

CITY OF KYLE



Notice of Regular City Council Meeting

KYLE CITY HALL
100 W. Center Street

Notice is hereby given that the governing body of the City of Kyle, Texas will meet at 7:00 PM on 7/16/2014, at Kyle City Hall, 100 West Center Street, Kyle, Texas, in a Special Called Meeting for the purpose of discussing the following agenda.

Posted this 11th day of July, 2014 prior to 7:00 p.m.

I. Call Meeting To Order

II. Citizen Comment Period With City Council

The City Council welcomes comments from Citizens early in the agenda of regular meetings. Those wishing to speak must sign in before the meeting begins at the Kyle City Hall. Speakers may be provided with an opportunity to speak during this time period, and they must observe the three-minute time limit.

III. Consider and Possible Action

1. *(Second Reading)* An ordinance reassessing properties located within Bunton Creek Public Improvement District; providing definitions; finding assessments on properties located within the district are excessive and invalid; waiving certain assessments; requiring reassessment of assessments levied against properties located within the district; requiring release of liens; finding assessments levied on properties located within the district are not delinquent; finding other expenses void and unenforceable; determining validity of certain assessments; requiring a reassessment roll; providing a right to an administrative hearing to request adjustments to the reassessment roll; providing for a deadline to request a hearing; creating a hearing committee; providing for disbursement of certain reassessments; requiring reimbursement of assessments, interest or other expenses to be paid from reassessments; providing for collection and disbursement of reassessments; levying reassessments and attaching liens on reassessed properties located within the district; providing for the option to cancel reassessments; providing for a service plan; providing for future improvements and assessments; disallowing enforcement of the ordinance in dissolution; providing for enforcement; providing for efficient and effective administration of the ordinance; providing a legal description of the district; repealing ordinances, resolutions, covenants, deed restrictions, and agreements in conflict; providing for severability; providing for compliance with open meetings law; providing for an effective date; and adopting such other findings and provisions related hereto ~ *Ken Johnson, City Attorney*

 [Attachments](#)

IV. Council Requested Agenda Items

2. *(First Reading)* An Ordinance of the City of Kyle, Texas, amending the Code of Ordinances of the City of Kyle, Texas, Chapter 5, "Animals," Article II, "General Regulations," Sec. 5-1, "Definitions," and Sec. 5-45, "Livestock," by adding a definitions of "miniature livestock"; exempting miniature livestock from certain livestock restrictions and regulations; providing a severability clause; providing repeal of conflicting ordinances; finding and determining that the meeting at which this ordinance is passed is open to the public as required by law; providing an effective date; making such other findings and provisions related hereto ~ *Samantha LeMense, Council District 5*

 [Attachments](#)

V. ADJOURN

At any time during the Regular City Council Meeting, the City Council may adjourn into an Executive Session, as needed, on any item listed on the agenda for which state law authorizes Executive Session to be held

*Per Texas Attorney General Opinion No. JC-0169; Open Meeting & Agenda Requirements, Dated January 24, 2000: The permissible responses to a general member communication at the meeting are limited by 551.042, as follows: "SEC.551.042. Inquiry Made at Meeting. (a) If, at a meeting of a government body, a member of the public or of the governmental body inquires about a subject for which notice has not been given as required by the subchapter, the notice provisions of this subchapter, do not apply to:(1) a statement of specific factual information given in response to the inquiry; or (2) a recitation of existing policy in response to the inquiry. (b) Any deliberation of or decision about the subject of the inquiry shall be limited to a proposal to place the subject on the agenda for a subsequent meeting.



CITY OF KYLE, TEXAS

Second Reading - Reassessment Ordinance

Meeting Date: 7/16/2014
Date time: 7:00 PM

Subject/Recommendation:

(Second Reading) An ordinance reassessing properties located within Bunton Creek Public Improvement District; providing definitions; finding assessments on properties located within the district are excessive and invalid; waiving certain assessments; requiring reassessment of assessments levied against properties located within the district; requiring release of liens; finding assessments levied on properties located within the district are not delinquent; finding other expenses void and unenforceable; determining validity of certain assessments; requiring a reassessment roll; providing a right to an administrative hearing to request adjustments to the reassessment roll; providing for a deadline to request a hearing; creating a hearing committee; providing for disbursement of certain reassessments; requiring reimbursement of assessments, interest or other expenses to be paid from reassessments; providing for collection and disbursement of reassessments; levying reassessments and attaching liens on reassessed properties located within the district; providing for the option to cancel reassessments; providing for a service plan; providing for future improvements and assessments; disallowing enforcement of the ordinance in dissolution; providing for enforcement; providing for efficient and effective administration of the ordinance; providing a legal description of the district; repealing ordinances, resolutions, covenants, deed restrictions, and agreements in conflict; providing for severability; providing for compliance with open meetings law; providing for an effective date; and adopting such other findings and provisions related hereto ~ *Ken Johnson, City Attorney*

Other Information:

Budget Information:

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[Ordinance](#)

Cover Memo

Item # 1

ORDINANCE NO. _____

AN ORDINANCE REASSESSING PROPERTIES LOCATED WITHIN BUNTON CREEK PUBLIC IMPROVEMENT DISTRICT; PROVIDING DEFINITIONS; FINDING ASSESSMENTS ON PROPERTIES LOCATED WITHIN THE DISTRICT ARE EXCESSIVE AND INVALID; WAIVING CERTAIN ASSESSMENTS; REQUIRING REASSESSMENT OF ASSESSMENTS LEVIED AGAINST PROPERTIES LOCATED WITHIN THE DISTRICT; REQUIRING RELEASE OF LIENS; FINDING ASSESSMENTS LEVIED ON PROPERTIES LOCATED WITHIN THE DISTRICT ARE NOT DELINQUENT; FINDING OTHER EXPENSES VOID AND UNENFORCEABLE; DETERMINING VALIDITY OF CERTAIN ASSESSMENTS; REQUIRING REASSESSMENT ROLL; PROVIDING A RIGHT TO AN ADMINISTRATIVE HEARING TO REQUEST ADJUSTMENTS TO REASSESSMENT ROLL; PROVIDING FOR A DEADLINE TO REQUEST A HEARING; CREATING A HEARING COMMITTEE; PROVIDING FOR DISBURSEMENT OF CERTAIN REASSESSMENTS; REQUIRING REIMBURSEMENT OF ASSESSMENTS, INTEREST OR OTHER EXPENSES TO BE PAID FROM REASSESSMENTS; PROVIDING FOR COLLECTION AND DISBURSEMENT OF REASSESSMENTS; LEVYING REASSESSMENTS AND ATTACHING LIENS ON REASSESSED PROPERTIES LOCATED WITHIN THE DISTRICT; PROVIDING FOR OPTION TO CANCEL REASSESSMENTS; PROVIDING FOR A SERVICE AND ASSESSMENT PLAN; PROVIDING FOR FUTURE IMPROVEMENTS AND ASSESSMENTS; DISALLOWING ENFORCEMENT OF THE ORDINANCE IN DISSOLUTION; PROVIDING FOR ENFORCEMENT; PROVIDING FOR EFFICIENT AND EFFECTIVE ADMINISTRATION OF THIS ORDINANCE; PROVIDING A LEGAL DESCRIPTION OF THE DISTRICT; REPEALING ORDINANCES, RESOLUTIONS, COVENANTS, DEED RESTRICTIONS, AND AGREEMENTS IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR COMPLIANCE WITH OPEN MEETINGS LAW; PROVIDING FOR AN EFFECTIVE DATE; AND ADOPTING SUCH OTHER FINDINGS AND PROVISIONS RELATED HERETO.

WHEREAS, Texas Local Gov't Code Sec. 372.020 authorizes and allows the governing body of a municipality to make reassessments or new assessments levied on properties located in a public improvement district ("a district") if the governing body determines that the original assessments are excessive or on the written advice of the governing body's counsel, the governing body determines that the original assessments are invalid; and,

WHEREAS, the City Council of the City of Kyle, Texas is a governing body of a municipality as that term is understood, used and incorporated in Local Gov't Code Chapter 372; and,

WHEREAS, an improvement to a district is a public improvement in the nature and character of a public improvement listed at Local Gov't Code Sec. 372.003; and,

WHEREAS, Local Gov't Code Sec. 372.013 and 372.014 requires the City Council, as the District's governing body, to approve a service plan including an assessment plan for a district based on the annual indebtedness and projected costs for improvements, which may be reviewed and updated annually; and ,

WHEREAS, after complying with the requirements of Local Gov't Code Chapter 372, on July 5, 2005, the City Council approved a "Petition Requesting the Establishment of the Bunton Creek Public Improvement District" and established by Resolution No. 438 the Bunton Creek Subdivision Public Improvement District ("the District"); and,

WHEREAS, by Resolution No. 438 adopted by the City, the City Council approved a Service Plan for the District based on then available estimated costs to design, acquire and construct the Improvements, which included accounting of existing Improvements to Drainage and Street Modifications within Phase 4 of the Bunton Creek addition within the District in the amount of \$53,841; and,

WHEREAS, Local Gov't Code Sec. 372.016 requires that once the total cost of an Improvement is determined, the City is required to prepare a proposed assessment roll setting forth the assessment to be charged against properties within a district, and provide notice of hearings and final determination of the assessment to be charged to an owner of property located within a district as required under the Local Gov't Code; and,

WHEREAS, Local Gov't Code Secs. 372.017 and 372.018 provides for the levying of assessments by the City following notice and public hearing as required under the Local Gov't Code, and creation of a first and prior lien against each property within a district which is assessed, securing payment of assessments charged and interest thereon as permitted under the Local Gov't Code, and a personal liability of and charge against the owners of said property, regardless of whether the owners are named; and,

WHEREAS, pursuant to the formulas established under Resolution 438 and requirements of the Local Gov't Code, including (without limitation, under Local Gov't Code Secs. 372.015, 372.016, 372.017 and 372.018, on August 16, 2005, on Second Reading the City Council passed Ordinance No. 469 which (i) apportioned the cost of Improvements to be assessed against the

property within the District, established reasonable classification and formulas for the apportionment of the costs between the municipality and the area to the assessed (the District), and established the methods of assessing the special benefits for various classes of Improvements, and (ii) established a plan for the levying of assessments as special assessments on the property within the District (“Assessments”), together with a plan for payment of interest which may be charged on such Assessments (“Interest”), and expenses of collection, and reasonable attorney’s fees, if incurred on delinquent payments (collectively, the “Other Expenses”), and approved an assessment roll for the District: and,

WHEREAS, Local Gov’t Code Secs. 372.003 and 372.017 requires an ordinance be adopted that levies assessments as special assessments on properties located in a district for the sole purpose of retiring the indebtedness on the improvements made to a district that confers a special benefit on the properties located in a district, but the assessments necessary to meet annual costs for improvements continue only for (1) the period necessary to retire the indebtedness on the improvements; or (2) the period approved by the governing body for the payment of the amounts; and,

WHEREAS, Local Gov’t Code Sec. 372.017 allows the retirement of the indebtedness on the improvements to be paid as installments in amounts necessary to meet the annual costs for improvements to a district and to continue for the period necessary to retire said indebtedness; and,

WHEREAS, Local Gov’t Code Sec. 372.018 makes the owners of properties located in a district personally liable for such assessments regardless of whether the owners are named, and requires the payment of other expenses, including expenses of collection and reasonable attorney’s fees, if incurred, and the payment of interest accrued on unpaid assessments; and,

WHEREAS, Local Gov’t Code Sec. 372.018 further creates a first and prior lien against each property assessed within a district and a personal liability of and charge against the owner of each property located in a district, both the lien and the personal liability on each property becoming effective and enforceable from the date of the establishment of a district; and,

WHEREAS, the lien imposed by Local Gov’t Code Sec. 372.018 is effective from the date of the ordinance or order levying an assessment only until the assessment is paid, and an assessment levied under Local Gov’t Code Sec. 372.017 is no longer valid or collectible if or when the indebtedness for making the improvements has been retired; and,

WHEREAS, in compliance with Local Gov’t Code Sections 372.017 and 372.018, the City Council passed on Second Reading Ordinance No. 472 on September 20, 2005, that levied Assessments and created Liens on the Properties located in the District and imposed Personal liability on the Owners of such Properties; and,

WHEREAS, legal precedent, including Texas Attorney General opinions and the cases they cite to, indicates that assessments (or special assessments) and any interest accrued and other expenses are valid and collectible only if said assessments are levied for the sole purpose of

retiring the indebtedness for improvements made that confer a special benefit on the properties located in a district; and,

WHEREAS, in accordance with Local Gov't Code Sec. 372.017, the City Council incorporated in Ordinance No. 472 the option to allow Owners of Properties in the District to retire the indebtedness on the Improvements made to the District by making installment payments over a thirty (30) year amortization period or to make a lump-sum payment during the thirty-year period; and,

WHEREAS, Local Gov't Code Sec. 372.018 states that assessment liens may be enforced by a governing body in the same manner that an ad valorem tax lien against real property may be enforced by a governing body, but said section does not include, mention, or otherwise suggest that any other individual or legal entity, including private legal entities, hold the authority to file notice of liens or in any way enforce said liens; and,

WHEREAS, assessments are not equivalent to or in the nature of ad valorem taxes, according to legal precedent, including Texas Attorney General's Opinions and cases cited in said opinions; and,

WHEREAS, nowhere in Local Gov't Chapter 372 is there allowed, authorized, suggested, or intimated that entitlement or title to assessments may be granted by contract, assignment or other arrangement separate and apart from the properties upon which the assessments are levied but rather, assessments are levied as a special assessment on the properties themselves, according to Local Gov't Code Sec. 372.017(a) and further, any liens attached to the properties run with the land, according to Local Gov't Code Sec. 372.018(d), and therefore any contract, assignment or other arrangement that separates or attempts to separate the assessments from the properties against which the assessments are levied is found to be void from its date of execution; and,

WHEREAS, a certain portion of Assessments levied on the Properties located in the District prior to the effective date of this ordinance are subject to Reassessment because the legal entity entitled to the Assessments, based on that legal entity's indebtedness incurred as a result of the Improvements it provided to the District and that conferred a special benefit to the Properties (parcels of land) located within said District, has waived, relinquished, foregone and otherwise surrendered all claims and rights to the Assessments, as evidenced by EXHIBIT "A" which is attached to this ordinance and incorporated herein by reference; and,

WHEREAS, Assessments levied on the Properties located in the District prior to the effective date of this ordinance are found to be invalid, based on the written advice of the City Council's legal counsel, due to certain conditions and facts existing, including, without limitation (i) the excessive amount being charged as Assessments in the context of the indebtedness for Improvements not previously waived, relinquished, foregone and otherwise surrendered by the legal entity entitled to the Assessments, and (ii) the administrative discrepancies, inconsistencies and practices, violations of state law, local ordinance and agency principles of law, misrepresentation, and breach of contract; and,

WHEREAS, because said Assessments are found by the City Council to be excessive and invalid, the City Council is legally authorized to reassess the Assessments levied prior to the effective date of this ordinance against the Properties located in the District in order to protect the public health, safety and welfare; and,

WHEREAS, the City Council finds that Reassessments should be made and levied against each final platted residential lot or tract of land (Properties) within the District, thereby having the effect of reassessing the Personal Liability of Owners of the Properties, and that such Reassessments are substantially in proportion to the benefits to each final platted residential lot (Properties) within the District because of the services and improvements within the District for which the Assessments are levied, and such proportional Reassessments establish substantial justice and equality and uniformity between Owners of the final platted residential lots located within the District (Properties) and between all parties concerned, considering the benefits received and the burdens imposed; and,

WHEREAS, the City Council further finds that in each case the Properties assessed are specially benefited by means of the said services and Improvements within the District and that the apportionment of the cost of the services and Improvements is in accordance with state and local law and the proceedings the City heretofore accomplished with reference to the formation of the District and that the imposition of the Reassessments for said services and Improvements are in all respects valid and regular;

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

Section 1. Findings. The above foregoing recitals are hereby found to be true and correct and are incorporated herein as findings of fact. The City Council hereby further finds and determines that adoption of this ordinance is legally authorized and is required in order to protect the public health, safety, and welfare.

Section 2. Definitions. The following words, terms, and phrases, when used in this ordinance, shall have the meanings ascribed to them in this section except where the context clearly indicates a different meaning. A term shall include both the plural and the singular if applicable.

“Assessments” shall mean and refer to those amounts levied against Properties and Owners of the Properties located in the Bunton Creek Subdivision Public Improvement District (“the District”) by state law, Ordinance Nos. 469 and 472, Resolution No. 438, the Petition, this ordinance and any other documents imposing or modifying the Assessments, which said Assessments were levied for the purpose of retiring the indebtedness for providing Improvements to the District that conferred a special benefit to the District and the Properties located in the District.

“City or the City” shall mean and refer to the City of Kyle, Hays County, Texas.

“City Council or the City Council” shall mean and refer to the City Council of the City of Kyle, Texas.

“City Council’s Legal Counsel” shall mean and refer to the city attorney of the City of Kyle, or any other attorney the City Council may retain, who may give written or verbal advice to the City Council that determines the Assessments are invalid pursuant to Code Sec. 372.020.

“Code” shall mean and refer to the Local Gov’t Code, Chapter 372, or any of its sections or parts of sections referred to in this ordinance.

“District, the” shall mean and refer to the Bunton Creek Subdivision Public Improvement District established by Resolution No. 438 and further described and governed by Ordinances No. 469 and 472, the Petition, this ordinance and any and all other applicable or relevant documentation or documents of record.

“Improvements” shall mean and refer to improvements in the nature and character of a public improvement listed at Code Sec. 372.003 or in any ordinance or resolution duly passed and adopted by the City Council and includes improvements the City Council may apportion or previously apportioned as required by Code Sec. 372.015, and further includes any and all reasonable classifications and formulas for the apportionment of costs between the City and the District that the City Council establishes or established by ordinance, and further includes the methods of assessing the special benefits for various classes of improvements. The term shall specifically mean and refer to the public improvements reflected on the Service Plan approved by Resolution No. 438, the actual and estimated costs of which the City Council apportioned the cost of to be assessed against the Properties in Ordinance No. 469, and namely (i) construction of streets in Bunton Creek Phases 1 and 2; (ii) drainage and street modifications in Bunton Creek Phase 4; (iii) drainage and street modification in Bunton Creek Phases 5 and 6; and (iv) construction of the Bunton Creek amenity center.

“Interest” shall mean and refer to interest at the rate specified by the City Council in this ordinance beginning at the time or times or on the occurrence of one or more events specified by the City Council.

“Lien” shall mean and refer to the lien described and applied pursuant to Code Sec. 372.018 or as otherwise used in this ordinance.

“Other Expenses” shall mean and refer to, if incurred, expenses of collection and reasonable attorney’s fees on payments paid to satisfy the Assessments. This term does not include Interest.

“Owners” shall mean and refer to those individuals or legal entities that legally own Properties located within the District.

“Parcels of land” means and refers to the lots, tracts and other property located within the District and also referred to as the “Properties.”

“Parties” shall refer to any and all individuals, legal entities, or others to whom this ordinance applies or who are otherwise subject to or governed by this ordinance or by the Code. The term shall include Claimants when applicable.

“Personal Liability” shall mean and refer to a personal charge against the Owners of the Properties located in the District regardless of whether the Owners are named.

“Petition” shall mean and refer to the “Petition Requesting the Establishment of the Bunton Creek Public Improvement District” filed by C4D-I, Ltd., and presented to a prior City Council.

“Properties” shall mean and refer to the parcels of and, including a platted lot or lots, whether developed or undeveloped, or occupied or unoccupied, that are located within the District.

“Reassessment Roll” shall mean and refer to the roll created and as particularly defined under this ordinance.

“Reassessments” shall mean and refer to the Assessments levied against the parcels of land (“Properties”) located in the District pursuant to Ordinance Nos. 469 and 472 that are reassessed under this ordinance by the authority of Code Sec. 372.020.

“Recipient” shall mean and refer to that individual or legal entity, acting either apart or in concert, that receives or has received payments or monies for Assessments, Interest, and/or Other Expenses from Owners of Properties prior to the effective date of this ordinance.

“Representative” or “City’s Representative” shall mean and refer to any qualified entity or entities that the City enters into an agreement with for the purpose of collecting Reassessments under this ordinance or otherwise managing the District, as authorized by Code Sec. 372.0175.

Section 3. Assessments excessive, invalid. Assessments and Other Expenses levied against the Properties located within the District prior to the effective date of this ordinance are found to be excessive and invalid by the City Council under Code Chapter 372 and are to be reassessed pursuant to this ordinance. Assessments, or a portion thereof, may be found to be valid after Reassessment required by this ordinance.

Section 4. Waiver of Assessments. Assessments levied to retire the indebtedness for Improvements made by Qualico KP, LLC (or being known by any other name) (“Qualico”) that conferred a special benefit to the Properties located in the District are waived and forgiven by Qualico and are no longer owed by Owners of said Properties to any Party, including Qualico.

Section 5. Reassessment required. Assessments levied prior to the effective date of this ordinance to retire the indebtedness for Improvements made to the District which are not included in the Assessments waived by Qualico under Section 5 of this ordinance shall be reassessed as required by this ordinance and as authorized by Code Section 372.020.

Section 6. Release of Liens. By the fact that liens may be enforced only by the governing body of a municipality according to Code Sec. 372.018(e), Liens levied or attached, or notice of Liens filed, against the Properties located in the District for the purpose of collecting Assessments, Interest, and Other Expenses, including, without limitation, the Notice of Assessment Lien and First Amended Notice of Assessment Lien recorded in Volume 4876, Pages 446-450 and Volume 4892, Pages 846-850, of the Official Public Records, Hays County, Texas (the “Notices of Lien”), are found by the City Council to not be valid or enforceable and are released pursuant to this ordinance by operation of law, notwithstanding whether any Lien or notice of Lien has been filed in the deed or real property records of Hays County, Texas, against any Property located in the District. Any liens or notices of liens that have been filed by any Party other than the City and are pending are hereby declared to be null and void and of no legal effect and shall be considered to be in violation of this ordinance and state law, including Code Chapter 372. All taxing authorities and political subdivisions may rely on this ordinance as authority to release or set aside said Liens or notice of Liens. The City may take the necessary proper legal action to enforce its authority granted under this section, this ordinance, Code Sec. 372.018(e), and Code Chapter 372. By this ordinance, the Notices of Lien previously filed are rescinded, and the City, through its mayor, city manager, city attorney or other authorized party, shall evidence the rescission and revocation of such Notices of Lien by, and is hereby authorized to execute and file in the deed or real property records of Hays County, Texas, this ordinance or a certified copy thereof or a separate instrument evidencing the rescission and revocation of such Notices of Lien previously filed.

Section 7. Assessments not delinquent; Other Expenses void. Any and all Assessments levied on Properties located in the District, or Personal Liability alleged against Owners, prior to the effective date of this ordinance are found by the City Council to not be delinquent, and no Interest has accrued thereon or is due in connection therewith. Other Expenses claimed or collected on any Assessment levied prior to the effective date of this ordinance and treated as delinquent by any Party are void and not enforceable, unless otherwise agreed upon in writing by the City Council and a Party subsequent to the effective date of this ordinance.

Section 8. Determination of Valid Assessments. Ordinance Nos. 469 and 472 and Resolution No. 438 shall be referred to in order to determine the amount of Assessments levied prior to the effective date of this ordinance. Such amounts determined shall not be used in the Reassessment of said Assessments.

Section 9. Reassessment Roll.

9.1 Reassessment Roll required; purpose. The City or its Representative shall prepare and make available to the public a Reassessment Roll (“Roll”) as provided in this section. The Roll shall include all information required pursuant to state law and this ordinance and shall otherwise comply with all requirements applicable to a reassessment roll under Code Chapter 372. The purpose of the Roll is to serve as the official record of the Reassessments of the Properties located in the District. Assessments levied on Properties in the District prior to the effective date of this ordinance and which have been reassessed in accordance with this

ordinance shall be included on the Roll. Assessments based on the indebtedness waived by Qualico under Section 4 of this ordinance shall be entered as zero(s) in the Roll.

9.2 Calculation of Reassessments still owed. Reassessments still owed by Owners of the Properties in the District, including Interest if applicable, shall be calculated by subtracting the dollar amount of Assessments based on the indebtedness waived by Qualico for the cost of Improvements constructed by Qualico levied prior to the effective date of this ordinance that Qualico made and that conferred a special benefit to said Properties. Assessments not included in the Assessments waived by Qualico and reassessed under this ordinance shall then be apportioned equally among the Owners of said Properties based on the actual and planned number of residential lots developed or to be developed within the District. Said apportionment shall be due and owing by each Owner, plus Interest, if applicable. The apportioned amounts owed by Owners shall be entered in the Roll.

9.3 Presumption of Roll's accuracy. Reassessments owed by Owners as calculated under subsection 10.2 of this ordinance, if any, entered in the Roll shall be presumed to be the accurate amounts of Reassessments owed by Owners. Reassessments may be adjusted in the Roll upon evidence by a Party, and upon acceptance of such evidence by the City Council or its Representative, that the Party made Improvements to the District that conferred a special benefit on the Properties, and the readjusted Reassessment shall be entered on the Roll. Other Parties, including Owners or prior Owners, may also request the Roll be adjusted for the reason that said Owner made a payment or payments of Assessments previously, upon evidence presented by the other Parties and accepted by the City Council or its Representative. In order to request an adjustment under this subsection, a Party must present in writing the request to adjust, addressed to the City Manager, and either hand-delivered or sent via certified mail, return receipt requested. The City or its Representative shall set the request on an agenda of the City Council to be heard by the City Council within a reasonable time.

9.4 Prior assessment rolls and service and assessment plan invalid. Assessment rolls and/or any service and assessment plan adopted by the City Council or relied upon or referenced to prior to the effective date of this ordinance shall no longer be valid or in force or effect and shall no longer determine or otherwise control the Reassessments on Properties located within the District. The City or its Representative may refer to said prior assessment rolls and/or assessment and service plans if beneficial in determining any Reassessments, including Property descriptions and ownership of said Property listed in the prior assessment rolls.

9.5 Reassessment Roll adopted by ordinance. By majority vote, the City Council shall adopt an ordinance that includes and incorporates the Reassessment Roll required by this ordinance.

Section 10. Right to administrative hearing.

10.1 Request for Roll adjustment denied. If the City denies and does not accept a request for adjustment to the Roll under Section 10 of this ordinance, a Party shall have the right to an administrative hearing ("Hearing") before a committee made up of City staff members

appointed by the city manager (“the Hearing Committee”). The Hearing is administrative in nature and is not a meeting open to the public.

10.2 Grounds for Hearing. A Party shall be entitled to a Hearing only if a Party alleges one of the following grounds:

10.2.1 A Party made Improvements that conferred a special benefit to the Properties within the District but the Roll does not show Reassessments, or the Roll shows inaccurate Reassessments, for the purpose of retiring the indebtedness claimed to have been incurred by the Party for said Improvements; or,

10.2.2 If a Party is an Owner or former Owner, the Owner or former Owner alleges that the Roll does not show accurate amounts due and owing by the Owner or former Owner.

10.3 Qualification for Hearing. A Party may request a Hearing for the purpose of being granted a Reassessment only if the Party made Improvements that conferred benefits to the Properties in the District and the Reassessment is for the purpose of retiring the indebtedness incurred by the Party making the Improvements.

10.4 Claim for Interest. Any claim for Interest accrued on the Reassessments may be heard by the Hearing Committee at the same Hearing being held to consider a claim for Reassessments brought under this Section.

10.5 Claim for Other Expenses. A claim by any Party for Other Expenses accrued on Reassessments shall be decided by a court of competent jurisdiction.

10.6 Right to Hearing and City’s Representative. A Party shall be entitled to a Hearing under this section if the City has contracted with another tax authority or political subdivision to collect Reassessments and Interest, providing all other terms and conditions of this section have been complied with by the Party requesting a Hearing.

10.7 Proceedings; decision of Hearing Committee final. At the Hearing a Party may be represented by legal counsel. The Party may present written or verbal evidence, including witnesses, at said Hearing. The city attorney may present written or verbal evidence, including witnesses, at said Hearing. After the Hearing, the Hearing Committee shall, by majority vote, either grant or deny a Party’s request and promptly notify a Party of its decision. No subsequent Hearing shall be allowed on the same request. The decision of the Hearing Committee shall be final.

10.8 Notice of Hearing. The City or its Representative shall provide at least three (3) calendar days’ notice to the Party and to the Owners prior to the Hearing. If the notice is not timely and adequately provided as required by this subsection to a Party or to Owners, the Hearing shall be set at a future date, and any notice provided at least three (3) calendar days before the Hearing shall suffice for a Hearing set on a subsequent date. The notice shall be in the

form of written correspondence mailed by certified mail, return receipt requested, or by email sent to an email address of the Party and Owners validated by said Party and Owners. If the notice is sent by mail, the date of delivery (or the date of refusal of delivery) shall be considered the first day of the three-day notice required under this subsection.

10.9 Nature of evidence. To be entitled to Reassessments or Interest as set forth in this section, the evidence presented by a Party must be in the form of documentation or other verifiable information, including witnesses, that objectively and unequivocally support the Party's claim. Hearsay or mere oral representations without substantiation shall not suffice as acceptable evidence to be taken into account by the Hearing Committee in making its ruling. The City, as represented by the city attorney, may have the opportunity to rebut a Party's evidence and to present its own evidence.

10.10 Post-Hearing procedures. One of the following procedures shall be complied with after the Hearing Committee makes its ruling.

- 10.10.1 If the Hearing Committee votes by a majority to grant the request of a Party that is based on the claim that the Party made Improvements that conferred a special benefit to the Properties within the District but the Roll does not show said Reassessments, or the Roll shows inaccurate Reassessments, for the purpose of retiring the indebtedness proved by a Party to have been incurred by the Party for said Improvements, the Roll shall be adjusted to reflect the Hearing Committee's ruling and the granted Reassessments shall be timely disbursed to the Party. Only the amount of Reassessments in proportion to the Improvements on which the Party is or was indebted shall be disbursed.
- 10.10.2 If the Hearing Committee votes by a majority to grant the request of an Owner or a former Owner, the City shall take whatever action is necessary to comply with the Hearing Committee's decision.
- 10.10.3 If the Hearing Committee votes by a majority to deny a request by either a Party or an Owner or former Owner, no further action shall be required.

10.11 Other grounds for a Hearing. A Party shall also have the right to a Hearing before the Hearing Committee pursuant to Section 14 of this ordinance.

10.12 Deadline for request. A Hearing shall not be allowed, nor heard by the Hearing Committee, unless a Party requests a Hearing in accordance with this ordinance within sixty (60) calendar days from the effective date of this ordinance.

Section 11. Disbursement of Reassessments. If it has been determined by the Hearing Committee under Section 11 of this ordinance that a Party is entitled to Reassessments and/or

Interest, and the City or its Representative has collected all or part of such Reassessments and Interest, the City or its Representative shall disburse the Reassessments and Interest to said Party annually but no later than January 15th of the year after such Reassessments and/or Interest have been collected by the City or its Representative. A Party is obligated to keep the City or its Representative informed of any current address to which said Reassessments and Interest may be sent. In the event the Party does not keep the City or its Representative notified of its current address, the City shall retain the Reassessments and Interest due the Party until the Party provides a current address, but if a Party has not provided a current address to the City or its Representative within ninety (90) days from the date the City or its Representative receives an undeliverable disbursement, it is presumed the Party has abandoned its claim, and the City shall return the Reassessments and Interest to the Owners who originally paid such Reassessments and Interest.

Section 12. Reimbursement of Assessments, Interest or Other Expenses paid by an Owner or former Owner. An Owner or former Owner may request a Hearing before the Hearing Committee to request a reimbursement of Assessments, Interest, and Other Expenses the Owner claims to have paid to a third party. The Owner or former Owner shall present evidence to support the claim. If the Hearing Committee agrees with the Owner's claim, the amount of said claim, or a part thereof as determined by the Hearing Committee, shall be deducted from the amount, if any, that may otherwise be due and owing to a Party that is entitled to disbursement of Reassessments for the purpose of retiring the indebtedness to said Party as a result of the Party making Improvements that conferred a special benefit to the Properties within the District. If the Hearing Committee denies the claim for reimbursement, said reimbursement shall not be deducted from said Party.

Section 13. Collection and disbursement of Reassessments.

13.1 Contract for collection and disbursements. The City may execute an interlocal agreement with another entity as allowed by Code Section 372.0175 to act as the City's Representative to collect Reassessments and accrued Interest due and payable by Owners, if any, and to disburse the Reassessments and accrued Interest to any Party entitled to such disbursements as governed by Section 12 of this ordinance.

13.2 Other Expenses. The City or its Representative shall not be responsible or in any way obligated under this ordinance or otherwise legally required to collect or attempt to collect from Owners any Other Expenses claimed by any Party against Owners.

13.3 Notice to Owners. The City or its Representative shall provide notice as set forth in this subsection to Owners liable for Reassessments and Interest due and owing. The City or its Representative shall mail first-class notices, or provide notice via email addresses verified by Owners, of Reassessments due and owing, and Interest accrued, to the Owners annually but no later than October 1st of each year. Each Owner is responsible to provide a current address or email address to the City's Representative or to the City's finance director if the City has no Representative. The City and its Representative is not liable and shall not be held responsible for notices sent to addresses that are not current or that are not delivered to any Owner by fault of a party other than the City or its Representative. If and when the City contracts with a

Representative, it shall promptly notify the Owners and other Parties of the Representative's address, telephone number(s) and email address.

13.4 Due date of Reassessments and Interest. Owners subject to payment of Reassessments and Interest shall make payment to the City or its Representative no later than December 1st of each year such Reassessments and Interest are due and owing. Lack of notice to Owners as set forth in this section after an Owner has received prior notice in an earlier year shall not excuse or forgive an Owner from being liable for such payment.

13.5 Nonpayment. An Owner who fails or refuses to make payment as required under this section shall be considered delinquent, and the City shall have the right to take legal action against the delinquent Owner, including foreclosure on the Owner's Property pursuant to the Lien created on said Property. The Owner shall be liable for reasonable attorney's fees accrued by the City in taking legal action for delinquent nonpayment.

Section 14. Other remedies. The adoption of this ordinance is not intended to, or should be read to, prevent, prohibit or challenge a Party's or Owner's right to seek legal redress in another venue or forum, including the right to seek legal or equitable relief in a court of competent jurisdiction.

Section 15. Reassessments levied.

15.1 Reassessment amount. A Reassessment excluding the Assessments waived by Qualico under section 5 of this ordinance is levied on the Properties in the District. The Reassessments shall be in the amount required to retire the indebtedness of a Party that made Improvements that are listed on Exhibit "B" of Ordinance No. 469 ("No. 469-Exhibit B"), attached as Exhibit "C" to this ordinance and incorporated by reference herein, which benefitted the Properties in said District. Reassessments shall not be due and owing to retire the indebtedness of a Party if the Party did not actually make an Improvement listed on No. 469-Exhibit "B". Improvements not listed on No. 469-Exhibit "B" shall not be included for the purpose of retiring indebtedness, notwithstanding the claim that Improvements were made the benefitted the Properties. Said Reassessments are reassessed against the real and true Owners of Properties located within the District (whether such Owners be correctly named or not) and shall be due and owing by each Owner on an apportionment basis, as required by this ordinance. The Reassessments shall not take into account any Assessments, Interest or Other Expenses waived under this ordinance or otherwise declared by this ordinance to be invalid or excessive.

15.2 Lien attached. The amount of the Reassessments as well as reasonable attorney's fees and costs of collection in the case of delinquent accounts, are hereby declared to be and are made a Lien upon each final platted residential lot (Properties) against which the same are levied and assessed, and a Personal Liability and charge against the real and true Owners of such lots (Properties), including successors and assigns, whether such Owners be named herein or not, and said Liens shall be and constitute the first enforceable lien and claim against the lots (Properties) on which said Reassessments are levied, and shall be a first and paramount lien thereon, superior to all other liens and claims except state, county, school district and city ad valorem taxes. A Lien shall also attach to any Interest which may accrue from the effective date of this ordinance.

15.3 Effective date of Reassessment. This Reassessment, although levied and reassessed by this ordinance and effective as of the date of this ordinance, shall not be applied to each final platted residential lot (Properties) in a particular phase until the first January 1st to occur after (i) all water, sewer, drainage, and roadway improvements for the subdivision containing the residential lot have been completed and accepted by the City Council and (ii) the final plat for the subdivision containing the lot has been recorded in the real property records of Hays County, Texas, for the particular phase. The date the Reassessment is applied is hereinafter called the "Reassessment Date."

15.4 Lump sum payment. Any Owner may pay in full and at any time the Reassessment amount (or the remaining unpaid balance), together with all accrued and unpaid Interest due thereon, if any. After the Reassessment amount is paid in full, including all accrued Interest, no further amounts shall be assessed against the Property.

15.5 Amortized payments. In lieu of full payment or balance thereof as provided for in this Section, any Owner may pay the reassessment and Interest that accrues from the effective date of this ordinance on a yearly basis amortized over ten (10) years. An annual interest rate of five percent (5%) shall accrue on all unpaid balances. The amount of the amortized payments shall be set by ordinance adopted by the City Council and based on whether, at the time the Reassessments are calculated, a Property contains a completed home or does not contain a completed home.

15.6 Multiple Owners. Where more than one individual or legal entity owns an interest in any final platted residential lot (Property), each said individual or legal entity shall be jointly and severally liable for the total Reassessment against the lot (Property) and any accrued interest.

15.7 Personal Liability. All Reassessments levied and reassessed by this ordinance are a Personal Liability and charge against the real and true Owners of the Properties, including successors and assigns, notwithstanding such Owners may not be named or may be incorrectly named.

15.8 Validity of Assessments and liens. The Reassessments herein levied and assessed, and Liens incorporated herein, are made and levied under and by virtue of the terms, powers and provisions of applicable state law.

Section 16. Cancellation of Reassessments. If it is determined by the City Council at any time that the indebtedness on the Reassessments has been retired in accordance with Code Secs. 372.017 and 372.018, the City Council may by majority vote cancel any remaining Reassessments and waive the Personal Liability imposed by this ordinance on all Owners of Properties located in the District.

Section 17. Service and Assessment Plan. A Service and Assessment Plan ("Service Plan") shall be prepared by the City or its Representative for the Reassessments if one is necessary for compliance with this ordinance or state law. The annual indebtedness set forth in No. 469-Exhibit B shall no longer be controlling nor shall No. 469-B be relied upon or

controlling for the purpose of determining indebtedness or for any other purpose of this ordinance. If applicable and necessary, costs for Improvements and Reassessments for subsequent calendar years set forth in the Service Plan to be prepared by the City or its Representative shall be reviewed and updated annually by the City Council. The City shall not be responsible or legally liable for any future Improvements, and the District shall pay all costs of future services and Improvements.

Section 18. Future Improvements and Assessments. The City Council may adopt by ordinance a revised Service Plan and revised Assessment Roll to govern Improvements and Assessments for phases of the District that may be completed from and after the effective date of this ordinance and that comply with Code Chapter 372.

Section 19. Dissolution. This ordinance shall not apply to or be enforceable against any tracts of land or owners of such tracts of land developed in the Bunton Creek Subdivision subsequent to the District being dissolved pursuant to Code Chapter 372 in the event such dissolution occurs.

Section 20. Enforcement. Failure or refusal by any individual, legal entity, or other party to comply with the provisions of this ordinance is a violation of state and local law, and the City may seek any available legal remedy in order to compel any individual, legal entity, or party to comply with the provisions of this ordinance.

Section 21. Administration of ordinance. The City Council authorizes the city manager to implement rules, procedures and policies necessary to carry out the purpose and enforcement of this ordinance in an efficient and effective manner.

Section 22. Legal description of District boundaries. The boundaries of the District shall be described in EXHIBIT "B" which is attached hereto and incorporated herein by reference.

Section 23. Prior ordinances, resolutions, agreements in conflict. Any and all ordinances, resolutions, covenants, deed restrictions, and agreements and parts of ordinances, resolutions, covenants, deed restrictions, and agreements that are in conflict with this ordinance are hereby repealed to the extent of the conflict only.

Section 24. Recordation of ordinance. The City shall record a certified copy of this ordinance in the official real property records of Hays County, Texas.

Section 25. Severability. If any section, subsection, sentence, clause, phrase or word of this ordinance is declared unconstitutional or invalid for any purpose by a court of competent jurisdiction, the remainder of this ordinance shall not be affected thereby and to this end the provisions of this ordinance are declared to be severable.

Section 26. Open meetings compliance. It is hereby found, determined and declared that a sufficient written notice of the date, hour, place and subject of this meeting of the City Council was posted at a place convenient to the public at the City Hall of the City for the time

required by law preceding this meeting, as required by the Open Meetings Law, Chapter 551, Texas Government Code, and that this meeting has been open to the public as required by law at all times during which this ordinance and the subject matter thereof has been discussed, considered and formally acted upon. City Council further ratifies, approves and confirms such written notice and the contents and posting thereof.

Section 27. Effective date. This ordinance shall take effect from and after its final passage and publication as required by law.

PASSED on first reading the 15th day of July, 2014.

PASSED AND ADOPTED on second reading the _____ day of _____, 2014.

R. Todd Webster, Mayor, City of Kyle, Texas

ATTEST:

Amelia Sanchez, City Secretary, City of Kyle, Texas

APPROVED AS TO FORM:

W. Ken Johnson, City Attorney, City of Kyle, Texas

EXHIBIT "A"
QUALICO DOCUMENTATION

EXHIBIT "B"
LEGAL DESCRIPTION
BUNTON CREEK PUBLIC IMPROVEMENT DISTRICT

EXHIBIT "C"

**EXHIBIT "B" OF ORDINANCE NO. 469
(NO. 469-EXHIBIT B)**



CITY OF KYLE, TEXAS

Ordinance amending animal ordinance concerning miniature livestock

Meeting Date: 7/16/2014
Date time: 7:00 PM

Subject/Recommendation:

(First Reading) An Ordinance of the City of Kyle, Texas, amending the Code of Ordinances of the City of Kyle, Texas, Chapter 5, "Animals," Article II, "General Regulations," Sec. 5-1, "Definitions," and Sec. 5-45, "Livestock," by adding a definitions of "miniature livestock"; exempting miniature livestock from certain livestock restrictions and regulations; providing a severability clause; providing repeal of conflicting ordinances; finding and determining that the meeting at which this ordinance is passed is open to the public as required by law; providing an effective date; making such other findings and provisions related hereto ~ *Samantha LeMense, Council District 5*

Other Information:

Budget Information:

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 [Ordinance](#)

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF KYLE, TEXAS, AMENDING THE CODE OF ORDINANCES OF THE CITY OF KYLE, CHAPTER 5, "ANIMALS," ARTICLE II, "GENERAL REGULATIONS," SEC. 5-1, "DEFINITIONS" AND SEC. 5-45, "LIVESTOCK", BY ADDING A DEFINITION OF "MINIATURE LIVESTOCK"; EXEMPTING MINIATURE LIVESTOCK FROM CERTAIN LIVESTOCK RESTRICTIONS AND REGULATIONS; PROVIDING A SEVERABILITY CLAUSE; PROVIDING REPEAL OF CONFLICTING ORDINANCES; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW; PROVIDING AN EFFECTIVE DATE; MAKING SUCH OTHER FINDINGS AND PROVISIONS RELATED HERETO.

WHEREAS, it is in the public interests to recognize a classification of animals known as "miniature livestock"; and,

WHEREAS, it is in interest of public safety, health and welfare that a fee be charged for the cost of enforcement of this amended ordinance;

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

Section 1. The facts and findings recited hereinabove are found to be true and correct and are hereby adopted as part of this ordinance.

Section 2. Chapter 5, Article II, Sec. 5-1 of the Code of Ordinances of the City of Kyle shall be amended to read as follows:

" Sec. 5-1. Definitions.

Miniature livestock means means livestock that meet the published breed definition for registration by a nationally recognized breeding association. For the purpose of this Chapter, this definition also includes chickens but not other types of fowl."

Section 3. Chapter 5, Article II, Sec. 5-45 of the Code of Ordinances of the City of Kyle shall be amended by adding "(d)" to read as follows:

"(d) This Section shall not apply to miniature livestock. The following provisions shall apply to miniature livestock except as otherwise required.

(1) Other than chickens, no more than two (2) miniature livestock may be housed on

property owned or occupied by the owner, handler or custodian of the miniature livestock. No more than five (5) chickens may be housed on property owned or occupied by the owner, handler or custodian of the chickens.

- (2) An enclosure used to keep miniature livestock must be located at least 100 feet from a structure used for human habitation other than a structure owned or occupied by the owner, handler or custodian of miniature livestock.
- (3) An owner, handler or custodian of miniature livestock other than chickens shall pay a fee in the amount of two hundred dollars (\$200.00) per head of miniature livestock that are housed, enclosed or otherwise present on the property of said owner, handler or custodian. The fee shall be for the purpose of offsetting city costs of enforcing subparagraph (d) of this Section. Said fee shall be annually due and owing on or before December 31st for each year miniature livestock are housed, enclosed or otherwise present on the property of an owner, handler or custodian of the miniature livestock. If said fee is not timely paid, an owner, handler or custodian of miniature livestock is prohibited from housing, enclosing or keeping miniature livestock unless and until the fee is paid. A fee shall be paid to the city's finance department. The fee for chickens shall be twenty dollars (\$20.00) per chicken. Other than the amount of the fee, the remainder of this subsection (3) shall equally apply to chickens.
- (4) Any and all other sections of this ordinance shall apply to miniature livestock unless said section or sections conflict with this subparagraph (d). If there is a conflict, this subparagraph (d) applies and controls.

Section 4. If any section, subsection, sentence, clause, phrase or word of this ordinance is declared unconstitutional or invalid for any purpose, the remainder of this ordinance shall not be affected thereby and to this end the provisions of this ordinance are declared to be severable.

Section 5. All ordinances or parts thereof conflicting or inconsistent with the provisions of this ordinance as adopted and amended herein, are hereby amended to the extent of such conflict. In the event of a conflict or inconsistency between this ordinance and any other code or ordinance of the City, the terms and provisions of this ordinance shall govern.

Section 6. It is hereby found, determined and declared that a sufficient written notice of the date, hour, place and subject of this meeting of the City Council was posted at a place convenient to the public at the City Hall of the City for the time required by law preceding this meeting, as required by the Open Meetings Law, Chapter 551, TEX. GOV'T CODE, and that this meeting has been open to the public as required by law at all times during which this ordinance and the subject matter thereof has been discussed, considered and formally acted upon.

Section 7. This ordinance shall take effect from and after its final passage and publication as required by law.

PASSED AND APPROVED on First Reading this ____ day of July, 2014.

PASSED AND ADOPTED on Second Reading this ____ day of July, 2014.

THE CITY OF KYLE, TEXAS

R. Todd Webster, Mayor

ATTEST:

Amelia Sanchez, City Secretary

APPROVED AS TO FORM:

W. Ken Johnson, City Attorney