

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF KYLE, TEXAS AMENDING PART II CHAPTER 41 ARTICLE V SECTION 41-147 (a) OF THE CITY CODE PERTAINING TO PARKLAND DEDICATION DEFINITIONS; PROVIDING FOR CONFLICTING ORDINANCES; PROVIDING A PENALTY CLAUSE; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

Whereas, the City of Kyle, Texas (the “City”) adopted Chapter 41, Article V, Section 41-147 (A) of the City Code pertaining to Parkland Dedication Definitions, and desires to amend the definition of a park;

Whereas, the City has parkland that includes features and amenities that are not clearly included in the definition; and

Whereas, the adoption of this ordinance will promote the public health, safety and quality of life for the citizens of Kyle;

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

Section 1. Findings of Fact. The above and 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 the rules, regulations, terms, conditions, provisions and requirements of this ordinance are reasonable and necessary to protect the public health, safety and quality of life.

Section 2. Amending Section 41-147 (a) – Parkland Dedication Definitions. Part II, Chapter 41, Article V, Section 41-147 (a), City of Kyle Code of Ordinances, is hereby amended to read as follows:

Sec 41-147 (a) Definitions

Definitions. For the purposes of this section, the following terms, phrases and words shall have the meaning ascribed to them in this subsection.

Hike and bike trail means a strip of land that is dedicated for a trail or pathway for pedestrian circulation, alternative transportation and recreational uses, that is not less than ten feet in width, and that has installed, or is planned to have installed, certain improvements, including but not limited to an all-weather (concrete or asphalt) trail or

pathway that is not less than six feet in width, designed and constructed in compliance with standards and specifications adopted and maintained by the city.

Neighborhood park means a public park provided for a variety of outdoor recreational opportunities located within a residential subdivision or within a close proximity or convenient distance of the majority of residences to be served thereby so that the residential subdivision or subdivisions so located shall be the primary beneficiaries of these facilities. These parks are generally smaller in size, being less than 15 acres.

Park means any public park, playground, pool, water-feature, lake, waterway, recreation or open space area, or hike and bike trail including a parking lot within such areas, which is operated, maintained and controlled by the city, and heretofore platted, dedicated, or designated as a public park within the city and its extraterritorial jurisdiction. These parks are generally larger in size, 15 acres or larger, and regionally located throughout the city. Land dedicated for public school land, which contains a park or park land as defined herein shall be considered a park for the purposes of this section but only to the extent of the actual land dedicated for such a park.

Private park means a recreation area or open space land within a residential area which are not available for public use or which are intended primarily for exclusive use by residents of the residential area, by members of a homeowners association or other organizations. A private park shall be considered a park for purposes of this section but only to the extent necessary for planning purposes. A private park does not meet the cash payment nor park land dedication requirements of this section.

Residential area means any area within a subdivision plat which in whole or in part is platted for the development of dwelling units or residences, whether the same be single-family, multifamily, owner-occupied or rental dwelling units and including townhouses, condominiums and apartments.

Section 3. Amendment of Code of Ordinances. The City Code is hereby amended in as set forth in this Ordinance, and all prior ordinances of the City dealing with or applicable to parkland are hereby amended with regard to parkland dedication definitions to the extent of any conflict herewith, and 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 4. Penalty Clause. Any person who shall violate any of the provisions of this ordinance, or shall fail to comply therewith, or with any of the requirements thereof, within the City limits shall be deemed guilty of an offense and shall be liable for a fine not to exceed the sum of five hundred dollars (\$500.00). Each day the violation exists shall constitute a separate offense. Proof of a culpable mental state shall not be required to establish a violation of this ordinance. Such penalty shall be in addition to all the other remedies provided herein.

Section 5. Savings Clause. All rights and remedies of the City of Kyle are expressly saved as to any and all violations of the provisions of any ordinances affecting parkland which have accrued at the time of the effective date of this Ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this Ordinance but may be prosecuted until final disposition by the courts.

Section 6. Effective Date. This Ordinance shall take effect immediately from and after its passage and publication in accordance with the provisions of the Tex. Loc. Gov't. Code and the City Charter.

Section 7. Severability. It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this Ordinance are severable and, if any phrase, sentence, paragraph or section of this Ordinance should be declared invalid by the final judgment or decree of any court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this Ordinance, since the same would have been enacted by the City Council without the incorporation into this Ordinance of any such invalid phrase, clause, sentence, paragraph or section. If any provision of this Ordinance shall be adjudged by a court of competent jurisdiction to be invalid, the invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision, and to this end the provisions of this Ordinance are declared to be severable.

Section 8. 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.

READ, CONSIDERED, PASSED AND APPROVED ON FIRST READING by the City Council of Kyle at a regular meeting on the _____ day of _____, 2011, at which a quorum was present and for which due notice was given pursuant to Section 551.001, et. Seq. of the Government Code.

READ, CONSIDERED, PASSED AND APPROVED ON SECOND AND FINAL READING by the City Council of Kyle at a regular meeting on the _____ day of _____, 2011, at which a quorum was present and for which due notice was given pursuant to Section 551.001, et. Seq. of the Government Code.

APPROVED this _____ day of _____, 2011.

Lucy Johnson, Mayor

ATTEST:

Amelia Sanchez, City Secretary