

# City Council Meeting Minutes

The City Council of the City of Kyle, Texas met in Regular Session on January 16, 2018 at Kyle City Hall with the following persons present:

Mayor Travis Mitchell  
Mayor Pro Tem Shane Arabie  
Council Member Dex Ellison  
Council Member Tracy Scheel  
Council Member Alex Villalobos  
Council Member Damon Fogley  
Council Member Daphne Tenorio  
Scott Sellers, City Manager  
James Earp, Assistant City Manager  
Frank Garza, City Attorney  
Jennifer Vetrano, City Secretary  
Matt Dawson, IT Director  
Kerry Urbanowicz, PARD Director  
Howard Koontz, Community Dev Director  
James Plant, Police Officer

Irene Melendez  
Kelly Erb  
Tim Komacec  
Lila Knight

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

Mayor Mitchell called the meeting to order at 7:01 p.m. Mayor Mitchell asked the city secretary to call roll. Present were: Mayor Mitchell, Council Member Ellison, Council Member Scheel, Council Member Villalobos, Council Member Fogley and Council Member Tenorio. A quorum was present.

Mayor Mitchell stated that Mayor Pro Tem Arabie was present earlier, but had to return home for his computer. Mayor Pro Tem Arabie had texted that he was on his way.

## **II. Approval of Minutes**

1. City Council Meeting Minutes - January 2, 2018. ~ *Jennifer Vetrano, City Secretary*

Mayor Mitchell brought forward the minutes for discussion.

Council Member Tenorio moved to approve the minutes of the January 2, 2018 Regular Council Meeting. Council Member Fogley seconded the motion. All votes aye; motion carried 6-0. Mayor Pro Tem Arabie was absent.

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

Mayor Mitchell opened citizen comments at 7:02 p.m.

Irene Melendez was called to speak on behalf of the Chamber of Commerce Government Affairs Committee and Board of Directors. She thanked the City for its support of the Chamber luncheon and invited Council and the community to the luncheon next Tuesday, January 23 where the topic will be Kyle's Pie Capital of Texas initiative. She stated the Chamber wants to play a key role in its success.

Kelly Erb was called to speak as registered in favor of Item No. 10. She stated that she works for the Firehouse Animal Health Center in Kyle and they have been helping register pets for the City since April. She said they have registered between 50 and 70 pets per month, and have helped raise about \$2,500.00. Ms. Erb stated that she is also a Steeplechase resident and stated that her neighbors are very excited about the dog park. She said that Firehouse would like to contribute some pet waste stations to the dog park.

Mayor Pro Tem Arabie arrived at 7:04 p.m.

Tim Komacec was called to speak as President of the HOA at Waterleaf Falls. He stated that one of his goals was to make sure their residents felt validated and recognized and wanted to get more involved with the City. He spoke about the large population of veterans here. Mr. Komacec stated that there are flags on an overpass where he is from in New Jersey and he wanted to explore doing that here. Mayor Pro Tem Arabie informed Mr. Komacec of the City's plans for a veterans' memorial.

With no one else wishing to speak, and no objections to closing citizen comments, Mayor Mitchell closed citizen comments at 7:08 p.m.

#### **IV. Presentation**

2. Recognition of 2018 Citizens Police Academy Graduates. ~ *Jeff Barnett, Chief of Police*

Lisa Baranski	Shawna Gallegos	Margery Marshall	Jenny Ruiz
Laurie Bentle	Jenny Hayes	Monica Nunez	Frank Schultz
Sean Collins	James Hill	Kelsey Owens	Dawn Serna
Allen Deaver	Robert Housman	Robert Price	Marlene Stone
Joyce Davis-Woods	Jennifer Hutson	Ashley Procell	Kelsey Thorson
Kelly Ekwurzel	Rebecca Liles	Irene Ruiz	

3. Presentation by the Emerald Crown Trail Work Group on a proposed trail connecting Buda, Kyle and San Marcos to the Violet Crown Trail in Austin to the Purgatory Trail in southern Hays County. ~ *Kerry Urbanowicz, Director of Parks and Recreation*

Mayor Mitchell stated that in order to keep this meeting as short as possible, he will postpone Item Nos. 2 and 3 and bring them back at the next regular council meeting.

#### **V. Appointments**

4. Reconsideration of vote and possible action regarding appointment to board position 3 on the Alliance Regional Water Authority Board of Directors. ~ *Travis Mitchell, Mayor*

Mayor Mitchell brought forward Item No. 4 for discussion and he presented the item.

Mayor Mitchell moved to reconsider the vote regarding appointment to board position 3 on the Alliance Regional Water Authority Board of Directors. Council Member Ellison seconded the motion.

There was discussion on the motion. Council Member Tenorio stated that Mayor Pro Tem Arabie knew that this important item was on the agenda for the last meeting and could have made it here. She said in order to avoid all this, she would resign the water board position. Mayor Mitchell stated that Council would need to vote on the motion to reconsider.

Motion carried 6-1 with Council Member Tenorio dissenting.

Mayor Mitchell brought forward discussion regarding appointment to board position 3 on the Alliance Regional Water Authority Board of Directors and gave the floor to Mayor Pro Tem Arabie.

Mayor Pro Tem Arabie moved to appoint Mayor Mitchell to board position 3 on the Alliance Regional Water Authority Board of Directors. Council Member Ellison seconded the motion.

There was discussion on the motion. Council Member Tenorio stated that she sought diversity in her position on the board. She spoke about the demographics of the members of the board. She recommended that a person of a different race or gender be nominated to provide diversity.

Mayor Mitchell asked if there was further discussion and with none, he stated he would provide some clarifying remarks. Council Member Tenorio interjected, "Call for the vote," but she was not recognized. Mayor Mitchell stated that the position on the ARWA Board should be appointed to a person who will best represent the Council, with a collaborative mindset to advocate for the City's water position and best long-term interests.

Council Member Tenorio requested to be recognized. She stated that she is glad that Mayor Mitchell shared his qualifications of being here a whole five years, and his care for our great city. She said that she was so grateful that Kyle has Mayor Mitchell to lead because God knows no one else could do it. She then asked to "Call for the vote."

Council Member Ellison stated his support for Mayor Mitchell's appointment. He stated he agrees with Mayor Mitchell's reasons for bringing this item back. He spoke about respect on the dais, and a lack of maturity on the dais. Council Member Ellison mentioned the Council's rules of decorum and their ability to disagree, but asked that it be done respectfully and without interruption. He stated that Mayor Mitchell is at the beginning of a three-year term, was elected at large, and will have the best opinion to the ARWA board representing this body. He asked for Council to proceed with respect moving forward.

Council Member Tenorio stated that there are no other mayors on this board. She stated that Kyle is represented by three positions, one being Mayor Pro Tem Arabie. She alleged that his house will be on the market this summer and she suggested that Mayor Pro Tem Arabie's seat could have been resigned to allow Mayor Mitchell to be appointed to the board. She stated that Mr. Earp is part of the board by being an employee of the City. Council Member Tenorio stated that diversity is needed. She spoke about personal attacks on the dais over the last three years. She said that when a person is elected by Council, that decision should stand. Council Member Tenorio spoke about her 25 years of financial experience in non-profits as it relates to the \$60 million of debt coming to Kyle. She called for the vote.

Mayor Pro Tem Arabie stated that he did not know that his house will be on the market. He stated that personal attacks are inappropriate and unprofessional and Council Member Tenorio's record of personal attacks on the members of Council are out there. He stated that this is the most important board that the City has, and it is responsible for our area having the most water available for the growth the region is experiencing in the state of Texas due to the planning that took place years ago by this board. Mayor Pro Tem Arabie stated that Council Member Tenorio's dissent to items previously related to this board, shows that she should not be a part of this board. He stated that the majority of the Council does not believe in her view and the fact that Council Member Tenorio resigned before the discussion without fighting for her seat shows that she should not be part of it.

Mayor Pro Tem Arabie called for the question. Mayor Mitchell seconded the motion.

There was discussion on the motion. Mayor Mitchell stated that the motion is undebatable and requires a 2/3 majority vote.

Mayor Mitchell requested a roll call vote. Council Member Tenorio voted nay; Council Member Scheel voted aye; Council Member Villalobos voted aye; Council Member Fogley voted aye; Mayor Mitchell voted aye; Mayor Pro Tem Arabie voted aye; and Council Member Ellison voted aye. Motion carried 6-1.

After Council voted on calling the question, Mayor Mitchell requested a roll call vote for the motion to approve the appointment of the Mayor to place 3 of the ARWA Board.

Council Member Fogley voted aye; Mayor Pro Tem Arabie voted aye; Council Member Tenorio voted nay; Council Member Ellison voted aye; Council Member Villalobos voted aye; Mayor Mitchell voted aye; and Council Member Scheel voted aye. Motion carried 6-1.

## **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. 7. With no objections, Mayor Mitchell brought forward Item Nos. 5 and 6.

5. *(Second Reading)* An Ordinance of the City of Kyle, Texas authorizing and directing the installation and erection of speed control signs for the zoning of traffic and rate of speed on Kohlers Crossing in the city limits of the City of Kyle; affirming the definition of speeding and fixing a penalty therefor; repealing any ordinance or resolution in conflict; providing a severability clause; and providing an effective date. ~ *Leon Barba, P.E., City Engineer*

*City Council voted 6-0 to approve on First Reading.*

6. A Resolution by the City Council of the City of Kyle, Texas to approve and adopt the 2018 Hays County, Texas Hazard Mitigation Plan; finding and determining that the meeting at which this Resolution is passed was noticed and is open to the public as required by law. ~ *Kathy Roecker, Stormwater Management Plan Administrator*

Council Member Fogley moved to approve Consent Agenda Item Nos. 5 and 6. Council Member Villalobos seconded the motion.

There was discussion on the motion. Mayor Pro Tem Arabie stated that the City's Stormwater Management Plan Administrator has done a fantastic job and he is happy to see Item No. 6 move forward.

All votes aye; motion carried 7-0.

7. Authorize the City Manager to reimburse YARRINGTON ROAD MATERIALS in an amount not to exceed \$34,266.00 for the cost of design, fabrication, and installation of a decorative pole cover with back-lit City logo to be installed on a billboard as part of the budgeted Kyle beautification project. ~ *J. Scott Sellers, City Manager*

Mayor Mitchell brought forward Item No. 7. Council Member Tenorio asked the funding source for this item. Mr. Sellers presented the item.

Council Member Tenorio moved to authorize the City Manager to reimburse Yarrington Road Materials in an amount not to exceed \$34,266.00 for the cost of design, fabrication, and installation of a decorative pole cover with back-lit City logo to be installed on a billboard as part of the budgeted Kyle beautification project with a stipulation that all funding coming from Hotel Occupancy Funds. Council Member Fogley seconded the motion. All votes aye; motion carried 7-0.

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

8. *(Second Reading)* An Ordinance amending Section 41-134 to add the Residential Neighborhood Style Guide to the city's subdivision regulations. ~ *Howard J. Koontz, Director of Planning and Community Development*

*City Council voted 5-1 to approve on First Reading.*

Mayor Mitchell brought forward Item No. 8 for discussion. Mr. Koontz made himself available for questions.

Council Member Tenorio moved to deny an Ordinance amending Section 41-134 to add the Residential Neighborhood Style Guide to the city's subdivision regulations. Motion died for lack of second.

Council Member Ellison moved to approve an Ordinance amending Section 41-134 to add the Residential Neighborhood Style Guide to the city's subdivision regulations. Council Member Fogley seconded the motion. Motion carried 6-1, with Council Member Tenorio dissenting.

9. Authorize award and execution of a Purchase Order to T.F. HARPER & ASSOCIATES, LP, Austin, Texas, selected through the BuyBoard Purchasing Cooperative, in an amount not to exceed \$49,895.00 for the construction of Steeplechase Dog Park Phase I. ~ *Kerry Urbanowicz, Director of Parks and Recreation*

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

Council Member Fogley moved to authorize award and execution of a Purchase Order to T.F. Harper & Associates, LP, Austin, Texas, selected through the BuyBoard Purchasing Cooperative, in an amount not to exceed \$49,895.00 for the construction of Steeplechase Dog Park Phase I. Council Member Villalobos seconded the motion. All votes aye; motion carried 7-0.

10. *(First Reading)* An Ordinance of the City of Kyle, Texas, amending the City of Kyle, Texas, Code of Ordinance; amending Part II, Chapter 26, Article IV, Section 26-80 Definitions to add Dog Park and Section 26-84 Park Rules, to amend Animals in Parks; providing for repeal of conflicting ordinances; providing for an effective date and an Open Meetings Clause; and providing for related matters. ~ *Kerry Urbanowicz, Director of Parks and Recreation*

Mayor Mitchell brought forward Item No. 10 for discussion. Mr. Urbanowicz presented the item.

Council Member Tenorio moved to approve an Ordinance of the City of Kyle, Texas, amending the City of Kyle, Texas, Code of Ordinance; amending Part II, Chapter 26, Article IV, Section 26-80 Definitions to add Dog Park and Section 26-84 Park Rules, to amend Animals in Parks; providing for repeal of conflicting ordinances; providing for an effective date and an Open Meetings Clause; and providing for related matters. Council Member Fogley seconded the motion.

There was discussion on the motion. Mayor Mitchell asked City Attorney Frank Garza whether the dog park rules are good from a legal standpoint. Mr. Garza stated that the rules were well-written and clearly understood.

All votes aye; motion carried 7-0.

Mayor Mitchell asked whether there were any objections to having the ordinance finally passed. There were none.

11. *(First Reading)* An Ordinance of the City of Kyle, Texas, amending Sec. 53-994 “Screening.”, of Chapter 53 “Zoning”, of the City of Kyle Code of Ordinances, by creating new definitions, clarifying approved techniques, establishing maximum heights, requiring proper maintenance, and creating exemptions for fences erected on both residential and non-residential lots inside Kyle’s corporate limits. ~ *Howard J. Koontz, Director of Planning and Community Development*

*Planning and Zoning Commission voted 7-0 to recommend approval with the conditions outlined in the staff memo.*

- Public Hearing

Mayor Mitchell brought forward Item No. 11 for discussion. Mr. Koontz presented the item.

Mayor Mitchell opened the public hearing at 7:57 p.m.

Lila Knight stated that while she had been sick at last week's Planning & Zoning Commission meeting, she submitted comments that were read into the record. She said still she has many questions and concerns about this ordinance and the ordinance confuses her. Ms. Knight stated that generally historic district fencing is 4-feet and she recommended a change from 3 feet to 4 feet. She mentioned that the City passed an ordinance for a Historic Preservation, although it was never implemented. She said that in 1994 the County Historical Commission they did a historical resources survey, which included a survey of every building that was 50 years of age or older. She stated the City has a good inventory of all of the historic aged houses in town.

With no one else wishing to speak, and no objections to closing the public hearing, Mayor Mitchell closed the public hearing at 8:00 p.m.

Council Member Tenorio moved to deny an Ordinance of the City of Kyle, Texas, amending Sec. 53-994 "Screening.", of Chapter 53 "Zoning", of the City of Kyle Code of Ordinances, by creating new definitions, clarifying approved techniques, establishing maximum heights, requiring proper maintenance, and creating exemptions for fences erected on both residential and nonresidential lots inside Kyle's corporate limits. Motion died for lack of second.

Mayor Pro Tem Arabie moved to approve an Ordinance of the City of Kyle, Texas, amending Sec. 53-994 "Screening.", of Chapter 53 "Zoning", of the City of Kyle Code of Ordinances, by creating new definitions, clarifying approved techniques, establishing maximum heights, requiring proper maintenance, and creating exemptions for fences erected on both residential and nonresidential lots inside Kyle's corporate limits, with the amendments of the Planning & Zoning Commission and striking the words "and one-half" from item (3)b. Mayor Mitchell seconded the motion.

There was discussion on the motion. Mayor Pro Tem Arabie stated that this is a good opportunity for the education of all our citizens on code enforcement practices, and is an education point for our code enforcement to uniformly apply our code across the City. Mayor Mitchell asked Mr. Koontz to address Council Member Scheel's scenario with uneven ground, hills, higher roads, etc. where a six-foot fence doesn't cover the line of sight. Mr. Koontz stated that in that case he would recommend a vegetative or green installation which doesn't have a limit. He continued that there isn't currently a provision outside of (3)b sensitive uses and ability to go up to 10 feet, 20% or more on either side of the slope. Mayor asked whether a situation like that would be able to request a variance like the historic district, and Mr. Koontz responded affirmatively. Mr. Koontz stated that he pulled the fees from the city's website and they are \$428.06 plus \$3.62 per acre. Council Member Villalobos stated that when the fee becomes a hardship that Council is creating that hardship. He stated that since we don't have too many of those locations that are within a Historic District, Council should consider the issue before they approve the ordinance as is. Mayor Mitchell asked Council Member Villalobos whether it would be more appropriate to take look at the fee schedule than to insert text into this ordinance. Mayor Pro Tem Arabie asked Mr. Koontz if a property has a fence currently that has been there for 50 years, and they repair the fence and put it back up, would that require a variance. Mr. Koontz stated that if a historic property replaced their fence with the same material, same design, just new materials, then no variance would be needed. He gave an example that if they went from wrought iron to wood, then a variance would need to be sought. Council Member Ellison asked whether any of Council took issue with the subjectivity of adding, "All fences must be maintained in good repair at all times." Mr. Koontz stated this

particular sentence was inserted to include the concept of the international property maintenance code that if something exists on your property it needs to be maintained in good repair. He said it cannot be derelict, falling down, or malfunctioning. Council Member Tenorio stated her opposition to this ordinance. She asked on a shared fence line, who would receive the citation. Council Member Villalobos stated that he believes the ordinance is written, rather than being subjective, to allow discretion. He stated that education will allow city staff to appropriately use discretion in the best interest of the city.

Motion carried 6-1, with Council Member Tenorio dissenting.

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

12. 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 Retreat Date

Mr. Sellers announced possible Budget Retreat Dates as Saturday, March 24, 2018 and Saturday, July 28, 2018 beginning at 8:00 a.m. He stated that Jason Biemer wasn't able to attend this meeting, but the center well is partially fixed, with the primary drive back online. Mr. Sellers stated that the weather is making the oxygen levels take a little longer to balance. He gave kudos to staff for brainstorming not only a fix, but an interim fix to keep the plant operating and in compliance with TCEQ. Mr. Sellers also announced that Mayor Mitchell will be representing Kyle at the Mayor's Conference this year. Mayor Pro Tem Arabie asked Mr. Sellers to thank the staff at the wastewater treatment plant for their effort and time in keeping the plant in compliance.

### **IX. Executive Session**

13. 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.
    - Crosswinds Water/Wastewater Agreement
    - Jesse Espinoza Lawsuit
  2. Possible purchase, exchange, lease, or value of real estate pursuant to Section 551.072.
    - Right-of-way Acquisition
  3. Personnel matters pursuant to Section 551.074.
    - Deliberate the selection process for appointment of the City Attorney
    - Deliberate the selection process for appointment of the Ethics Commission Legal Counsel Selection Process
  4. Economic Development negotiations pursuant to Section 551.087.
    - Project Ollie

Mayor Mitchell brought forward Executive Session. Council Member Tenorio stated that she had two issues with the agenda. She read a portion of the Open Meetings Act and stated that because



the agenda did not specify that Council would be interviewing candidates for the City Attorney position, she would not deliberate on the item. She also read a portion of the City's Charter regarding the appointment of the legal counsel to the Ethics Commission and stated that she would not participate on that item.

Council Member Tenorio moved to convene into Executive Session pursuant to pending or contemplated litigation or to seek the advice of the City Attorney pursuant to Section 551.071 - Crosswinds Water/Wastewater Agreement and Jesse Espinoza Lawsuit; possible purchase, exchange, lease, or value of real estate pursuant to Section 551.072 - Right-of-way Acquisition; personnel matters pursuant to Section 551.074 - Deliberate the selection process for appointment of the City Attorney and Deliberate the selection process for appointment of the Ethics Commission Legal Counsel Selection Process; and Economic Development negotiations pursuant to Section 551.087 - Project Ollie. Mayor Pro Tem Arabie seconded the motion.

There was discussion on the motion. City Attorney Frank Garza stated that it is his opinion that the selection process is encompassing of interviews, and would not be prohibitive by the Open Meetings Act.

All votes aye; motion carried 7-0.

The City Council convened into executive session at 8:35 p.m. Council Member Tenorio left the meeting while Council was convened in executive session at 9:26 p.m.

14. Take action on items discussed in Executive Session.

Mayor Mitchell moved to reconvene into Open Session. Council Member Fogley seconded the motion. All votes aye; motion carried 6-0. Council Member Tenorio was absent.

The City Council reconvened into open session at 12:45 a.m. on January 17, 2018. Mayor Mitchell announced that no action took place in Executive Session and no action would be taken now.

**X. ADJOURN**

Council Member Fogley moved to adjourn. Mayor Pro Tem Arabie seconded the motion. All votes aye; motion carried 6-0. Council Member Tenorio was absent.

With no further business to discuss, the City Council adjourned at 12:45 a.m. on January 17, 2018.

Attest:

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Travis Mitchell, Mayor

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Jennifer A. Vetrano, City Secretary