

ORDINANCE NO. 457

**AN ORDINANCE DESIGNATING A CONTIGUOUS GEOGRAPHIC AREA WITHIN CITY OF KYLE, TEXAS AS REINVESTMENT ZONE NUMBER ONE, CITY OF KYLE, TEXAS, FOR TAX INCREMENT FINANCING PURPOSES PURSUANT TO CHAPTER 311 OF THE TEXAS TAX CODE; CREATING A BOARD OF DIRECTORS FOR SUCH ZONE; CONTAINING FINDINGS AND PROVISIONS RELATED TO THE FOREGOING SUBJECT; AND PROVIDING A SEVERABILITY CLAUSE**

WHEREAS, pursuant to Chapter 311 of the Texas Tax Code, as amended ("Act") a city may designate a contiguous geographic area within such city as a reinvestment zone if the area satisfies the requirements of certain sections of the Act;

WHEREAS, the City of Kyle, Texas (the "City") has prepared a preliminary reinvestment zone financing plan, which provides that City ad valorem taxes are to be deposited into the tax increment fund, and that ad valorem taxes of other taxing units may be utilized in the financing of the proposed zone;

WHEREAS, the City has provided written notice of the public hearing on the creation of the proposed zone, complying with the requirements of Act, to the governing body of all taxing units levying taxes on property in the proposed zone;

WHEREAS, a notice of the October 12, 2004 public hearing on the creation of the proposed zone was published on September 29, 2004, in the Kyle Free Press a newspaper of general circulation in the City;

WHEREAS, at the public hearing on October 12, 2004, interested persons were allowed to speak for or against the creation of the proposed zone, its boundaries, or the concept of tax increment financing; and owners of property in the proposed zone were given a reasonable opportunity to protest the inclusion of their property in the proposed zone;

WHEREAS, evidence was received and presented at the public hearing in favor of the creation of the proposed zone under the provisions of Act;

WHEREAS, no owner of real property in the proposed zone protested the inclusion of their property in the proposed zone;

WHEREAS, the City has provided all information, made all presentations, given all notices and done all other things required by Chapter 311, Texas Tax Code, or other law as a condition to the creation of the proposed zone;

WHEREAS, the lack of adequate street layout has hindered the accessibility and usefulness of the property meeting the requirements of 311.005, Tex. Tax Code; and

WHEREAS, the total area within the proposed zone is approximately 475 acres, excluding property that is publicly owned;

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

**Section 1.     Findings.**

(a)     That the facts and recitations contained in the preamble of this Resolution are hereby found and declared to be true and correct and are adopted as part of this Resolution for all purposes.

(b)     That the City Council further finds and declares that the creation of the Zone will significantly enhance the value of all the taxable real property in the Zone and will be of general benefit to the City.

(c)     That the City Council further finds and declares that the Zone meets the criteria and requirements of Section 311.005 of the Act because the Zone contains: (i) substantial areas that are predominantly open and underdeveloped; (ii) lack public water distribution, wastewater collection and storm drainage facilities; and (iii) lack adequate roadway systems for mobility, access and orderly development, each of which cause conditions that substantially impair and arrest the sound growth of the City.

(d)     That the City Council, pursuant to the requirements of the Act, further finds and declares:

- (1)     that the Zone is a contiguous geographic area located wholly within the corporate limits of the City of Kyle;
- (2)     that the total appraised value of taxable real property in the Zone does not exceed fifteen percent of the total appraised value of taxable real property in the City and in the industrial districts created by the City;
- (3)     that the Zone does not contain more than fifteen percent of the total appraised value of real property taxable by Hays County, the Hays Independent School District, Plum Creek Conservation, and the Hays County Rural Fire #5; and
- (4)     that the development of the property in the Zone will not occur solely through private investment in the reasonably foreseeable future.

**Section 2.     Designation of the Zone.** That the City, acting under the provisions of Chapter 311, Texas Tax Code, including Section 311.005(a), does hereby designate as a reinvestment zone, and create and designate a reinvestment zone over, the area described in Exhibit "A" and depicted in the

map attached hereto as Exhibit "B" to promote the redevelopment of the area. The reinvestment zone shall hereafter be named for identification as Reinvestment Zone Number One, City of Kyle, Texas, (the "TIRZ 1"). The City Council specifically declares that the Zone is designated pursuant to Section 311.005(a)(1) and (2) of the Texas Tax Code.

**Section 3. Board of Directors.** TIRZ 1 shall be governed by a five (5) person Board of Directors (the "Board"). One member of the Board may be appointed by the Hays County Commissioners Court (the "County"). The Board of Trustees of the Hays County Independent School District ("HISD"), the Board of the Plum Creek Conservation ("PCC"), and the Board of the Hays County Rural Fire #5 ("HCRF 5") have waived appointment of a board member in writing prior to the date of this ordinance. Four members of the Board shall be appointed by the City Council. If the County waives the appointment of a board member, the position shall be filled by an appointment made by the City Council.

(a) **Qualifications.** Each member of the Board shall be a qualified voter of the City, or a person at least eighteen (18) years of age who owns property within the boundaries of TIRZ 1.

(b) **Term of Office.** The term of each initial director shall be determined by lot and then recorded in the minutes of the organizational meeting of TIRZ 1. Two of the initial directors shall serve an initial term of one (1) year, and three shall serve an initial term of (2) years. The term of each subsequent director shall be two (2) years. Vacancies shall be filled for the remainder of the unexpired term, by appointment made by the governing body that appointed the director who served in the vacated position.

(c) **Officers.** The City Council shall annually appoint a member of the Board to serve as chairman of the Board for a one year term beginning January 1st and ending December 31st. The Board may elect a vice-chairman to serve in the absence of the chairman, and other officers as it deems appropriate.

(d) **Meetings of Directors.** The Board may hold its meetings at any place within the City as the Board may from time to time determine; provided that, in the absence of any such determination by the Board, the meetings shall be held at the City Council Chambers of the City. The Board shall conduct its meetings in accordance with the requirements of the Act and the Texas Open Meetings Act, *Chapt. 551, Tex. Gov't. Code*, as amended. Regular meetings of the Board shall be held at such times and places as shall be designated, from time to time, by resolution of the Board. Notice of regular meetings need not be given to each of the Directors but public notice of each meeting shall be given in the manner prescribed by law. Special meetings of the Board shall be held whenever called by the chairman, the vice-chairman in the absence of the chairman, or upon advice of or request by the Mayor. A majority of the directors fixed by this Ordinance shall constitute a quorum for Board meetings. The act of a majority of the directors present at a meeting at which a quorum is in attendance shall constitute the act of the Board, unless the act of a greater number is required by law.

(e) **Authority.** The Board shall have the authority specifically given to the Board in *Chapt. 311, Tex. Tax. Code*. The Board shall have such other authority, as may be lawfully delegated by the City

Council, as is delegated by the City Council acting by a formal, written resolution or ordinance. Action by the Board that is expressly or impliedly provided in *Chapt. 311*, or by other state law, to be subject to approval by the City Council, shall not be effective until approved in writing by the City Council.

(f) Duties. The Board shall perform each duty and obligation required to be performed by the Board, by *Chapt. 311*, any project or plan approved by the City Council, and each such duty and obligation lawfully imposed on the Board by the City Council consistent with *Chapt. 311*.

(g) Plan. The Board of Directors shall make recommendations to the City Council concerning the administration of the Zone. The Board of Directors shall prepare or cause to be prepared and adopt a project plan and a reinvestment zone financing plan for the Zone as described in Section 311.011 of the Act, and shall submit such plans to the City Council for its approval. The City hereby delegates to the Board of Directors all powers necessary to prepare the project plan and reinvestment zone financing plan, subject to approval by the City Council, including the power to employ any necessary consultants, that may be reasonably necessary or convenient to assist the Board of Directors in the preparation of the project plan and reinvestment zone financing plan.

**Section 4. Duration of the Zone** That the Zone shall take effect on November 2, 2004, for the deposit of tax increments into the Tax Increment Fund established pursuant to Section 6 of this Ordinance, and termination of the operation of the Zone shall occur on December 31, 2035, or at an earlier time designated by subsequent ordinance, or at such time, subsequent to the issuance of tax increment bonds, if any, that all project costs, obligations secured with tax increment revenues, and the interest thereon, have been paid in full.

**Section 5. Tax Increment Base** That the Tax Increment Base of the City or any other taxing unit participating in the Zone for the Zone is the total appraised value of all real property taxable by the City or other taxing unit participating in the Zone and located in the Zone, determined as of November 2, 2004, the year in which the Zone was designated as a reinvestment zone (the "Tax Increment Base").

**Section 6. Tax Increment Fund** That there is hereby created and established a Tax Increment Fund for the Zone which may be divided into subaccounts as authorized by subsequent ordinances. All Tax Increments, as defined below, shall be deposited in the Tax Increment Fund. The Tax Increment Fund and any subaccount shall be maintained at the depository bank of the City and shall be secured in the manner prescribed by law for funds of Texas cities. The annual Tax Increment shall equal the property taxes levied by the City and any other taxing unit participating in the Zone for that year on the captured appraised value, as defined by the Act, of real property located in Zone that is taxable by the City or any other taxing unit participating in the Zone, less any amounts that are to be allocated from the Tax Increment pursuant to the Act. All revenues from the sale of any tax increment bonds, notes or other obligations hereafter issued for the benefit of the Zone by the City, if any; revenues from the sale of property acquired as part of the project plan and reinvestment zone financing plan, if any; and other revenues to be used in the Zone shall be deposited into the Tax Increment Fund. Prior to the termination of the Zone, money shall be disbursed from the Tax

Increment Fund only to pay project costs, as defined by the Texas Tax Code, for the Zone, to satisfy the claims of holders of tax increments bonds or notes issued for the Zone, or to pay obligations incurred pursuant to agreements entered into to implement the project plan and reinvestment zone financing plan and achieve their purpose pursuant to Section 311.010(b) of the Texas Tax Code.

**Section 7. Severability** If any provision, section, subsection, sentence, clause or phrase of this Ordinance, or the application of same to any person to set circumstances, is for any reason held to be unconstitutional, void or invalid, the validity of the remaining provisions of this Ordinance or their application to other persons or set of circumstances shall not be affected thereby, it being the intent of the City Council in adopting this Ordinance that no portion hereof or regulations connected herein shall become inoperative or fail by reason of any unconstitutionality, voidness or invalidity of any portion hereof, and all provisions of this Ordinance are declared severable for that purpose.

**Section 8. Effective Date.** This ordinance shall take effect immediately from and after its passage.

**Section 9. Open Meetings.** It is hereby officially found and determined that the meeting at which this ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act.

**Section 10. Notices.** The contents of the notice of the public hearing, which hearing was held before the City Council on October 12, 2004, and the publication of said notice, are hereby ratified, and confirmed.

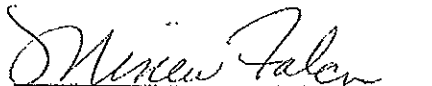
PASSED AND APPROVED on first reading this the 12th day of October, 2004.

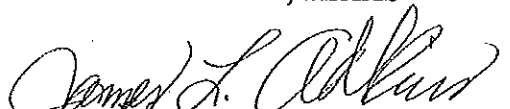
PASSED AND APPROVED on second reading this the 1st day of November, 2004.

FINALLY PASSED AND APPROVED on this the 16th day of November, 2004.

ATTEST:

CITY OF KYLE, TEXAS

  
Minerva Falcon, City Secretary

  
James Adkins, Mayor

## EXHIBIT A

THIS IS A DESCRIPTION OF A TRACT OF LAND CONTAINING APPROXIMATELY 475 ACRES OUT OF THE JOHN KING SURVEY, THE DAN DOWNER SURVEY, THE THOMAS G. ALLEN SURVEY NO. 26, THE HENREY LOLLER SURVEY, ABSTRACT 280 AND THE J. M. GREEN SURVEY IN HAYS COUNTY, TEXAS, TO BE USED FOR POLITICAL MEANS. THIS WAS NOT SURVEYED ON THE GROUND AND IS A BOUNDS DESCRIPTION ONLY ASSEMBLED FROM THE BEST AVAILABLE EVIDENCE INCLUDING DEED RESEARCH AND APPRAISAL DISTRICT MAPS. REFERENCES TO ALL DOCUMENTS OF RECORD REFER TO THE OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS. THIS TYPE OF DESCRIPTION IS ALLOWED UNDER THE TEXAS ADMINISTRATIVE CODE, PART 29, CHAPTER 663, SUBCHAPTER B, RULE 663.21 AND IS FURTHER DESCRIBED AS FOLLOWS:

BEGINNING at the most northerly northeast corner of the herein described tract, same being the most northerly north east corner of Kyle Towne Center, a subdivision of record in Book 11, Page 356 of the Official Public Records of Hays County, Texas, same also being in the westerly right-of-way line of Interstate Highway No. 35;

THENCE, with the easterly line of said Kyle Towne Center and the westerly right-of-way line of Interstate Highway No. 35 to the southeast corner of said Kyle Towne Center, same being the northeast corner of a tract of land described in a deed to Les Crane in Volume 399, Page 294;

THENCE with the easterly line of said Crane Tract and the westerly right-of-way line of Interstate Highway No. 35 to the southeast corner of said Crane tract same being the Northeast corner of Kyle Industrial Park;

THENCE, with the southerly line of said Crane Tract, and the northerly line of Kyle Industrial Park, to the easterly right of way line of County Road No. 210;

THENCE, with the easterly right-of-way line of County Road No. 210 to the southwest corner of said Kyle Industrial Park;

THENCE, the southerly line of said Kyle Industrial Park to the westerly right-of-way line of Interstate Highway No. 35;

THENCE, with the westerly right-of-way line of Interstate Highway No. 35 to a point where the westerly right-of-way line of Interstate Highway No. 35 intersects the easterly right-of-way line of County Road No. 210;

THENCE, crossing said County Road No. 210, in a southwesterly direction to a point on the westerly right-of-way line of said Interstate Highway No. 35, same being the easterly line of a tract of land described as EVANS Tract I in a deed to SHELDON-TANGLEWOOD LTD. of record in Volume 2495, Page 677;

THENCE with the northwesterly right-of-way line Interstate Highway No. 35, same being the southeasterly line of said SHELDON-TANGLEWOOD LTD. Tract approximately 927 feet to a northeast corner of a tract of land described as EVANS II in a deed to SHELDON-TANGLEWOOD LTD of record Volume 2495 Page 677;

THENCE, continuing with the northwesterly right-of-way line of Interstate Highway No. 35, same being the southeasterly line of Evans Tract II, passing at approximately 1693 feet the most southerly corner of Evans Tract II, same being a northeasterly corner of a tract of land described as Kirkham Tract II of record in a deed to SHELDON-TANGLEWOOD LTD. as recorded in Volume 2495, Page 658, and continuing with the southeasterly line of said Kirkham Tract II, same being the northwesterly right-of-way line of Interstate Highway No. 35, to the most southerly corner of said Kirkham Tract II, same being an easterly corner of lot 2 of Plum Creek Park, a subdivision of record in Volume 7, Page 297;

THENCE, with the common line of said Lot 2 and said Kirkham Tract II to the southeasterly right-of-way line of the Missouri & Pacific Railroad Company Tract;

THENCE, with the easterly line of the Missouri & Pacific Railroad Tract, same being the west line of said Kirkham Tract II, to the approximate west corner of said Kirkham Tract I;

THENCE, with the northwesterly lines of said Kirkham Tract I and said Evans Tract I, in a northeasterly direction approximately 4000 feet to the North corner of said Evans Tract I;

THENCE, with the northeasterly line of said Evans Tract I, in a southeasterly direction to the northeast corner of said Evans Tract I in the westerly right-of-way line of County Road No. 210;

THENCE with the westerly right-of-way line of said County Road No. 210 to the intersection of the southerly right-of-way line of Kohler's Crossing Road;

THENCE, crossing said County Road No. 210 to the southwest corner of said Kyle Towne Center;

THENCE with the west lines of Kyle Towne Center, same being the east right-of-way line of County Road No. 210 to the southwest corner of a 10 acre tract of land to Palm Harbor Manufacturing L.P. of record in Volume 1907, Page 576;

THENCE, with the south line of said Palm Harbor Manufacturing L.P., same being the north line of said Kyle Towne Center to the southeast corner of said Palm Harbor Tract;



## EXHIBIT B



PROPOSED TAX INCREMENT  
REINVESTMENT ZONE FOR KYLE  
APPROXIMATELY 475.6 ACRES