.m. to noon. He gave a presentation on Budget and CIP Project statuses.

### VIII. Executive Session

24. Pursuant to Chapter 551, Texas Government Code, the City Council reserves the right to convene into Executive Session(s) from time to time as deemed necessary during this meeting. The City Council may convene into Executive Session pursuant to any lawful exception contained in Chapter 551 of the Texas Government Code including any or all of the following topics.
1. Pending or contemplated litigation or to seek the advice of the City Attorney pursuant to Section 551.071.
  2. Possible purchase, exchange, lease, or value of real estate pursuant to Section 551.072.
  3. Personnel matters pursuant to Section 551.074.
  4. Economic Development negotiations pursuant to Section 551.087.
    - Project Sunset Orange
- Item No. 24 Cover Sheet

Mayor Webster moved to convene into executive session to seek the advice of the City Attorney pursuant to Section 551.071 - Agenda Item No. 13 Consider and possible action regarding an amended and restated development agreement for the Sunset Hills Subdivision; Agenda Item No.

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14 An Ordinance amending Chapter 53 (Zoning) of the City of Kyle, Texas, for the purpose of rezoning approximately 52.990 acres of land from Single Family Residential-2 'R-1-2' to Single Family Detached Residential 'R-1-3' for property located on the north side of Bebee Road, 1/4 mile west of Dacy Lane, in Hays County, Texas; and Agenda Item No. 19 Consider and possible action regarding a Development Agreement with Blanco River Ranch; and Economic Development negotiations pursuant to Section 551.087 - Project Sunset Orange. Mayor Pro Tem Fogley seconded the motion. All votes aye; motion carried 7-0.

The City Council convened into executive session at 11:08 p.m.

25. Take action on items discussed in Executive Session.  
Item No. 25 Cover Sheet

Council Member Tenorio moved to reconvene into open session. Council Member Arabie seconded the motion. All votes aye; motion carried 7-0.

The City Council reconvened into open session at 11:44 p.m. Mayor Webster announced that no action took place in Executive Session but action would be taken now on Agenda Items 13, 14, and 19. He stated no action would be taken on Project Sunset Orange.

Council Member Arabie moved to reconsider the decision on Agenda Item No. 13. Council Member Selbera seconded the motion. All votes aye; motion carried 7-0.

Council Member Arabie moved to approve with conditions the development agreement subject of Agenda Item No. 13 conditional that use of a gravity feed line be required for the development agreement approval and with a caveat that direction to staff to go all the way if needed with eminent domain. Council Member Selbera seconded the motion. Motion carried 6-1 with Council Member Mitchell dissenting.

Council Member Arabie moved to approve an Ordinance amending Chapter 53 (Zoning) of the City of Kyle, Texas, for the purpose of rezoning approximately 52.990 acres of land from Single Family Residential-2 'R-1-2' to Single Family Detached Residential 'R-1-3' for property located on the north side of Bebee Road, 1/4 mile west of Dacy Lane, in Hays County, Texas. Council Member Selbera seconded the motion. Motion carried 6-1 with Council Member Mitchell dissenting.

Council Member Arabie moved to approve a Development Agreement with Blanco River Ranch. Council Member Tenorio seconded the motion.

There was discussion on the motion. Mayor Webster stated staff would be contacting the Nances to discuss the issues. He stated the City does not have control over the alignment of FM 150, which is TxDOT's purview. He continued that delaying the project based on the alignment of that road would indefinitely delay any projects going into this area. Mayor Webster stated that depending on where the road is placed would require Blanco River Ranch to amend their proposal.

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All votes aye; motion carried 7-0.

IX. ADJOURN

Council Member Tenorio moved to adjourn. Council Member Arabie seconded the motion. All votes aye; motion carried 7-0.

With no further business to discuss, the City Council adjourned at 11:49 p.m.

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R. Todd Webster, Mayor

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Attest: Jennifer A. Vetrano, City Secretary

Attachments to Minutes as follows:

1. Get Ahead of the Curve, submitted by Madalyn Raymond, related to Citizen Comments
2. Gary Duncan Investments letter, submitted by Brad Wittington, regarding Agenda Item No. 14

# **Get Ahead of the Curve**

Madalyn Raymond

# Who I Am

My name is Madalyn Raymond.

- Hays High School Junior
- Editor-in-Chief of Hays' new magazine, *The Nation*
- UIL Journalism State Qualifier
- Member of National Honors Society, Spanish Honors Society, and Quill & Scroll
- 11 year Girl Scout, current Ambassador



## Get Ahead of the Curve

- Change current screening ages, 6<sup>th</sup> and 9<sup>th</sup> grades, to 5<sup>th</sup> and 8<sup>th</sup>
  - Better correlates with adolescent spinal development
  - Allows for more treatment options
- Restrictive legislation doesn't allow for change from 6<sup>th</sup> and 9<sup>th</sup>
  - Currently reaching out to local representatives
  - If you have personal relationships with any legislators, reach out!
- Starting a support group to give students with scoliosis an understanding environment to share scoliosis experiences



## I ask that you...

- Use relationships with Senators, Legislators, and Representatives to discuss scoliosis screening
- Send a letter, email, or call local legislators about scoliosis screenings
- Join my Facebook group page, "Get Ahead of the Curve – Hays CISD"
- Share my project with anyone you know who has scoliosis or would be interested in staying updated



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March 21, 2017

Mayor Todd Webster  
Mayor Pro Tem Damon Fogley  
Council Member Travis Mitchell  
Council Member Becky Selbera  
Council Member Shane Arabia  
Council Member David Wilson  
Council Member Daphne Tonorio  
City of Kyle  
Kyle, TX 78640

RE: Sunset Hills Community, Bebee Road, Kyle, TX

Dear Mayor and City Council:

Please accept this letter as my gratitude and appreciation working with the City of Kyle for over the last Ten (10) years. On behalf of the Meadows at Kyle II, Ltd., I wanted to take this opportunity to thank you and City Staff for working with me and Brad Whittington in the process of entitling and developing my property. Thank you also for postponing the official City Council hearing on February 21<sup>st</sup> regarding the Amendment to the Development Agreement and the Re-zoning request to re-zone the above referenced community from R-1-2 to the desired R-1-3. I was unavailable to attend that meeting. Unfortunately, I have to be with my grandchildren (did not have any when the process began). Please accept Brad Whittington with The Whittington Group to formally present our request at the City Council Meeting tonight night, March 21<sup>st</sup> at 7:00 PM. Brad is authorized to also present to you and the City Council this letter written by me. Brad represents us as the owner of the property; The Meadows at Kyle II, Ltd., and is an authorized agent on our behalf.

We are requesting this re-zoning request together with an amended Development Agreement. As stated in the Planning Directors packet, the reasons for this request are as follows:

1. The land plan has been modified to better utilize the existing topography of the site.
2. The land plan as modified incorporates a central park and an open play park.
3. The land plan also has increased park land for the community that will be privately maintained.
4. The land plan also allows better connectivity to the adjacent proposed Kyle Vista Regional Park and Recreation Center.
5. The home product includes 2 car garages with varying home styles and lot sizes that will be interspersed within the community.
6. The home product contemplated meets City Standards regarding design and garages.
7. The revised land plan encourages water conservation and minimizes individual yard maintenance.
8. The revised land plan additionally encourages improved connectivity to community parks and gathering places.
9. The improved land plan better adheres to adjacent land uses which are:
  - Hays Junction Apartments and Lakeside Crossing Manufactured Housing Community to the South
  - Kyle Vista Regional Park to the East
  - Republic Business Park to the West
  - Existing Amberwood subdivision to the North

Together with the re-zoning we are requesting that the existing Development Agreement be amended as we have been working with planning staff on acceptable amendments by the City, Developer and the Builder.

The Amendment to the Development Agreement that we entered into with the City of Kyle on April 11, 2007 provided the following:

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1. We contribute 13.22 acres of land to the City of Kyle in a spirit of a Public/Private effort to kick off the Kyle Vista Regional Park and Recreational Center and has been deeded to the City pursuant to the agreement and paid for us in April 2007.
2. Provided for variances on the then recently adopted new ordinances and revisions to the UDC including Impervious Coverage, Garage & Set-back variances.

We have worked long and hard with City and Staff and feel this collaborative process has drastically improved the Sunset Hills Community. We have been responsible tax paying citizens and have performed our obligations as demonstrated by the substantially completed Development of The Meadows at Kyle that was part of the Original Development Agreement.

The Tri-Party Development has been amended three (3) times and we appreciate the City approving each of those Amendments.

This process, although difficult at times, has transpired;

1. Amending the Tri-Party again (4<sup>th</sup> Amendment) addressing a variance required in the originally proposed R-1-A zoning addressing the side setbacks from 0 ft. & 10 ft.' side setbacks (maintain 10 ft.' separation between homes). Additionally, it was considered to provide separate rear yard storage facilities in lieu of the required 480 sq. ft. garage requirement. After considerable legal dollars it was discovered that Contract Zoning is not valid in the state of Texas.
2. Creating a new Zoning Category that is more desired than the R-1-A (small lot) zoning we utilized in our Meadows at Kyle community to a new R-1-3 zoning classification (medium sized lots). We feel this creates the most desired end result as the existing R-1-2 is designed for larger lots that require more maintenance and burden on the home owner and is not conducive to water conservation. Even though our Re-zoning Application was submitted last October we patiently worked with staff as the new R-1-3 was written and adopted by council as recommended by P&Z.
3. Finally, we have worked diligently with staff to thoroughly analyze all known wastewater alternatives. This process involved the following alternatives
  - a) Completed construction plans designed to construct a gravity line through Hays Junction Apartments and Lakeside Crossing Manufactured Housing Community to the South and connecting into Dacy Lane. We invested over \$50,000 in this alternative in survey & engineering work (with 90% completed set of engineering drawings including plans & profiles) to come to find out the owner of Lakeside Crossing changed his mind at the last minute. (Alternative 1 on the attached exhibit)
  - b) Completed construction plans designed to construct gravity flowing wastewater generated from the Sunset Hills community through the Hays Junction Apartments into the existing City gravity system located west of the newly constructed apartment complex. (Alternative 2 on the attached exhibit) Note: this alternative was the alternative that was included in the amended and approved preliminary plat.
  - c) Constructing a shared Small Lift Station with the City of Kyle to be used by both the City for the Proposed Kyle Vista Regional Park & Recreation and the Sunset Hills Community. (Alternative 3 on the attached exhibit)
  - d) Constructing a deep gravity line with deep manholes in Bebee Road to the west and boring around the curve in Bebee Rd. (Alternative 4 on the attached exhibit). Note: This was the Alternative that is included in the initial existing approved Preliminary Plat.

I, on behalf of my partner in the Meadows at Kyle II and Mr. Whittington which to thank you and your staff that have helped and worked so hard on this joint effort over the last ten (10) years - primarily Howard Koontz, James Earp, Leon Barba, Harper Wilder and Kerry Urbanowicz.

We appreciate your consideration and respectfully thank you and kindly ask for your unanimous support as the P&Z Commission has also unanimously recommended approval. We are in hopes of starting the Amended Platting process shortly after receiving Re-zoning Approval and Approval the Amended Development Agreement. Our


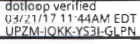
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approved builder (with approved home plans) would like to have professionally landscaped and decorated models open for the spring 2018 selling season.

Best regards,

THE MEADOWS AT KYLE II, LTD

By: The Meadows at Kyle Development Co. II, LLC, General Partner

By:    
George Gary Duncan  
Manager

Cc: Howard Koontz, Community Development Director  
James Earp, Assistant City Manager ✓  
Leon Barba P.E., City Engineer  
Harper Wilder, Director of Public Works  
Kerry Urbanowicz, Parks Director ✓  
William A. Atkinson, City Planner  
Debbie A. Guerra, Planning Technician  
George Murfee P.E., Murfee Engineering Company  
Jim Bechtol, SunRhea Design  
John Zinsmeyer, KB Home, VP Land Development  
Pat Murphy, KB Home, VP Land Acquisitions  
Brad Whittington, the Whittington Group