

**ORDINANCE NO. 985**

**AN ORDINANCE OF THE CITY OF KYLE, TEXAS, AMENDING ARTICLE 1 SEC. 41-1 “DEFINITIONS”, AND ARTICLE 4 SEC. 41-110 “FINAL PLAT PACKAGE (FPP)”, AND ARTICLE 5 SEC. 41-141 “UTILITY EASEMENTS”, OF CHAPTER 41 “SUBDIVISIONS”, OF THE CITY OF KYLE CODE OF ORDINANCES, BY AMENDING CURRENT DEFINITIONS, REQUIRING CERTAIN DEDICATION LANGUAGE, CLARIFYING APPROVED TECHNIQUES, ESTABLISHING CITY AUTHORITY, REQUIRING PROPER APPROVALS FOR THE CREATION OF UTILITY EASEMENTS ON BOTH RESIDENTIAL AND NON-RESIDENTIAL LOTS BOTH INSIDE AND OUTSIDE KYLE’S CORPORATE LIMITS, PROVIDING AN EFFECTIVE DATE, PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES, AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE WAS PASSED AS OPEN TO THE PUBLIC AS REQUIRED BY LAW.**

**WHEREAS**, the City of Kyle is authorized to regulate property development by establishing the strict guidelines for the time, manner, and place of certain improvements; and

**WHEREAS**, the City of Kyle is charged with providing for the health, safety and welfare of the citizens of the City; and

**WHEREAS**, the City’s regulatory mechanism for the regulation of new subdivisions and utility easements therein, Section 41-141, of Article 5, of Chapter 41 of the City Code currently has provisions for their creation and placement; and

**WHEREAS**, the City of Kyle seeks to provide direct guidance regarding the establishment of certain types of utility easements on public and private property; and

**WHEREAS**, the City seeks to expand and clarify the rules and regulations for creating and maintaining certain types easements, and the programming for their use; and

**WHEREAS**, in order to provide greater specificity in allowable encroachments and uses; and

**WHEREAS**, in order to provide exemptions to specific utility and encroachment requirements; and

**WHEREAS**, the regulation of these easements established both within Kyle’s corporate limits and in its extraterritorial jurisdiction is a reasonable and lawful police power of Texas home rule jurisdictions; and

**WHEREAS**, the City of Kyle encourages constant evaluation of regulatory practices, procedures and allowances to ensure conformance with the previously established visions, goals, policies, and objectives outlined in various master plans; and

**WHEREAS**, the Mayor and City Council have reviewed these recommended changes to the Kyle Zoning Ordinance and find that it furthers the City's intended provisions for health, safety and welfare; and

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

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

**Section 2. Definitions Section Amended.** The Ordinance regulating the subdivision of land is hereby amended by clarifying a specific set of definitions to be used when regulating new and amended subdivisions of land.

**Section 3. Required Dedications.** City of Kyle City Code Chapter 41, Subdivisions, as amended, is hereby modified and amended by requiring a signed and notarized certification of dedication of streets, roads, parks and other land intended for public use and dedication of municipal utility easements, rights-of-way and other land to the appropriate utilities.

**Section 4. Amendment of Approved Techniques.** City of Kyle City Code Chapter 41, Subdivisions, as amended, is hereby modified and amended by clarifying certain aspects of the creation and maintenance of utility easements, such as their locations, maintenance requirements, permissible encroachments, and in some instances, these aspects taken in combination.

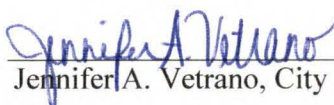
**Section 5. Conditions and Standards.** Those changes noted in the attached Exhibit A are affected by this text amendment.

**Section 6. Effective Date.** This Ordinance language will be in full force and effective on the date of final approval by the City of Kyle Mayor and City Council.

**Section 7. 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, Chapter 51, Texas Local Government Code.

**PASSED AND APPROVED on first reading, this the 6th day of February, 2018.**

**PASSED AND APPROVED on second reading, this the 20th day of February, 2018.**

  
Jennifer A. Vetrano, City Secretary

  
Travis Mitchell, Mayor

## EXHIBIT A

### Sec. 41-1. - Definitions.

- (a) The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

*Abutting* means adjacent; joining at a boundary.

*Administrator* means the city engineer, director of public works or other person designated by the city to administer the regulations and provisions of this chapter.

*Alley* means a minor public right-of-way that is primarily for vehicular service access to the back or sides of properties otherwise abutting on a street.

*Block* means a unit of land bounded by streets or a combination of streets and public land, railroad rights-of-way, waterways, or any other barrier to the continuity to development.

*Building setback line* means a line beyond which building foundations or any building extension other than roof overhang not exceeding 18 inches must be set back from the property line.

*Crosswalkway* means a public right-of-way, between property lines, for pedestrian circulation.

*Cul-de-sac* means a local street with only one street outlet and having an appropriate terminal for the safe and convenient reversal of traffic movement.

*Dead-end street* means a portion of a street or a road with only one street or road outlet.

*Developer*. See *Subdivider*.

*Double fronting lot* means a lot which fronts upon two parallel streets, or which fronts upon two streets which do not intersect at the boundaries of the lot.

*Easement* means right or privilege of the public, a corporation, or another prescribed person or entity, to use and/or enjoy (a) designated property right(s) of certain real property of another without possessing the real property.

*Easement, avigation*, means an air-rights easement, which protects air lanes around airports.

*Easement, drainage*, means an easement required for the installation of stormwater sewers or drainage ditches, and/or required for the preservation or maintenance of a natural stream or watercourse or other drainage facility.

*Engineer* means a person authorized under the Texas Engineering Registration Act to practice the profession of engineering.

*Flood* means a general and temporary condition as partial or complete inundation of normally dry land areas from the unusual and rapid accumulation or runoff of surface waters from any source.

*Flood protection elevation, regulatory*. See the flood hazard area regulations in chapter 17, article II.

*Homeowners' association* means a community association, other than a condominium association, which is organized in a development in which individual owners share common interests in open space or facilities.

*Interior lot* means a lot other than a corner lot.

*Lot* means an undivided tract or parcel of land, identified by a number or symbol and designated as a distinct and separate tract on a fully approved subdivision plat properly filed of record.

*Lot area* means the total area within the lot lines of the lot excluding any street rights-of-way.

*Lot corner* means a lot or parcel of land abutting upon two or more streets at their intersection, or upon two parts of the same street forming an interior angle of less than 135 degrees.

*Lot depth* means the distance measured from the front lot line to the rear lot line. Where the front and rear lot lines are not parallel, the lot depth should be measured by drawing lines from the front to the rear lot lines, at right angles to the front lot line every ten feet, and averaging the length of these lines.

*Lot line* means a line of record bounding a lot, which divides one lot from another lot or from a public or private street or any other public space.

*Major subdivision* means any subdivision not classified as a minor subdivision.

*Master development plan* means a graphic representation and narrative description of a large area of land intended for eventual development in phases. The plan may involve a single parcel or a number of contiguous parcels. It should show proposed land use, street classification, parks and open space, major public facility sites, floodplains and waterways, major drainage and utility improvements, and other features deemed necessary or appropriate by the administrator to depict critical on-site and off-site relationships that coordinate the development with the community's overall plan and adjoining undertakings.

*Minor plat* means a proposed plat with four or fewer lots, with said lot or lots fronting on an existing street, and not requiring the creation of any new street or the extension of municipal facilities.

*Municipal Utility Easement* means easement dedicated by the owner of the proposed subdivision to the city in perpetuity for the installation and maintenance of utilities and all the necessary appurtenances thereto installed above, on, or below the surface of the ground. Nothing shall be placed or permitted to remain within the dedicated easement limits that may damage or interfere with the proper installation and/or maintenance of utilities. Subject to the provisions in Sec. 41-141, utility companies, their agents and assigns, will have the rights and benefits of the rights herein granted, including but not limited to the free right of ingress to and egress from the municipal utility easement, and the right to, periodically, cut and/or remove all trees, brush and other obstructions that may injure, endanger or interfere with the operation and/or maintenance of utility installations.

*Mobile home park* means a site with required improvements and utilities for the longterm parking of mobile homes, which may include services and facilities for the residents.

*Owner.* See *Subdivider*.

*Parkway* means that portion of the right-of-way between the curb and the right-of-way line.

*Person* means any individual, association, firm, corporation, governmental agency, political subdivision or other legal entity.

*Plan, comprehensive,* means the comprehensive plan of the city and adjoining areas adopted by the planning and zoning commission and approved by the council, including all its revisions. The plan indicates the general locations recommended for various land uses, transportation routes, public and private buildings, streets, parks, and other public and private developments and improvements, to include detailed plans for water, sewer, etc.

*Plan, concept,* means a rough concept map of a proposed subdivision with sufficient accuracy to be used for the purpose of discussion, classification, and comment.

*Plan or plat package* means and includes all drawings, instruments, written specifications, reports, test results, covenants, and other similar items required in this chapter.

*Plan, preliminary,* means a preliminary plan indicating the proposed layout of a subdivision that is submitted to the review authority for consideration and preliminary approval.

*Planned development* means a development provided for by chapter 53, pertaining to zoning wherein certain yards, areas and related standards may be varied and a variety of land uses associated on a tract, the plan of which is subject to approval by the planning and zoning commission and council.

*Planning and zoning commission* means the duly designated planning commission of the city acting as the planning and zoning commission having responsibilities as delegated by the city council including, but not limited to, land use review concerning comprehensive planning, zoning, and subdivision of land.

*Plat* means a map representing a tract of land, showing the boundaries and location of individual properties and streets.

*Plat drawing* means a drawing or drawings depicting the proposed subdivision layout itself, along with associated certifications, dedications and related notations.

*Plat, final*, means the final map of all or a portion of a subdivision, which is presented to the proper review authority for final approval.

*Predesign conference* means a conference between a developer and the city planning staff, held prior to application for approval of a plat, for the purposes of exchanging information and identifying potential problems with a proposed development.

*Replatting* means the alteration of any part or all of any lot, block or tract of a previously platted subdivision.

*Residential lane* means a street which, by its design, discourages through traffic and which may afford the only vehicular access to lots abutting thereon, which lots shall be restricted to residential use as set forth for only certain zoning districts in chapter 53, as amended, pertaining to zoning.

*Staff or city staff* means the employees, and the professionals providing services to the city, authorized or permitted by the council to undertake any duty or to provide any review, work or service contemplated by the terms of this chapter to be undertaken by city personnel.

*Street* means a public right-of-way, however designated, which serves one or more of the following purposes:

- (1) *Major thoroughfare, arterial street or expressway*. A major thoroughfare, arterial street or expressway primarily provides vehicular circulation to various sections of the city.
- (2) *Collector street*. A collector street primarily provides circulation within neighborhoods, to carry traffic from local streets to arterial or major thoroughfare streets, or to carry traffic through or adjacent to commercial or industrial areas.
- (3) *Marginal access*. A marginal access or frontage street is a street, which is parallel to and adjacent to an arterial street and primarily provides access to properties abutting these types of streets.
- (4) *Local street*. A local street is a street designed primarily for access to abutting residential property. A local street does not include roadways that carry through traffic, but will generally be intersected frequently by collector streets.

*Street width* means that distance from back of curb to back of curb.

*Subdivider* means any person, or agent thereof, dividing or proposing to divide land so as to constitute a subdivision, as defined herein. The term "subdivider" shall be restricted to include only the owner, equitable owner, or authorized agent of such owner or equitable owner, of land sought to be divided.

*Subdivision* means a division of any tract of land, situated within the corporate limits of the city or within its extraterritorial jurisdiction, into two or more parts for the purpose of laying out any addition to the city, or for laying out suburban lots or building lots, or any lots, and streets, alley, access easements, public utility easements, or parks or other portions intended for public use or the use of purchasers or owners of lots fronting thereon or adjacent thereto. The term "subdivision" does not include divisions of land in parcels of five acres or more, unless any such division of five acres or more includes the planning or development of a new street or access easement, or public utility easement.

*Surveyor* means a registered professional land surveyor authorized by state statute to practice the profession of surveying.

- (b) Words and terms not expressly defined herein are to be construed in accordance with customary usage in municipal planning and engineering practices.

(q) *Dedications*. A signed and notarized certification of dedication of streets, roads, parks and other land intended for public use and dedication of municipal utility easements, rights-of-way and other land to the appropriate utilities. Signatures are not required on the plat until recordation. The certification statement shall read:

"STATE OF TEXAS           §

COUNTY OF HAYS       §

KNOW ALL MEN BY THESE PRESENTS:

THE OWNERS OF THE LAND SHOWN ON THIS PLAT WHOSE NAMES ARE SUBSCRIBED HERETO, AND IN PERSON OR THROUGH A DULY AUTHORIZED AGENT, HEREBY DEDICATE TO THE USE OF THE PUBLIC FOREVER ALL STREETS, PARKS, WATER COURSES, DRAINS, MUNICIPAL UTILITY EASEMENTS, AND PUBLIC PLACES THEREON SHOWN FOR THE PURPOSES AND CONSIDERATIONS THEREIN EXPRESSED". I (we) further certify that all other parties who have a mortgage or lien interest in the subdivision have been notified and signed this plat.

I (we) further acknowledge that the dedications and/or exactions made herein are proportional to the impact of the subdivision upon the public services required in order that the development will comport with the present and future growth needs of the City; I (we), my (our) successors and assigns hereby waive any claim, damage, or cause of action that I (we) may have as a result of the dedication of exactions made herein.

Owner

Signature of Party with Mortgage or Lien Interest

STATE OF TEXAS

COUNTY OF HAYS

Before me, the undersigned authority, on this day personally appeared \_\_\_\_\_, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purpose and consideration therein stated.

Given upon my hand and seal of office this day of \_\_\_\_\_, 20 \_\_\_\_\_.

Notary Public in and for the State of Texas

My Commission Expires:

#### Sec. 41-141. – Municipal Utility easements.

- (a) *Rear and side lots*. Each block that does not contain an alley, shall contain or have access to a municipal utility easement at the rear of each lot, and/or at other appropriate locations on each lot, as determined by the city's engineer and/or public works director and/or their designees. The easement(s) will be reserved for the use of all public utility lines, conduits and equipment. Programming for utility locations in the easements will be reserved to the city, and placement of utilities in municipal utility easements require expressed, written prior authorization from the city. In the case of rear lot locations, the utility easements shall be no less than ten (10) feet in width. For properties with required building rear yards, the rear yard easement will be no less than ten (10) feet in width, or the width of any applicable setback, whichever is less. In side lot locations, the utility easements shall be no less than five (5) feet in width. For properties with required building side yards, any required side yard easement will be no less than five (5) feet in width, or the width of any applicable setback, whichever is less.

Unless abutting an alley, water and wastewater utility easements in the rear are not favored and will not be approved except under special circumstances.

- (b) *Drainage.* Required drainage easements shall allow for a minimum of 15 feet in width in addition to any width required for a drainageway structure. This easement may be split between drainageway sides but one side (easement) may be no less than ten feet in width unless access and maintenance provisions are provided by other dedicated right-of-way. All public utility easements shall also be dedicated for use as drainage easements.
- (c) *Utilities.* The developer shall arrange with the appropriate utility department and/or company for the payment and/or refund of construction costs of each utility involved.
- (d) *Easements abutting streets.* A 15-foot wide municipal easement abutting the right-of-way of each street shall be dedicated as an easement for utilities, drainage and excavation and/or embankments. For properties with required building front yards, any required front yard easement will be no less than fifteen (15) feet in width, or the width of any applicable setback, whichever is less. Programming for utility locations in the easement will be reserved to the city, and placement of utilities in municipal utility easements require expressed, written prior authorization.
- (e) *Electrical, telephone and other lines.* All electrical, telephone, cable television and similar lines shall be placed underground in the municipal utility easement, and within the assignment directed by the city. Such lines shall be installed in accordance with the regulations and requirements established by each utility or service company, as applicable, and city ordinance. As authorized by V.T.C.A., Local Government Code ch. 212, the city council may waive this requirement for good cause, and permit such lines to be installed above ground.
- (f) *Private or gated communities.* Public utilities may be allowed within the confines of a private or gated community upon the approval of the city engineer and/or public works director and/or their designees. This allowance applies only to a private or gated community of single-family homes. Multifamily projects that are private or gated shall have private utilities within the project and be served by a master meter on the public side periphery of any fence or gate, in which there is proper access granted for access as determined by the city engineer and/or public works director and/or their designees, or his designee.
- (g) **Property Owner's Maintenance Obligations**
  - (1) The property owner(s) abutting a municipal utility easement is responsible for regular weeding, mowing of grass, irrigation, fertilizing, pruning, or other vegetative maintenance as needed for similarly used properties in the market in which the property is located. Any landscaping required by applicable city code, deed covenant, and/or subdivision plat must be maintained by the property owner in a healthy, growing condition at all times. Any plant that dies must be replaced by the property owner with another approved plant variety, generally of the same size, that complies with the approved landscape plan within 90 days after notification by the city.
  - (2) Any damage to utility lines resulting from the negligence of the property owner, his agents, or employees in the installation and maintenance of required landscaping in a utility easement is the responsibility of the property owner. If a public utility disturbs a landscaped area in a utility easement, it shall make every reasonable effort to preserve the landscaping materials, and return them to their prior locations after the utility work. If, nevertheless, some plant materials die, it is the obligation of the property owner to replace the plant materials.
  - (3) If owner does not perform the required maintenance, then city, after giving the owner thirty days' written notice, will have the right to perform the maintenance and receive reimbursement from owner. Reimbursement will be payable on demand and include the costs of the maintenance, plus interest at the highest rate permitted by law (or if no maximum rate is prescribed by law, at the rate of 18 percent per year).

- (h) *Owner's Reservations and Encroachments.* Owner for itself, its successors, and assigns will retain the right to continue to use and enjoy the surface of the municipal utility easement for all purposes that do not unreasonably interfere with or interrupt the use or enjoyment of the Easement. Provided however, that owner may not install, construct, operate, use, maintain, repair, modify, upgrade, and replace any building, building appurtenance (eaves, bay windows, utility boxes, air conditioning pads, etc.), gate, fence, retaining wall, or other similar improvements either above or below the surface without approval by the City Engineer. City may condition its approval by requiring the owner to make building design modifications and/or other improvements as may be reasonably required in the opinion of the City Engineer to ensure public safety and the city's use or enjoyment of the municipal utility easement.

If a private or gated community is allowed to have public utilities then all utilities inside of the private or gated community shall be placed within an easement of sufficient size, as accepted by the city engineer and/or public works director and/or their designees, or his designee, and which easement shall have in addition to standard requirements, added the following characteristics:

- (1) Shall be superior to any other easements or rights-of-way, whether private or public, such that future repairs to the utility shall not be impeded by failure of another entity to provide sufficient permission to proceed;
- (2) Permission to utilize existing private drives or roadways to facilitate a repair, including but not limited to:
  - a. Access;
  - b. The temporary storage or stockpile of material;
  - c. The ability to temporarily close access, entirely or in part, on a private drive or roadway;
  - d. Removal of vehicle(s) that may be impeding a repair.
- (3) Permission to cut or otherwise demolish portions of private drives or roadways needed to facilitate a repair, to include the waiver of any requirement to return the private drive or roadway affected to its original condition.
- (4) City, at its sole cost and expense, shall be obligated to restore the surface of the soil of the easement that has been removed, relocated, altered as a result of city's use of the easement. City will not be obligated to restore or relocate any other improvements, including, but not limited to, irrigation systems, walkways, driveways, access roads, parking areas, fences, landscaping items, and any movable structures such as benches, gazebos or other similar items, located in, upon, under or across the easement.