

ORDINANCE NO. 439-(4)

AN ORDINANCE OF THE CITY OF KYLE, TEXAS, AMENDING ARTICLE V, SECTION 14 – PARK LAND DEDICATION - OF CITY SUBDIVISION ORDINANCE NO. 439 IN ITS ENTIRETY; PROVIDING FOR PARK LAND FEE, PARK LAND DEDICATION IN LIEU OF FEE AND PARK DEVELOPMENT FEE; PROVIDING FOR FEE CALCULATION METHODOLOGY; REVISING AND UPDATING DEFINITIONS; MAKING FINDINGS OF FACT; AND PROVIDING FOR RELATED MATTERS.

Whereas, in accordance with the home rule powers of the City of Kyle, granted under the Texas Constitution, and the statutes of the State of Texas, the ordinance of the City of Kyle regulating the development and subdivision of land within the City and its extraterritorial jurisdiction should be amended to better provide an attractive living environment and to protect the health, safety and welfare of the present and future residents of Kyle;

Whereas, it is reasonable and necessary for the public health, safety and welfare to provide for the development of park land and open space in the City of Kyle when developments cause increased density within the City and its extraterritorial jurisdiction;

Whereas, recreational areas in the form of parks and open spaces are necessary to promote the public welfare, and it is reasonable and necessary to enact procedures for dedication of park land and construction or funding of park improvements by integrating such a requirement into the procedure for planning and developing property, subdivision of land, or the addition of new dwelling units on existing residential land;

Whereas, residential development increases demands upon the City of Kyle's parks and recreational system;

Whereas, the Kyle City Council has previously adopted a Parks, Recreation and Open Space Master Plan which provides for acquisition and development of parks to serve the recreational needs of the City and provide for its citizens health and general welfare;

Whereas, the adoption of a park dedication ordinance with offsets for cash in lieu of land or improvement of park land will enable the City of Kyle to meet the neighborhood recreational needs of the City in accordance with the principles and standards contained in the Parks, Recreation and Open Space Master Plan;

Whereas, the City Council determines that the requirements of this ordinance that subdividers of residential subdivisions and lots provide for park land and park facilities and improvements at the time of development approval as provided herein are in proportion to the need for such improvements created by the development and in proportion to the benefits received from contribution of such facilities; and

Whereas, the City of Kyle Parks Committee has reviewed and recommended this proposed amendment;

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

Section 1. Findings. The following recitals are hereby found to be true and correct and are hereby adopted by the City Council and made a part hereof for all purposes as findings of fact.

Section 2. Amendment of Subdivision Ordinance. Ordinance Number 439, Article V, Section 14 – Park Land Dedication, shall be amended in its entirety to read as follows:

Section 14. Park Land Dedication.

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

(i) "Park" means any public park, playground, 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 of Kyle 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.

(ii) "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.

(iii) "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.

(iv) "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.

(v) "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 (10) 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 (6') in width, designed and constructed in compliance with standards and specifications adopted and maintained by the City.

(b) Park Land Fee

The developer of any residential subdivisions or developments within the City of Kyle and its Extraterritorial Jurisdiction shall pay a park land fee which shall be paid for each residential lot or dwelling unit within the subdivision or development at or prior to the time the final plat is submitted to the City for final signature approvals and recording in the public records. The park land fee shall be uniform and sufficient to acquire land for parks sufficient to serve the needs of the community as prioritized in the adopted Parks, Recreation and Open Space Master Plan. The park land fee shall be applicable to residential developments and dwelling units, or living unit equivalents (LUE) and shall be computed on the basis of six hundred dollars

(\$600.00) per dwelling unit, LUE. The park land fee shall not apply to developments of five (5) dwelling units or less, unless such development is a phase, section, or part of a development plan that will include more than (5) lots when completed.

(c) Park Land Dedication In Lieu of Park Land Fee.

(i) An owner responsible for payment of the park land fee under this section may be required at the discretion of the city council to meet the requirements of subsection (b) in whole or in part by a park land dedication as set forth in subsection (c)(ii) hereunder.

(ii) Whenever a final plat is submitted to the City for final signatures and filing of record with the county clerk of Hays County for development of a residential area in accordance with this ordinance, or a planned development or other development subject to this ordinance and the comprehensive planning and zoning ordinance of the City, unless earlier waived by the City Council such plat shall contain a clear fee simple dedication of an area of land to the City for park purposes, which area shall equal one (1) acre for each seventy-five (75) proposed dwelling units (LUE), and the dedication by fee or easement of land for hike and bike trails. Except as found appropriate and necessary by the City Council for the hike and bike trail, all dedication of land shall be in a single parcel. The Council and Commission may deem that non-contiguous parcels are permissible in accordance with the regulations set forth herein. Any proposed plat submitted to the City for approval where a park land dedication is being substituted for the required park land fee as provided by this section shall show the area proposed to be dedicated. If a provision of this ordinance for park land dedication conflicts with a provision for a hike and bike trail, the park land dedication requirements shall govern and control except when waived or varied by the City Council to provide for hike and bike trails.

A. The Council declares the development of an area smaller than five (5) acres for public park purposes as impractical.

B. No plat showing dedication of less than five (5) acres shall be approved unless the Council, upon recommendation of the Commission, approves a variance to this requirement by resolution.

C. Dedication required by this subsection shall be made by the filing of the final plat clearly showing such park land dedication and by separate deed in a form acceptable to the City. The fully executed deed shall be delivered to the City at or prior to the time the final plat is submitted to the City for final signature approvals and recording in the public records. If the actual number of completed dwelling units exceeds the figure upon which the original dedication is based, additional dedication shall be required in the amount required by this ordinance as amended, and shall be made by payment of cash instead of the land amount provided by section 14(b) and 14(d)(i).

(iii) Before any payment of park land fee, the Council must find after review of the Commission and at the public hearing at which the subdivision is considered for final approval, that payment of the park land fee bears a substantial relation to the health, safety, general welfare and morals of the community and that there is not a substantial and compelling interest of the community that would be better served by substituting a park land dedication for the park land fee required of the subdivision. In order to determine whether or not the need or benefit is sufficient to require the dedication,

such factors as the size of lots in the subdivision, the economic impact of the subdivision, density of population, the amount of private park land contained in the subdivision, and the amount of open land consumed by the development shall be considered. The director of Parks and Recreation and the City of Kyle Parks and Recreation Committee shall be informed of all new subdivisions, which are submitted for approval and of all existing subdivisions, which are submitted for replatting, expansion, or redevelopment.

(iv) Dedication of land for hike and bike trails:

A. The Council declares that the creation of a comprehensive hike and bike trail connecting the city's parks, neighborhoods and other areas of interest is a substantial and compelling interest of the community.

B. Land shall be dedicated in fee simple or by easement by instrument acceptable to the City for hike and bike trails along all creek, natural drainage ways, selected tree lines as provided in the City adopted Parks, Recreation and Open Space Master Plan, unless specifically waived by the City Council after review by the Parks Committee and the Commission. Land that is required to be dedicated in fee simple under this section, and that is not within an easement, shall be credited to the park land dedication requirements. Land that is dedicated by easement or that is within the right of way of any street, drainage or utility easement shall not be credited to the park land dedication requirement. The maximum distance between access points to trails shall be no more than one thousand feet (1,000').

C. Whenever a final plat is filed for development of any retail, commercial or industrial area in accordance with this ordinance, or other comprehensive planning and zoning ordinance of the City, such a plat shall contain a clear dedication by fee simple, or by easement, if found appropriate by the City Council, of an area of land to the City for a hike and bike trail, under the same terms, conditions and requirements as are applicable to residential plats.

(v) No area of land or facility shall be dedicated to the City for park land purposes unless approved and accepted by the City Council.

(d) Park Development Fee.

(i) In addition to the required payment of park land fee as set forth in section 14(b) or the dedication of land as set forth in section 14(c), as applicable, the developer or his successor shall pay a park development fee to the City which shall be paid for each residential lot or dwelling unit within the subdivision or development at or prior to the time the final plat is submitted to the City for final signature approvals and recording in the public records. The park development fee shall be set from time to time by city ordinance and shall be sufficient to provide for the development of amenities and improvements on dedicated parks within the City. The park development fee shall be applicable to residential developments and dwelling units, or living unit equivalents (LUE) and the park development fee shall be computed on the basis of six hundred dollars (\$ 600.00) per dwelling unit (LUE) in the development or subdivision. The park development fee shall not apply to developments of five (5) dwelling units or less, unless such development is a phase, section, or part of a development plan that will include more than (5) lots when completed.

(ii) In lieu of payment of the required park development fee, the developer, with approval of the Parks Director, may construct the park improvements. All public park improvements shall meet the minimum requirements set forth in the adopted Kyle Parks, Recreation and Open Spaces Master Plan. All development plans and specifications for the construction of said park improvements shall meet the minimum design and construction standards on file with the Kyle Parks and Recreation Department, be sealed by a Landscape Architect registered in the State of Texas and be reviewed and approved by the Kyle Parks Director prior to construction.

A. The developer shall financially guarantee the construction of such park improvements by providing performance and payment bonds, an irrevocable letter of credit, or other similar security that is deemed acceptable to the Parks Director and that complies with the requirements of this ordinance for fiscal guarantees for required subdivision improvements, except as provided otherwise in this section, prior to the recording of the final plat for the subdivision.

B. The developer and contractor constructing the park improvements shall be required to execute a license agreement using the City's standard for prior to beginning work on the park improvements.

C. Performance and payment bonds shall name the City as a beneficiary and shall cover one hundred percent (100%) of the estimated construction cost of such park improvements as shown in a construction contract executed by the developer.

D. The period within which required park improvements must be completed shall be incorporated in the surety instrument and shall not in any event, without prior approval of the City, exceed one (1) year from date of final plat approval.

E. As a condition of City acceptance of the park improvements, the developer shall be required to provide a two year maintenance bond that is equal in amount to one hundred percent (100%) and that complies with the requirements of this ordinance for maintenance bonds for required subdivision improvements, except as provided otherwise in this section, of the construction cost of said park improvements and a manufacturer's letter stating the main play structure and safety surface was installed in accordance with the manufacturer's installation requirements.

F. As a condition of City acceptance of the park improvements, the developer shall also provide the City a copy of the application and subsequent inspection report prepared by the Texas Department of Licensing and Regulation or their contracted reviewer for compliance with the Architectural Barriers Act, codified as Article 9102, Texas Civil Statutes, as amended.

G. All park improvements may be inspected by the City while construction is in progress and the developer shall provide the City with reasonable access to perform such inspections. Once construction of the park improvements are

complete as determined by the Park Director, the developer shall convey such improvements to the City free and clear of any lien or other encumbrances by instrument acceptable to the City. The developer shall provide documentation satisfactory to the Parks Director demonstrating that the improvements and land are free and clear of any lien or other encumbrances. The Parks Director shall accept the park improvements in writing after inspection and upon the determination that the park improvements have been satisfactorily completed, the park improvements and underlying park land are free and clear of any lien or encumbrance, the developer has complied with sections 14(d)(ii)(E) and (F), and the developer has executed the required instrument to convey the park improvements to the City.

(e) Prior Dedication.

(i) Credit shall be given for payment of park land and park development fees or for park land dedications paid or dedicated pursuant to the existing zoning ordinance or subdivision ordinance of the City at the time a development was accepted by the City.

(ii) If a park land and park development fee or park land dedication requirement arose prior to the passage of this section, that dedication requirement shall be controlled by the ordinance in effect at the time such obligation arose, except that an additional park land and park development fee or an additional park land dedication shall be required if the actual density of the dwelling units constructed on the property is greater than the former assumed density. An additional park land fee, or park land dedication, and park development fee shall be determined by the increase in density and shall be based on the ratio set forth in subsections (b) and (c) of this section.

(iii) At the discretion of the City, acting through its Council, any former gift of park land to the City, which was not required by any provision of this ordinance, the zoning ordinance or other applicable laws, may be credited on a per acre basis toward eventual park land dedication requirements imposed on the donor of such land. The Council shall consider the recommendation of the Commission in exercising its discretion under this section.

(f) Comprehensive Plan Considerations.

Land designated in the comprehensive plan as being suitable for development by the City for a major recreational center, park, or other public use, may be reserved for a period of one year after the preliminary plan is approved by the Council if, within two (2) months after such approval, the Council advises the subdivider of its interest in acquiring the land or of the interest of another governmental unit to acquire the land, at the appraised value of the land at the time of purchase. A failure by the Council to notify the subdivider shall constitute a waiver of the right to reserve the land. Any waiver of the right to reserve the land shall no longer be effective if the preliminary plat shall expire without adoption of a final plat.

(g) Dedicated Fund.

(i) There is hereby established a dedicated fund for the deposit of all sums paid for park land fees and park development fees. This fund shall be known as the "Park Lands Dedicated Fund". All monies set aside in said Park Lands Dedicated Fund shall be used exclusively for park land acquisition and park and recreational development and/or improvements in new or existing parks within the City of Kyle.

(ii) The City shall account for all sums paid the Park Lands Dedicated Fund with reference to the individual plats involved and the contributing developer. Any funds paid for such purposes must be expended by the City on a "first-in, first-out" basis within ten (10) years from the date received by the City for acquisition or development and/or improvement of parks within the City of Kyle.

(iii) The Park Lands Dedicated Fund may be placed in a "treasury fund" established by the City, so long as accounting procedures maintain a separate account for the proceeds in a manner allowing for the purposes set forth herein and that assures that such funds will not be disbursed for any purposes not set forth in this ordinance.

(iv) Park land and park development payments may be used only for the acquisition, development, and/or improvement of park land located within the city limits or the City's extraterritorial jurisdiction. In determining the allocation of funds derived from the payment of park land and park development fees, the Council shall allocate such funds to parks in the same area as the development giving rise to the park land and park development fees, or in close proximity thereto.

(v) The Council may allocate park land and park development fee funds at its discretion to any park within the city limits or the City's extraterritorial jurisdiction after there is a review by the Commission and a finding by the Council that there is a substantial and compelling interest of the community requiring a different allocation than that prescribed in section 14(g)(iv).

(h) Additional Requirements.

(i) Any land dedicated to the City under this section must be suitable for recreational purposes, such as for parks, playgrounds, hike and bike trails and usable open space. The following characteristics of proposed area are presumed unsuitable:

- A. Any area which is located within the one hundred (100) year flood plain.
- B. Any areas of unusable topography or slope which render more than twenty-five percent (25%) of the area unusable for organized recreational activities, or due to unusual circumstances relating to subsoil, slope or topography, the development of the property for park or recreational purposes would be unusually difficult or expensive.
- C. Areas encumbered by overhead utility lines or easements of any type which might limit the opportunity for park and recreation development.
- D. Land sites encumbered by hazardous and or municipal waste materials or dump sites.

(ii) The characteristics described in Sections 14(h)(i)(A)-(D) may be grounds for refusal of any preliminary or final plat.

(iii) Drainage areas may be accepted as a part of a park if the channel is constructed in accordance with the city engineering standards, and if no significant area of the park is cut off from the access by such channel; provided, however, that the developer may provide vehicular access by a bridge or similar structure. The percentage or portion of

park land dedication hereunder may include fifty (50) feet on each side of any well-defined creek or waterway subject to the approval of the City.

(iv) Each park must have ready access to an improved public street. The park entrance must be visible to the public.

(v) Permanent Property Boundary Markers required. The developer shall be obligated to place survey markers at all corners of the park land, which has been located by a license and professional surveyor. The markers will be four (4) inch diameter PVC pipe recessed twelve (12) inches in the ground. They will contain a ½-inch iron pipe or rebar and be filled with concrete flush with the ground.

(vi) The park site being dedicated shall be free of trash and debris. If the condition of the dedicated park land is disturbed during construction of subdivision improvements, then the subdivider shall be responsible for returning the dedicated land to its previous condition prior to or at the time of final plat filing. The public improvements to be constructed per the applicable subdivision plat will not be accepted by the City until such time that the above conditions have been met.

(v) The following utility connections shall be completed by the developer, and such connections shall not count as a credit toward park land or park development fee or park land dedication requirements:

(A) Water Meter – A two (2) inch metered water supply located twelve (12) feet behind the curb in a location determined by the Parks Director.

(B) Waste-Water Stub – a six (6) inch gravity-feed waste-water (sewer) stub or two (2) inch pressurized sewer line and electricity line located ten (10) feet behind the curb in a location determined by the Parks Director.

(vi) Unless provided otherwise herein, an action by the City shall be by the Council, after consideration of the recommendation of the Commission and the Parks and Recreation Committee.

(i) Updating of Dedication Fees, Improvement Costs and Other Requirements. The requirements described within this section as related to fees, development costs, population and park land level of service may be updated from time to time on a basis of current conditions. The Parks Committee shall consider and make periodic recommendations to the City Council on such conditions.

Section 3. Amendment of Conflicting Ordinances. Ordinance Number 439, Article V., Section 14 is hereby amended as provided herein 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. 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 subdivision within the City 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 5. Open Meetings. That 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, Chapt. 551, Loc. Gov't. Code.

Section 6. Effective Date. This Ordinance shall be in full force and effect from and after the date of its final passage and adoption in accordance with the provisions of the Kyle City Charter.

PASSED AND APPROVED on First Reading this ____ day of _____, 2009.

FINALLY PASSED AND APPROVED on this the ____ day of _____, 2009.

ATTEST:

THE CITY OF KYLE, TEXAS

Amelia Sanchez, City Secretary

Miguel Gonzalez, Mayor