

City Council Meeting Minutes

The City Council of the City of Kyle, Texas met in Regular Session on February 6, 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
Scott Sellers, City Manager
James Earp, Assistant City Manager
Frank Garza, City Attorney
Paige Saenz, Knight Law Firm
Jerry Hendrix, Chief of Staff
Leon Barba, City Engineer
Diana Torres, Economic Dev Director
Perwez Moheet, Finance Director
Kayleigh Soukup, IT Technician
Kerry Urbanowicz, PARD Director
Howard Koontz, Community Dev Director
Jeff Barnett, Chief of Police
Dan Pruett, Police Officer
James Plant, Police Officer

Jeremiah Jordan
Lila Knight
Lori Rangel
Robert Ferguson
Alison Southern Ullom
David Glenn
Rose Lucio
Gene Lucio
Mark Taylor

I. Call Meeting to Order

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

Mayor Mitchell stated that Council Member Fogley had sent a text saying he was about five minutes away. Mayor Mitchell stated that Council Member Tenorio reached out to City Manager Scott Sellers stating that she would not be able to attend due to illness.

Mayor Mitchell moved to excuse Council Member Tenorio's absence due to illness. Council Member Scheel seconded the motion. All votes aye; motion carried 5-0.

Mayor Mitchell stated that before the Council meeting on January 23, Council Member Villalobos informed him that he would be unable to make it; however, Mayor Mitchell stated it was early in the morning when he received the text and he forgot.

Mayor Mitchell moved to excuse Council Member Villalobos absence from the January 23 council meeting. Mayor Pro Tem Arabie seconded the motion. All votes aye; motion carried 5-0.

II. Citizen Comment Period with City Council

Mayor Mitchell opened citizen comments at 7:03 p.m.

Jeremiah Jordan was called to speak as registered in opposition of Item No. 12. He stated that he moved here from Austin for a private retreat. He stated with the hills, the line of site with a six foot fence doesn't allow for privacy. He stated that neighbors' security cameras, of which he supports their right, do not allow privacy either. Mr. Jordan also said that people can easily jump over a six-foot fence. He also mentioned an experience with a peeping Tom. He is supportive of eight foot fences. Mr. Jordan closed with the following questions for council: what are the benefits of a six-foot fence, and what kind of means for a variance could the Council offer for those seeking an eight-foot fence, and what options are available for grandfathering.

Council Member Fogley arrived at 7:05 p.m.

Lila Knight was called to speak regarding Agenda Item Nos. 7 and 18. She stated that the Council will hear a presentation on the Emerald Crown Trail, which she described as very ambitious, to link the Hays County trail system with the Violet Crown Trail in Austin. She stated the purpose of the Violet Crown Trail is water quality, while the Emerald Crown Trail's primary purpose is transportation. She stated that according to CAMPO the cost to construct the trail is approximately 1.7 million dollars per mile. Ms. Knight continued, that the map in the paper shows routes across private property and while the group has stated they do not intend to invoke eminent domain, they have never contacted the landowners before releasing that map to the press. She stated that planning in advance is always good, which is why she wonders why the City of Kyle still lacks an annexation plan, which was a recommendation of the 2010 Comprehensive Plan. She asked that Council make an annexation plan a priority.

Lori Rangel registered her opposition to Item 12, but did not wish to testify.

Robert Ferguson was called to speak as registered on behalf of himself and residents of Britni Loop. He spoke about the planned dog park at Steeplechase Park, within 70 feet of his front door. He stated Mr. Urbanowicz told him that a survey had been done 10 years ago and one year ago, but he has no records on file of the results of the survey. He stated that Mr. Urbanowicz told him that a purchase order has been issued and there is digging equipment on site today. He said that the city engineer showed the dog park being located near some shade trees on the other side of Steeplechase Park. Mr. Ferguson stated that in an independent survey of all his neighbors, he found that the public has not had an opportunity to provide input on this plan. He stated that his poll of all his neighbors resulted in no one wanting the dog park, citing issues with noise, odor, loss of view of the park, and property value decrease. He stated that the residents on Britni Loop will sign a petition to stop this. Mr. Ferguson requested Council release the purchase order and put the project on hold. He stated that the chain link fence reduces the view, disturbs the quiet, and is unacceptable. He asked Council to relocate the park.

Alison Southern Ullom was called to speak. She lives in Hometown Kyle, works for Sky Realty, and is a member of the Kyle Area Chamber of Commerce. She thanked the elected officials for

their devotion and service to the community. She invited Council to join Chamber in voting on February 27 to support the community's businesses.

David Glenn who spoke in support of Item No. 13, as the Director of Governmental Affairs for the Home Builders' Association of Greater Austin. He stated that the item gives the City more authority and control over its easements. He stated that current projects under construction continue to move forward, and he requests the Council vote favorably.

Rose Lucio who opposed changing the height of the fence to be considered in Item No. 12. She stated that on Bailey Loop, her back yard faces the steel company. She said starting at 5:30 a.m. you will hear the pounding of steel. She then spoke about the two lane road turning to a four lane road without anyone's consent that has affected noise and pollution. The addition of a beautiful sidewalk has increased walking traffic, noise, and trash. Ms. Lucio stated that people have thrown rocks over her fence. She continued that their 8-foot fence acts not just for protection, but as a sound barrier, stating the steel businesses behind has expanded. She invited Council to come by her house at 5:30 a.m. to hear the noise and asked Council to consider grandfathering in their 8 foot fence.

Gene Lucio spoke regarding Item No. 12. He stated when they began building their fence, they asked about exemptions to the code and were told that only pollution would provide them a waiver. He spoke of the noise pollution right across from their yard, saying that they are woken up early, even on Saturdays due to the noise. He asked Council for leniency and mercy. Mr. Lucio asked whether someone from the City would go to the company and ask them to put up a sound barrier. He stated that they are glad for the success of the company and the growth in Kyle. He asked to be able to keep their fence until a sound barrier could be established by the business. He asked Council to consider all these things and to direct them on how to go about getting a sound barrier from the company, or to provide time and leniency to take down their fence, or to accept the noise pollution as a reason for a waiver.

With no one else wishing to speak, and no objections to closing citizen comments, Mayor Mitchell closed citizen comments at 7:21 p.m.

III. Executive Session

1. 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. Personnel matters pursuant to Section 551.074.
 - Deliberate the selection process for appointment of the City Attorney
 - Deliberate the transition of City Attorney pending item

Mayor Mitchell moved to convene into executive session pursuant to personnel matters pursuant to Section 551.074 - deliberate the selection process for appointment of the City Attorney; and

deliberate the transition of City Attorney pending items. Council Member Fogley seconded the motion. All votes aye; motion carried 6-0.

The City Council convened into executive session at 7:23 p.m.

2. Take action on items discussed in Executive Session.

Mayor Mitchell moved to reconvene into open session. Council Member Fogley seconded the motion. Motion carried 6-0.

The City Council reconvened into open session at 7:43 p.m. Mayor Mitchell announced that no action took place in Executive Session but action would be taken now.

Mayor Mitchell moved to accept the engagement letter for the Knight Law Firm. Council Member Scheel seconded the motion. All votes aye; motion carried 6-0.

City Attorney Frank Garza thanked the Mayor and Council for the last nearly 8 years of working with the City. He stated that tonight's action gives 30 days' notice of termination of the agreement with his firm. He stated that his firm will continue working with City's staff and officials along with Knight Law Firm to ensure nothing is left undone. Mr. Garza said he's worked with three mayors, countless council members, countless department heads, and two city managers and that it has been a pleasure seeing the City grow. He said the issues facing Kyle have been challenging issues and many times rewarding.

IV. Approval of Minutes

3. City Council Meeting Minutes - January 16, 2018. ~ *Jennifer Vetrano, City Secretary*

4. City Council Special Meeting Minutes - January 23, 2018. ~ *Jennifer Vetrano, City Secretary*

Mayor Mitchell brought forward the minutes for discussion.

Council Member Fogley moved to approve the minutes of the January 16, 2018 Council Meeting and the minutes of the January 23, 2018 Special Council Meeting. Council Member Villalobos seconded the motion. All votes aye; motion carried 6-0.

V. Presentation

5. Dating Violence Awareness Month Proclamation. ~ *Travis Mitchell, Mayor*

Mayor Mitchell brought forward Item No. 5 for discussion and gave the floor to Council Member Scheel who presented the proclamation. No action was taken.

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

Lisa Baranski
Laurie Bentle

Shawna Gallegos
Jenny Hayes

Margery Marshall
Monica Nunez

Jenny Ruiz
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	

Mayor Mitchell brought forward Item No. 6 for discussion. Chief Barnett presented the item. Officer Pruett spoke about this having been the largest class and several had perfect attendance. Five people from Orchard Park, a local business, went through the program. He stated that tonight only nine of twenty-two could come tonight. Some are sick and some are out of the country. Officer Plant stated that the age range was 18 - 81 for the participants in this class. He said this program is to show what the Kyle Police Department does and why they do it. No action was taken.

7. 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 brought forward Item No. 7 for discussion. Mr. Urbanowicz gave a brief overview about the City's trail history. He then introduced Sherwood Bishop in the audience, and Mark Taylor who presented the item. Mayor Pro Tem Arabia asked Mr. Taylor what the organization would ask of the City. Mr. Taylor stated that Mr. Urbanowicz has been helping them with questions they've had, and six months from now they could possibly be requesting funding for preparations for a concept plan. He said they will not come back unless they have substantial public buy-in. He encouraged Council to listen for support and for opposition in the community. No action was taken.

VI. Consent Agenda

Mayor Mitchell asked if there were any items to be pulled from the Consent Agenda. Council Member Scheel requested to ask a question about Item No. 10. She asked Chief Barnett to explain the duties of the Victims Services Coordinator. Chief Barnett provided an overview including domestic violence, sexual assault, dating violence, victims of violent crime and assist police officers with death notifications for crime-related and accidental deaths. He stated that recently, a presentation was given by the Victims Services Coordinator, Kelly Sheridan who is a joint-founder of the CISM team who serves our local first responders. He said they help victims of crime through the criminal justice system.

8. Approve Change Order No. 13 to AARON CONCRETE CONTRACTOR, LP, Austin, Texas in an amount not to exceed \$26,892.91 for the purpose of finalizing all the work quantity amounts and closing the construction contract for the Bunton Creek Road reconstruction project, for a total contract amount of \$4,737,011.23. ~ *Leon Barba, P.E., City Engineer*
9. Park at Plum Creek - Site Plan (SD-17-018) 3.60 acres; 3 commercial buildings located at the southwest corner of Kohler's Crossing and Cromwell Drive. ~ *Howard J. Koontz, Director of Planning and Community Development*

Planning and Zoning Commission voted 7-0 to approve.

10. Consider and possible action to approve a Resolution of the City Council of the City of Kyle, Texas, authorizing the submission of a two year grant application to the Office of the Governor, General Victim Assistance Direct Services Program; and authorize applicable matching funds from the Police Department's approved operating budget for FY 2019, to continue to fund the Police Department's full-time Victim's Coordinator position; authorizing the City Manager to apply for, accept, reject, alter or terminate the grant on behalf of the City Council; finding and determining that the meeting at which the resolution is passed is open to the public as required by law; providing for an effective date; and making such other findings and provisions related hereto. ~ *Jeff Barnett, Chief of Police*
11. Approve contract Task Order No. 1 to LJA ENGINEERING, INC., Austin, Texas, in an amount not to exceed \$31,476.25 for the purpose of providing surveying services for the Bunton Creek Interceptor Phase 3.1 and 3.2 Project. ~ *Leon Barba, P.E., City Engineer*

Council Member Scheel moved to Consent Agenda Item Nos. 8, 9, 10, and 11 Council Member Fogley seconded the motion. All votes aye; motion carried 6-0.

VII. Consider and Possible Action

12. (Second 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.

City Council voted 6-1 to approve the ordinance.

Mayor Mitchell brought forward Item No. 12 for discussion. Mr. Koontz presented the item.

Council Member Fogley 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. Council Member Villalobos seconded the motion. All votes aye; motion carried 6-0.

13. (First Reading) An Ordinance of the City of Kyle, Texas, amending Sec. 41-1 "Definitions" and 41-141 "Utility Easements", of Chapter 41 "Subdivisions", of the City of Kyle Code of Ordinances, by amending current definitions, clarifying approved techniques, establishing city authority, and requiring proper approvals, for the creation of utility easements on both residential and non-residential lots inside Kyle's corporate limits. ~ *Howard J. Koontz, Director of Planning and Community Development*

Mayor Mitchell brought forward Item No. 13 for discussion. Mr. Koontz presented the item.

Council Member Fogley moved to approve an ordinance of the City of Kyle, Texas, amending Sec. 41-1 “Definitions” and 41-141 “Utility Easements”, of Chapter 41 “Subdivisions”, of the City of Kyle Code of Ordinances, by amending current definitions, clarifying approved techniques, establishing city authority, and requiring proper approvals, for the creation of utility easements on both residential and non-residential lots inside Kyle’s corporate limits. Mayor Pro Tem Arabia seconded the motion.

There was discussion on the motion. Mayor Mitchell stated that he is always in favor of the city being able to take on easements and make concessions where appropriate.

All votes aye; motion carried 6-0.

14. (First Reading) An Ordinance of the City of Kyle, Texas, Annexing approximately 17.19 acres of land located at 1001 S. Sledge Street, in Hays County, Texas all of which are lying within the City's Extraterritorial Jurisdiction and to incorporate such property into the City of Kyle, as shown in the attached exhibit; making findings of fact; providing a severability clause; providing an effective date; and providing for open meetings and other related matters.
~ Howard J. Koontz, Director of Planning and Community Development

- Public Hearing

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

Mayor Mitchell opened the public hearing at 8:40 p.m.

Lila Knight stated that she doesn't have an opinion based on the annexation being voluntary, but she said, the City of Kyle needs an annexation plan. She asked Council to make it a priority.

With no one else wishing to speak, and no objections to closing the public hearing, Mayor Mitchell closed the public hearing at 8:41 p.m.

Council Member Fogley moved to approve an ordinance of the City of Kyle, Texas, Annexing approximately 17.19 acres of land located at 1001 S. Sledge Street, in Hays County, Texas all of which are lying within the City's Extraterritorial Jurisdiction and to incorporate such property into the City of Kyle, as shown in the attached exhibit; making findings of fact; providing a severability clause; providing an effective date; and providing for open meetings and other related matters. Council Member Villalobos seconded the motion. All votes aye; motion carried 6-0.

15. (First Reading) An Ordinance of the City of Kyle, Texas, Annexing approximately 1.12 acres of land located at 503 N. Old Stagecoach Road, in Hays County, Texas all of which are lying within the City's Extraterritorial Jurisdiction and to incorporate such property into the City of Kyle, as shown in the attached exhibit; making findings of fact; providing a severability clause; providing an effective date; and providing for open meetings and other related matters.
~ Howard J. Koontz, Director of Planning and Community Development

- Public Hearing

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

Mayor Mitchell opened the public hearing at 8:44 p.m.

Lila Knight stated that the City of Kyle really needs an annexation plan.

With no one else wishing to speak, and no objections to closing the public hearing, Mayor Mitchell closed the public hearing at 8:44 p.m.

Council Member Scheel moved to approve an ordinance of the City of Kyle, Texas, Annexing approximately 1.12 acres of land located at 503 N. Old Stagecoach Road, in Hays County, Texas all of which are lying within the City's Extraterritorial Jurisdiction and to incorporate such property into the City of Kyle, as shown in the attached exhibit; making findings of fact; providing a severability clause; providing an effective date; and providing for open meetings and other related matters. Council Member Fogley seconded the motion. All votes aye; motion carried 6-0.

16. Consider a request by James Ingalls, agent for three (3) waivers from the minimum standards provided by Section 41-82 (Rural Subdivision Standards) for Windy Hill North Subdivision located on FM 2001, approximately 500 feet north of Windy Hill Road. (SUB-18-0017) ~ *Howard J. Koontz, Director of Planning and Community Development*

- Allow 50' Right of Way vs. 60' Right of Way
- Allow less than minimum 1 acre lots
- Allow less than 130' of street frontage

Mayor Mitchell brought forward Item No. 16 for discussion. Mr. Koontz stated that the applicant requested postponement for this issue.

Mayor Mitchell moved to postpone three (3) waivers from the minimum standards provided by Section 41-82 (Rural Subdivision Standards) for Windy Hill North Subdivision located on FM 2001, approximately 500 feet north of Windy Hill Road until February 20, 2018. Council Member Fogley seconded the motion. All votes aye; motion carried 6-0.

17. (First Reading) An Ordinance of the City of Kyle, Texas amending Section 2-50 of the Code of Ordinances to provide one additional ex officio seat; providing an effective date; and making such other findings and provisions related hereto. ~ *Diana Torres, Director of Economic Development*

Mayor Mitchell brought forward Item No. 17 for discussion. Ms. Torres presented the item.

Council Member Fogley moved to approve an ordinance of the City of Kyle, Texas amending Section 2-50 of the Code of Ordinances to provide one additional ex officio seat; providing an effective date; and making such other findings and provisions related hereto. Council Member Villalobos seconded the motion.

There was discussion on the motion. Mayor Mitchell asked City Attorney Frank Garza about the fact that this ordinance affects all boards, not just the ED&T Board. He asked whether Planning & Zoning Commission could have an ex officio. Mr. Garza stated no, because Planning & Zoning Commission membership is set by charter. He provided other examples such as Board of Adjustment which is governed by state law, stating that ex officios could not be appointed.

All votes aye; motion carried 6-0.

18. Consider and possible action to direct Planning & Zoning Commission to gather public input and conduct short term rental study. ~ *Travis Mitchell, Mayor*

Mayor Mitchell brought forward Item No. 18 for discussion and presented the item. Mr. Sellers spoke about actions taken by staff so far related to short term rentals. Mr. Garza spoke about the recent City Attorneys conference presentation on this subject. Mr. Koontz spoke about possible time frame for Planning & Zoning Commission to discuss the project.

Mayor Mitchell moved to direct the Planning & Zoning Commission to gather public input and conduct a short-term rental study. Planning & Zoning Commission shall provide this feedback in the form of a memo, which shall be presented to Council by or before the first Council meeting in May. Planning & Zoning Commission may, but is not required to, include in the memo the opinions of the individual commissioners and/or any proposed amendments to our code of ordinances related to short-term rentals. Council Member Fogley seconded the motion.

There was discussion on the motion. Council Member Ellison stated he would definitely want to get Economic Development & Tourism Board involved. He proposed an ad hoc made up of three Planning & Zoning Commissioners, three Economic Development & Tourism Board Members, and one Council Member as well. Mayor Mitchell stated that this suggestion would require the establishment of a subcommittee, and with the recent process established for Planning & Zoning Commission, that is why he is suggesting Planning & Zoning Commission.

Motion carried 4-2 with Mayor Pro Tem Arabie and Council Member Scheel dissenting.

VIII. City Manager's Report

19. 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*

There was no report.

IX. Executive Session

20. 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.
 - Windy Hill Zoning
 - Crumley Ranch
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.
4. Economic Development negotiations pursuant to Section 551.087.

Mayor Mitchell 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 - Windy Hill Zoning and Crumley Ranch; and pursuant to possible purchase, exchange, lease, or value of real estate pursuant to Section 551.072 - Right-of-way Acquisition. Council Member Fogley seconded the motion. All votes aye; motion carried 6-0.

The City Council convened into executive session at 9:47 p.m.

21. 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 5-0. Mayor Pro Tem Arabie was absent for the vote.

The City Council reconvened into open session at 11:04 p.m. Mayor Mitchell announced that no action took place in Executive Session but action would be taken now.

Mayor Mitchell moved to authorize the City Manager to enter negotiations related to the Mattox property as discussed in Executive Session. Council Member Scheel seconded the motion. All votes aye; motion carried 5-0. Mayor Pro Tem Arabie was absent for the vote.

X. ADJOURN

Mayor Mitchell moved to adjourn. Council Member Ellison seconded the motion. All votes aye; motion carried 5-0. Mayor Pro Tem Arabie was absent for the vote.

With no further business to discuss, the City Council adjourned at 11:04 p.m.

Attest:

Travis Mitchell, Mayor

Jennifer A. Vetrano, City Secretary