

# City Council Meeting Minutes

The City Council of the City of Kyle, Texas met in Regular Session on December 5, 2017 at Kyle City Hall with the following persons present:

Mayor Travis Mitchell	Marquet Curl
Mayor Pro Tem Shane Arabie	Jeff England
Council Member Dex Ellison	Gregory Ross
Council Member Tracy Scheel	Tonya Domingo
Council Member Alex Villalobos	Kyle Taylor
Council Member Damon Fogley	Alison Southern Ullom
Council Member Daphne Tenorio	Julie Snyder
Scott Sellers, City Manager	John Lahmon
James Earp, Assistant City Manager	Christopher Harrell
Frank Garza, City Attorney	Cody DeSalvo
Jerry Hendrix, Chief of Staff	Todd Uhlman
Kim Hilsenbeck, Communications Specialist	Steve Tucker
Jennifer Vetrano, City Secretary	
Leon Barba, City Engineer	
Diana Torres, Economic Dev Director	
Perwez Moheet, Finance Director	
Matt Dawson, IT Director	
Paul Phelan, Library Director	
Howard Koontz, Community Dev Director	
Jeff Barnett, Chief of Police	
Pedro Hernandez, Police Captain	
Tracy Vrana, Police Sergeant	
Kelly Sheridan, Victims Services Coordinator	
Harper Wilder, Director of Public Works	
Brian Lillibridge, Assistant Director of Public Works	
Jason Biemer, Div. Mgr. – Treatment Operations	

## **I. Call Meeting to Order**

Mayor Mitchell called the meeting to order at 7:00 p.m. Mayor Mitchell asked the city secretary to call roll. Present were: Mayor Mitchell, Council Member Ellison, Council Member Scheel, Mayor Pro Tem Arabie, Council Member Villalobos, Council Member Fogley and Council Member Tenorio. A quorum was present.

Mayor Mitchell held a moment of silence for Officer Copeland of the San Marcos Police Department. Kyle Police Chaplain Marquet Curl provided a prayer.

## **IV. Presentation**

### **4. Presentation on Critical Incident Stress Management Team. ~ Jeff Barnett, Chief of Police**

Mayor Mitchell brought forward Item No. 4 for discussion. Chief Barnett presented the item, and introduced Kelly Sheridan, Victims Services Coordinator, who described critical incidents and spoke about Kyle's Critical Incident Stress Management Team. She recognized four team

members, who each introduced themselves: Jeff England, Chaplain and Pastor at First Baptist Church; Gregory Ross, Chaplain and Pastor at First Christian Church in San Marcos; Tonya Domingo, Telecommunicator/Dispatcher for City of Kyle; and Kyle Taylor, Kyle Fire Chief. No action was taken.

## **II. Approval of Minutes**

Mayor Mitchell brought forward the minutes for discussion.

1. City Council Special Meeting Minutes – November 16, 2017. ~ *Jennifer Vetrano, City Secretary*
2. City Council Special Meeting Minutes – November 21, 2017. ~ *Jennifer Vetrano, City Secretary*
3. City Council Meeting Minutes – November 21, 2017. ~ *Jennifer Vetrano, City Secretary*

Council Member Tenorio moved to approve the minutes of the Special Meeting November 16, 2017, the minutes of the Special Meeting November 21, 2017, and the minutes of the Regular Meeting November 21, 2017. Council Member Fogley seconded the motion.

There was discussion on the motion. Mayor Mitchell stated that he wanted to provide clarity for voting on minutes for which a council member was not present for the new council members, particularly for the November 16, 2017 meeting for which they had not yet been sworn in. He stated that City Attorney Frank Garza provided some advice that the City Council is a continuous entity and the current council is the only body that can approve the minutes at any given time. He continued that when a council member leaves his position, he/she loses his ability to vote, even in minutes where he/she participated. Mayor Mitchell stated that the new council members are now empowered to vote even though they were not there. Additionally, he said, Charter Section 3.08 provides that “all members of the council present shall vote upon every issue, subject or matter properly before the council and requiring a council vote; provided that, if any member of the council has a conflict of interest that fact shall be stated in the minutes and such member shall abstain from discussion and voting on the issue.” He continued that the Local Government Code defines a conflict of interest as having a financial or fiduciary conflict with an item. Council Member Tenorio stated that as a matter of conscience, you can choose to not vote. She said that for the past two and a half years if she was not present at the meeting that she has not voted, and has not had the Mayor or City Attorney any conflict with that at any time.

All votes aye; motion carried 7-0.

## **III. Citizen Comment Period with City Council**

Mayor Mitchell opened citizen comments at 7:26 p.m.

Alison Southern Ullom was called to speak as registered in favor of Item Nos. 16 and 17. She stated that she has lived in Kyle for three years and works for Sky Realty on Center Street. She

stated that there is congestion on Center Street, and she hopes that the item will assist with congestion and beautification of downtown.

Julie Snyder was called to speak. She spoke about the Chamber membership survey. She stated that one question was why they are a member of the Chamber of Commerce. The primary response was to grow their business. The survey also asked what they wanted from the Chamber. They wanted the Chamber to represent the business community. She invited the Council to reach out to them and their board of directors as a resource.

John Lahmon asked to speak. He stated that he has been frustrated with the Planning Department and whether or not he needed a building permit. He stated that he left a packet for each council member in their mailbox last week. Mr. Lehman stated that he wanted to build a storage shed, and two planning representatives stated he may not need a building permit, and then someone else in that complex said maybe he does. He stated he found out that to build an 8' x 10' rubberized portable shed without a concrete pad, may cost him \$107. He stated that if there is an issue with impervious cover, he will turn the skids any direction the planning department wants him to. Mr. Lehman asked the Council to find out whether he needs a permit, second, he offered his time for open dialogue with the Planning Department. He said at \$107 he thinks there are people who have built their projects without the appropriate permits.

With no one else wishing to speak, and no objections to closing citizen comments, Mayor Mitchell closed citizen comments at 7:33 p.m.

## **V. Appointments**

5. Appoint nominee for position on City of Kyle Ethics Commission. ~ *Dex Ellison, Council Member*
  - Blair McMurray

Mayor Mitchell brought forward Item No. 5 for discussion and gave the floor to Council Member Ellison. He presented his nominee, Blair McMurray. Mayor Pro Tem Arabie left the dais at 7:34 p.m.

Council Member Tenorio moved to approve the appointment of Blair McMurray to the Ethics Commission. Council Member Fogley seconded the motion. All votes aye; motion carried 6-0. Mayor Pro Tem Arabie was absent for the vote.

6. Appoint nominee for position on City of Kyle Ethics Commission. ~ *Tracy Scheel, Council Member*
  - Lacy Goldberg

Mayor Mitchell brought forward Item No. 6 for discussion and gave the floor to Council Member Scheel. She presented her nominee, Lacy Goldberg.

Council Member Tenorio moved to approve the appointment of Lacy Goldberg to the Ethics Commission. Council Member Fogley seconded the motion. All votes aye; motion carried 6-0. Mayor Pro Tem Arabie was absent for the vote.

7. Appoint nominee for position on City of Kyle Ethics Commission. ~ *Alex Villalobos, Council Member*

- Marco Pizana

Mayor Mitchell brought forward Item No. 7 for discussion and gave the floor to Council Member Villalobos. He presented his nominee, Marco Pizana.

Council Member Tenorio moved to approve the appointment of Marco Pizana to the Ethics Commission. Council Member Fogley seconded the motion.

There was discussion on the motion. Council Member Ellison stated that each member has a right to appoint who they wish to the Ethics Commission. He stated that he has had conversations with Mr. Pizana, as his recent opponent for the Council election, and has found him to be of good character with a heart of service. Mr. Ellison stated that he would agree to Mr. Pizana's appointment to any City board, other than the Ethics Commission because of Mr. Pizana's recent run for office, and his intentions to run again. Mayor Mitchell stated that he agrees with Mr. Ellison. He echoed the sentiments of Mr. Pizana's character and commitment to the City, however, he stated that the Ethics Commission is designed to have members set apart from Council and City Staff because they are to be the arbiter of ethics and whether or not violations have occurred. For this one commission, Mayor Mitchell said, such ambition to serve on Council could create a conflict and a perception problem. He stated that while he personally believes Mr. Pizana would approach situations judiciously and ethically, the perception challenge has caused him difficulty. Council Member Tenorio called for the vote. Mayor Mitchell asked for a roll call vote. Mayor Pro Tem Arabie returned to the dais at 7:41 p.m.

Mayor Pro Tem Arabie voted nay; Council Member Villalobos voted aye; Council Member Ellison voted nay; Council Member Tenorio voted aye; Council Member Fogley voted nay; Council Member Scheel voted nay; and Mayor Mitchell voted nay. Motion failed 5-2.

8. Appoint nominee for position on City of Kyle Ethics Commission. ~ *Travis Mitchell, Mayor*

- Mike Rubsam

Mayor Mitchell brought forward Item No. 8 for discussion and presented his nominee, Mike Rubsam.

Mayor Mitchell moved to approve the appointment of Mike Rubsam to the Ethics Commission. Council Member Ellison seconded the motion. All votes aye; motion carried 7-0.

9. Consider Nomination for appointment to fill an unexpired term to the Planning and Zoning Commission. ~ *Howard J. Koontz, Director of Planning and Community Development*

- Paul Scheibmeir

Mayor Mitchell brought forward Item No. 9 for discussion. Mr. Koontz presented the item.

Council Member Tenorio moved to deny the appointment of Paul Scheibmeir to the Planning & Zoning Commission. The motion failed for lack of a second.

Mayor Mitchell moved to approve the appointment of Paul Scheibmeir to the Planning & Zoning Commission. Mayor Pro Tem Arabia seconded the motion. Motion carried 6-1 with Council Member Tenorio dissenting.

## **VI. Consent Agenda**

Mayor Mitchell asked if there were any items to be pulled from the Consent Agenda. Council Member Tenorio requested to pull Item No. 15. With no objections, Mayor Mitchell brought forward Item Nos. 10 – 14.

10. Declare (1) Mars Company stencil machine; (1) box bandoleer 6 magazine pouch; lot of electronic components associated with emergency warning and computer equipment, including but not limited to mounts, wiring, lights, computers, sirens; additional police vehicle equipment, including components of cages, push bumpers, center consoles with switch controllers, bicycle mount, weapon mounts, and cases as surplus property; and authorize the Chief of Police to sell these items through the internet public auction service in accordance with City procedures. ~ *Jeff Barnett, Chief of Police*
11. Approve contract Task Order No. 1 to HDR ENGINEERING, INC., Austin, Texas, in an amount not to exceed \$74,614.00 for the purpose of providing preliminary engineering services for evaluating and recommending an alignment for the Plum Creek Phase 3 Wastewater Interceptor Improvements. ~ *Leon Barba, P.E., City Engineer*
12. Approve contract Task Order No. 2 to HDR ENGINEERING, INC., Austin, Texas, in an amount not to exceed \$50,565.00 for the purpose of providing preliminary engineering services to define the scope of work required for proposed improvements at the existing FM 1626 Pump Station. ~ *Leon Barba, P.E., City Engineer*
13. A Resolution by the City of Kyle, Texas (“City”) suspending the effective date for ninety days in connection with the rate increase filing made on or about November 16, 2017 by CenterPoint Energy Resources Corporation, d/b/a, CenterPoint Energy Entex and CenterPoint Energy Texas Gas, for its South Texas Division; finding that the meeting complies with the open meetings act; making other findings and provisions related to the subject; and declaring an effective date. ~ *Jerry Hendrix, Chief of Staff*
14. Authorize award and execution of a Purchase Order to RDO EQUIPMENT COMPANY, Pflugerville, Texas in an amount not to exceed \$216,188.68 for the purchase of one (1) new John Deere 210GLC Excavator and various attachments through the Buy Board Purchasing Co-operative (Contract No. 515-16) for the Storm Drainage & Flood Risk Mitigation Utility in Public Works Department. ~ *Harper Wilder, Director of Public Works*

Council Member Tenorio moved to approve Consent Agenda Item Nos. 10 – 14. Council Member Fogley seconded the motion. All votes aye; motion carried 7-0.

15. (*First Reading*) An Ordinance of the City of Kyle, Texas, amending Code of Ordinances Article VI. Fireworks, Section 23-150 to allow City Code Enforcement Officers the authority

to issue citations for violations of the Fireworks Ordinance; providing an effective date; and providing for related matters. ~ *Jeff Barnett, Chief of Police*

Mayor Mitchell brought forward Item No. 15 for discussion and gave the floor to Council Member Tenorio who pulled the item. Council Member Tenorio stated she will pull all first readings for transparency and presentation for the citizens. Chief Barnett presented the item.

Council Member Tenorio moved to approve an Ordinance of the City of Kyle, Texas, amending Code of Ordinances Article VI. Fireworks, Section 23-150 to allow City Code Enforcement Officers the authority to issue citations for violations of the Fireworks Ordinance. Council Member Scheel seconded the motion.

There was discussion on the motion. Mayor Pro Tem Arabie asked whether the City has the ability to do this. Frank Garza stated yes, as a home rule city, Kyle has the power to do this, and there is no state law prohibiting this. Council Member Villalobos asked Chief Barnett what the policy will be when staff makes contact, whether a backup officer would be sent, and de-escalation training. Chief Barnett stated that Code Enforcement officers were moved under the Police Department a couple of years ago to streamline their services and provide oversight from officers with issuing citations and diffusing situation. He stated they currently issue citations daily for other code violations, and are accustomed to issuing citations. He stated that two days of the year where fireworks are a major concern and for those two evenings public education about the strict enforcement is a main priority. Chief Barnett continued that the police department, parks department and public works department all go out into the community to educate the public and enforce the fireworks ordinance. He said Code Enforcement will be backing up the police officers, as they already do and they are on the same radio channel, connected with the dispatchers, documentation is made on their activities, and have immediate access to law enforcement officers. Council Member Scheel stated her support for Chief Barnett in having more employees issuing citations and wanted to reiterate the no tolerance policy on the discharge of fireworks. Mayor Pro Tem Arabie stated that the staff has done a great job in enforcing the ordinance without conflict.

All votes aye; motion carried 7-0. Mayor Mitchell asked if there were any objections to having the ordinance finally passed. There were none.

## **VII. Consider and Possible Action**

16. Consider and possible action to approve a request for the CAMPO 2019-2022 Project Call.  
~ *J. Scott Sellers, City Manager*

- Center Street rail siding relocation \$14.9 million
- Burleson \$8.79 million
- Burleson St. – \$7.86M
- Burleson St. Extension (Flea Market Rd.) – \$0.93M
- Lehman \$8.01 million
- Kyle Crossing \$1.28 million
- Post Road \$2.5 million

Mayor Mitchell brought forward Item No. 16 for discussion. Mr. Sellers presented the item. Mayor Mitchell asked Perwez Moheet, Director of Finance, to speak on the financial impact and options if the City were to be chosen for CAMPO funds. Mr. Moheet presented on the item. Mr. Sellers continued his presentation. Council Member Ellison asked about the original time line for the road bonds. Leon Barba, City Engineer, spoke about the road bond time line plans. Mr. Sellers continued his presentation. Council Member Tenorio had a question related to an economic development project, related to this item.

Council Member Tenorio moved to convene into Executive Session related to Economic Development Negotiations Pursuant to Section 551.087. Council Member Villalobos seconded the motion. All votes aye; motion carried 7-0. The City Council convened into executive session at 8:42 p.m.

Mayor Mitchell moved to reconvene into Open Session. Mayor Pro Tem Arabie seconded the motion. All votes aye; motion carried 7-0. The City Council reconvened into open session at 8:46 p.m.

Mayor Pro Tem Arabie moved to approve a request for the CAMPO 2019-2022 Project Call to include Center Street rail siding relocation, Burleson Street, Lehman Road, Kyle Crossing, and Post Road. Council Member Fogley seconded the motion. All votes aye; motion carried 7-0.

17. Consider possible action to update the Transportation Master Plan to include the Center Street Railroad Siding Relocation. ~ *Leon Barba, P.E., City Engineer*

Mayor Mitchell brought forward Item No. 17 for discussion. Mr. Sellers presented the item.

Mayor Pro Tem Arabie moved to approve an update the Transportation Master Plan to include the Center Street Railroad Siding Relocation. Council Member Fogley seconded the motion.

There was discussion on the motion. Council Member Tenorio asked whether a formal committee has been convened related to this update. Mr. Sellers stated that while a formal committee has not been convened many conversations have taken place.

All votes aye; motion carried 7-0.

18. Presentation to council regarding wastewater treatment mechanical failure and status of repairs; and consider approval of emergency repairs to be completed by ALL-PUMP & EQUIPMENT COMPANY, Houston Texas, in an amount not to exceed \$ 125,000.00 including contingency at the City's wastewater treatment plant. ~ *Jason Biemer, Division Manager – Treatment Operations*

Mayor Mitchell brought forward Item No. 18 for discussion. Mr. Biemer presented the item.

Council Member Tenorio moved to approve emergency repairs to be completed by All-Pump & Equipment Company, Houston Texas, in an amount not to exceed \$ 125,000.00 including contingency at the City's wastewater treatment plant. Council Member Fogley seconded the motion.

There was discussion on the motion. Mayor Pro Tem Arabie asked how many staff Mr. Biemer has. Council Member Tenorio left the dais at 8:59 p.m. Mr. Biemer stated he has a lead operator, a standard operator, and an assistant operator, and the wastewater collections team has been supplementing their efforts with vector operations and other tasks. He stated that they are completing those operations with seven to nine people. Mr. Arabie complemented the quality personnel of the city. Mayor Mitchell asked whether modifications would void the warranty. Mr. Biemer stated no. Council Member Scheel asked whether there was any additional discharge. Mr. Biemer responded no there was no additional discharge, and that they are within permit. He said there are some clarity issues they are working through.

All votes aye; motion carried 6-0. Council Member Tenorio was absent for the vote.

19. [Tabled 11/21/2017] (*First Reading*) An Ordinance amending Chapter 53 (Zoning) of the City of Kyle, Texas, for the purpose of assigning original zoning to approximately 1.082 acres of land from Agriculture 'AG' to Retail Service District 'RS' for property located at 1049 Windy Hill Road and to assign original zoning to approximately 5.533 acres of land from Agriculture 'AG' to Multi-Family Residential-3 'R-3-3' for properties located at 1001, 1003 and 1049 Windy Hill Road, in Hays County, Texas. (Asifali Karowalia – Z-17-019) ~ *Howard J. Koontz, Director of Planning and Community Development*  
*Planning and Zoning Commission voted 4-2 to recommend approval for a more restrictive zoning district of R-3-2 and R/S, adjusting the R-3-2 district to 5.714 acres and reducing the R/S district to 0.901 acres.*

- Public Hearing

Mayor Mitchell brought forward Item No. 19 for discussion. Mr. Koontz presented the item. Council Member Tenorio returned to the dais at 9:01 p.m. Mr. Koontz stated that Council asked about previous vested rights, and turned over the presentation to City Attorney Frank Garza. Mr. Garza stated that the law provides that once a permit is applied for, the rules in place at the time are the rules that the property owner must comply with. He said that while there is no zoning in the county, the project would have been allowed, and therefore, it limits the City's ability to deny the zoning because they have the right to proceed with this project. Council Member Tenorio asked Mr. Sellers why the Windy Hill project wasn't added to the CAMPO funding item. He stated that Windy Hill scored lower on priority and is not shovel ready. He stated that the County is supportive of moving forward with a project for Windy Hill.

Council Member Tenorio moved approve to an Ordinance amending Chapter 53 (Zoning) of the City of Kyle, Texas, for the purpose of assigning original zoning to approximately 1.082 acres of land from Agriculture 'AG' to Retail Service District 'RS' for property located at 1049 Windy Hill Road and to assign original zoning to approximately 5.533 acres of land from Agriculture 'AG' to Multi-Family Residential-3 'R-3-3' for properties located at 1001, 1003 and 1049 Windy Hill Road, in Hays County, Texas.. Council Member Fogley seconded the motion. The public hearing had not yet been held. Council Member Tenorio withdrew her motion.

Mayor Mitchell opened the public hearing at 9:07 p.m.



Christopher Harrell was called to speak in opposition of the item. He stated that the County permit had been pulled, but no activity had taken place. The County permit would have expired in one year with no activity. He stated that the local entity, City of Kyle, could at its discretion, adopt more restrictive standards. Mr. Harrell stated that it seems strange that once the applicant found out about the annexation, he brought forward the County permits. He mentioned the traffic on Windy Hill, as well as its patchwork, and he asked how much faster will it deteriorate? He asked whether an environmental study been done for the gas station, and what kind of strain on wastewater the project will present. Mr. Harrell stated that when he moved into Meadows of Kyle, he moved in from an apartment complex. He said the behaviors are significantly different because there's no sense of ownership. He spoke about the quiet atmosphere that they currently enjoy and asked Council to deny the zoning change.

Cody DeSalvo spoke in opposition of the item. He stated that the zoning in the area is agriculture. He asked whether if a subdivision was proposed, how the Council would consider that. He stated it will take 10 – 15 years to get Windy Hill Road to where it needs to be, in which case there should be no more development along that road. Mr. DeSalvo stated that the applicant asked to be annexed to the City to gain access to City Services. He asked Council to consider the zoning in the area.

Todd Uhlman spoke in opposition of the item. He asked whether his previous comments on this item were included in the record, including comments made during citizen comments. Mayor Mitchell confirmed that his comments are included in the minutes. Mr. Uhlman stated that if the Council votes to approve this with the staff recommendation, the City could be at risk of litigation. If the Council votes to approve as the applicant has requested, then he said the Council's vote is moot anyway. Mr. Uhlman continued that if the Council denies the zoning, the City will be at risk of litigation. He asked whether the onus would be on the applicant to violate the code to build his project anyway and risk litigation against him by the city.

With no one else wishing to speak, and no objections to closing the public hearing, Mayor Mitchell closed the public hearing at 9:18 p.m.

Council Member Tenorio moved to deny an Ordinance amending Chapter 53 (Zoning) of the City of Kyle, Texas, for the purpose of assigning original zoning to approximately 1.082 acres of land from Agriculture 'AG' to Retail Service District 'RS' for property located at 1049 Windy Hill Road and to assign original zoning to approximately 5.533 acres of land from Agriculture 'AG' to Multi-Family Residential-3 'R-3-3' for properties located at 1001, 1003 and 1049 Windy Hill Road, in Hays County, Texas. Council Member Fogley seconded the motion.

There was discussion on the motion. Council Member Fogley stated for the record that he is not against high density development, but he thinks the City should be strategic in where high density development occurs. He is concerned with the traffic congestion, and the burden on wastewater infrastructure. He doesn't feel that high-density development is appropriate for this particular area. Council Member Ellison asked Mr. Garza to explain the legal ramifications brought forward by Mr. Uhlman. Mr. Garza advised Council that discussion would be more appropriate in executive session.

Council Member Tenorio withdrew her motion.

Council Member Tenorio moved to convene into Executive Session to seek the advice of the City Attorney pursuant to Section 551.071. Council Member Fogley seconded the motion. All votes aye; motion carried 7-0. The City Council convened into executive session at 9:21 p.m.

Mayor Mitchell moved to reconvene into Open Session. Council Member Tenorio seconded the motion. All votes aye; motion carried 7-0. The City Council reconvened into open session at 9:51 p.m. Mayor Mitchell announced that no action took place in Executive Session and no action would be taken now.

Mayor Mitchell moved to approve an Ordinance amending Chapter 53 (Zoning) of the City of Kyle, Texas, for the purpose of assigning original zoning to approximately 0.901 acres of land from Agriculture 'AG' to Retail Service District 'RS' for property located at 1049 Windy Hill Road and to assign original zoning to approximately 5.714 acres of land from Agriculture 'AG' to Multi-Family Residential-2 'R-3-2' for properties located at 1001, 1003 and 1049 Windy Hill Road, in Hays County, Texas. Mayor Pro Tem Arabie seconded the motion. Motion carried 6-1 with Council Member Tenorio dissenting.

### **VIII. City Manager's Report**

20. 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*

- Next Council Meeting January 2, 2018
- Downtown Lighting Contest
- Polar Bear Splash

Mayor Mitchell brought forward Item No. 20 for discussion. Mr. Sellers stated next meeting will be January 2, 2018, a day after the Polar Bear Splash, New Year's Day at 1:30 p.m. with the sign-up for that event online. He stated that the City is encouraging down town businesses to participate in a Christmas Lighting competition. Mr. Sellers stated there will be judging opportunities and an award given. No action was taken.

### **IX. Executive Session**

21. 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.
  - Legal advice regarding Creekside Village
2. Possible purchase, exchange, lease, or value of real estate pursuant to Section 551.072.
  - Burleson Road Right-of-Way Acquisition
3. Personnel matters pursuant to Section 551.074.
4. Economic Development negotiations pursuant to Section 551.087.

- Project Goldfish
- Project Caribbean Green
- Project Phoenix
- Project Cherry Red
- Project Just Peachy

Council Member Tenorio moved to convene into Executive Session. 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: pending or contemplated litigation or to seek the advice of the City Attorney pursuant to Section 551.071 - Legal advice regarding Creekside Village; possible purchase, exchange, lease, or value of real estate pursuant to Section 551.072 - Burleson Road Right-of-Way Acquisition; and Economic Development negotiations pursuant to Section 551.087 - Project Goldfish; Project Caribbean Green; Project Phoenix; Project Cherry Red; and Project Just Peachy. Council Member Villalobos seconded the motion. All votes aye; motion carried 7-0. The City Council convened into executive session at 9:55 p.m.

22. Take action on items discussed in Executive Session.

Mayor Mitchell moved to reconvene into Open Session. Council Member Tenorio seconded the motion. All votes aye; motion carried 7-0. The City Council reconvened into open session at 11:21 p.m. Mayor Mitchell announced that no action took place in Executive Session but action would be taken now.

Mayor Mitchell moved to approve an agreement between City of Kyle and Creekside Village with an amendment to Sec. 1.01 by striking the last paragraph. Mayor Pro Tem Arabie seconded the motion.

There was discussion on the motion. Council Member Tenorio asked for the developer to be given the opportunity to make a statement regarding the amendment to the agreement. Council Member Tenorio then asked the amendment to be explained to the developer. Mayor Mitchell stated that a sentence had been added by Mr. Tucker, and a response was added by the city, and the City wishes to strike both. He read the amendments as follows, "The City hereby agrees not to increase the fee amount in the future for the remainder of the project," and additionally, "If the owner amends the remainder of the project or any aspect of the project at Creekside Village, the owner may be required to pay additional city fees." Mr. Steve Tucker approached the podium and asked why the City is proposing to strike the paragraph. Mr. Sellers explained that Section 3 of the subdivision is already approved by staff and is before Council as the next item on the agenda. He said Section 4 is currently in the plan review process. He said the sentence says that the City will not increase any fees, with the intent of the agreement being to cap the fees at what has been anticipated. Mr. Sellers continued that Council's concern is that if during the review process before Section 4 is finally approved by Council, if the applicant brings back a change of the plat or project, it would potentially change the fees levied on the project. He said the language was meant to say that if the applicant makes a revision, then the City would have the ability to assess those fees. The applicant has stated that he will not make a revision, so the Council decided that if there will be no revisions,

that sentence need not be included. Mr. Tucker stated that if he is not making any changes, he doesn't want the City making any changes either.

Mayor Mitchell withdrew his motion.

Mayor Mitchell moved to approve an agreement between City of Kyle and Creekside Village as written in the copy handed to Mr. Sellers. Mayor Pro Tem Arabie seconded the motion. All votes aye; motion carried 7-0.

#### **X. Consider and Possible Action**

23. [Postponed 11/21/2017] A Resolution of the City Council of the City of Kyle, Texas accepting the Creekside Village Section 3 subdivision improvements; finding and determining that the meeting at which this Resolution is passed was noticed and is open to the Public as required by law. ~ *Leon Barba, P.E., City Engineer*

Mayor Mitchell brought forward Item No. 23 for discussion. Mr. Barba presented the item.

Council Member Tenorio moved to approve a Resolution of the City Council of the City of Kyle, Texas accepting the Creekside Village Section 3 subdivision improvements contingent on the execution of the fee agreement between City of Kyle & Creekside Village. Mayor Pro Tem Arabie seconded the motion. All votes aye; motion carried 7-0.

#### **XI. ADJOURN**

Council Member Tenorio moved to adjourn. Council Member Fogley seconded the motion. All votes aye; motion carried 7-0. With no further business to discuss, the City Council adjourned at 11:29 p.m.

Attest:

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Travis Mitchell, Mayor

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Jennifer A. Vetrano, City Secretary