

**AN ORDINANCE OF THE CITY OF KYLE, TEXAS**

**ORDINANCE NO. 1049**

**AN ORDINANCE OF THE CITY OF KYLE, TEXAS AMENDING SECTIONS OF CHAPTER 41 THE SUBDIVISION ORDINANCE TO ADOPT PROCEDURES FOR REVIEW, PROCESSING, AND APPROVAL OF PLATS, CONCEPT PLANS, AND CONSTRUCTION PLANS; PROVIDING ALTERNATIVE REVIEW PROCEDURES; PROVIDING FOR DESIGN STANDARDS FOR PUBLIC IMPROVEMENTS; PROVIDING A SEVERABILITY CLAUSE, PROVIDING SAVINGS, EFFECTIVE DATE AND OPEN MEETINGS CLAUSES, AND PROVIDING FOR RELATED MATTERS.**

**WHEREAS**, the City Council of the City of Kyle, Texas considered amendments to the subdivision ordinance to implement the changes adopted by the Texas Legislature as House Bill 3167;

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

**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.

**SECTION 2. Amendment of Section 41-1, Definitions.** Section 41-1, Kyle Code of Ordinances (the “Subdivision Ordinance”) is amended by adding the following definitions:

***Alternative Review Procedure*** means the procedures set forth in Section 41-47B that modify the Plan or Plat application review process as described in Section 41-47.

***Application*** refers to an application for a plan or plat approval under this Chapter, which includes the plan or plat package, and unless context dictates otherwise, will include the Resubmittal Application for a plan or plat.

***Applicant*** means a person applying for plan or plat approval under this Chapter.

***Filed or Filing Date*** means, with respect to a plan or plat, the date that a plan or plat application is determined to be complete and is accepted for review by the City; provided that with respect to Plats or Plans that must be approved by the City Council, the Filing Date for the purposes of Council action shall be the date the Plan or Plat is approved by the Commission or approved by inaction of the Commission

***Municipal Authority*** means the entity responsible for approving plats or plans governed by this Chapter. The Planning and Zoning Commission is responsible for approving Concept Plans, Preliminary Plats, Final Plats, and Amending Plats. The City Council is responsible for approving Amending Plats. City Staff, as further specified in this Chapter, is responsible for approving Minor Plats and short form subdivisions. The City Engineer is responsible for approving construction plans.

***Plan or Plat.*** The phrase “plan or plat” or “plat or plan” when used in this Chapter refers to Preliminary Plats, Construction Plans, Final Plats, Minor Plats, short form subdivisions, and Amending Plats, and includes replats. Specifically, the term “plan” refers to Concept Plan and Construction Plans and the term “plat” refers to Preliminary Plats, Final Plat, Minor Plats, short form subdivisions, or Amending Plats, and includes replats.

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

***Resubmittal Application*** means the application for a plan or plat resubmitted to the City following the disapproval or conditional approval of the original application or a Resubmittal Application that satisfies each condition of a conditional approval or remedies the reasons for disapproval.

***Resubmittal Date*** means the date that a Resubmittal Application is determined to be complete and is accepted for review by the City.

***Standard Approval Procedure*** means the procedure for review, processing and approval of plans or plats set forth in this Chapter other than the Alternative Review Procedure.

**SECTION 3. Amendment of Section 41-47, Applications.** Section 41-47 of Subdivision Ordinance is hereby amended in its entirety to read as follows:

**Sec. 41-47. –General Procedures.**

- (a) **Action on Plats and Plans.** Plats and Plans for the development of land within the scope of this Chapter shall be drawn and submitted to the Municipal Authority for their approval, conditional approval, or disapproval, as provided herein. If an application is approved with conditions or disapproved, the Municipal Authority shall provide or cause to be provided to the applicant a written statement for the conditions for approval or reasons for disapproval that clearly articulate each specific condition for the conditional approval or reason for disapproval. Each condition or reason specified in the written statement shall include a citation to the law or ordinance that is the basis for the conditional approval or disapproval, as applicable. In the event that a Municipal Authority subject to quorum requirements fails to act due to lack of a quorum at the meeting at which an application is posted for action, then: (i) the application will be deemed approved if it meets the requirements of this Chapter and applicable state law; or (ii) the presiding officer of the Municipal Authority is authorized to disapprove an application that is recommended by City Staff to be

disapproved due to failure to comply with this Chapter or applicable law.

- (b) **Commencement of Construction.** Notwithstanding any provision of this Chapter to the contrary a developer shall not commence construction activities within the City's jurisdiction, before first obtaining all of the City approvals required by this Chapter.
- (c) **Pre-Submittal Meeting.** The applicant is required to attend a pre-submittal meeting with City Staff to help familiarize the applicant with applicable codes and regulations before submitting any application under this Chapter, except a construction plan application. Applicants shall also attend a pre-construction meeting after construction plans are approved and prior to the issuance of a construction permit. The Director of Planning may waive this requirement if they deem that the meeting is not necessary.
- (d) **General Subdivision Process.** Generally, the subdivision process is comprised of four (4) individual steps, consisting of the Concept Plan, the Preliminary Plat, Construction Plans, and the Final Plat. Each step of the development process has established deadlines and expirations that must be met in order for the application and any approval(s) granted to remain valid, in effect and eligible to continue to the next step of, or to complete, the development process. Compliance with each such established deadline constitutes a separate required performance and approval. Applicants must complete and obtain approval the application for a particular step before submitting an application for the next step in the platting process. An application will not be accepted unless the applicant has obtained approval of the plat or plan application for a preceding step, unless use of the Alternative Procedure is approved.
- (e) **Submittal Schedule.** The Director of Planning shall prepare an application submittal schedule which will be kept on file with the Planning Department and published on the City's website.. Applications will only be accepted for submittal or resubmittal on the days set forth in the submittal schedule. The Director of Planning is authorized to adjust the submittal schedule to accommodate holidays, City Hall closures, and cancelled or special called meetings.
- (f) **Application Forms.** The Director of Planning shall prepare application forms which shall include a checklist of the required information and documents that are required to be submitted by applicants in order for an application to be accepted as complete for review and processing under this Chapter. The Director of Planning shall update the application from time to time as required due to amendments to this Chapter, state law, or applicable technical codes and manuals. The applications will be kept on file with the Planning Department and published on the City's website.
- (g) **Application Completeness Review.**
  - (i) City staff shall review all applications, for completeness and either accept the application as complete or reject the application and provide the applicant with written notice of rejection that specifies the reasons for rejection within ten (10) business days of the date the application is submitted. An application will be considered complete if it is submitted in the required form, includes all information

certificates, plans, documents, and instruments required in the application and by this Chapter, and is accompanied by the applicable fees. All applications shall also include a list of any requested variance or exceptions from the ordinance and will identify whether there are any development agreements that govern development of the property. Resubmittal Applications are also subject to subsection (g)(ii)(D) below. An application that is not complete, does not include the information or documents required in the application, or is not accompanied by the applicable fees may not be accepted by the City. If the application is determined to be incomplete, the Director of Planning shall provide written notice of the rejection of the application that includes a description of the application’s deficiencies. No further processing of the application will occur until the deficiencies are corrected.

(ii) The following are additional requirements for acceptance of an application:

(A) **Required Number of Copies.** The required number of copies of applications and its components, having the form and content specified in this chapter for the plat package shall be as follows:

Stage of Review	Information in Narrative Form	Plat Maps
Concept plan package	2	20
Preliminary plan package	2	20
Final plat package	2	20

(B) **Water and Wastewater Modeling.** Water and wastewater modeling reports must be completed prior to the submission of the first plat application for a proposed subdivision, unless the requirement is waived by the City Engineer. Applicants will use the consultant selected by the City to prepare the reports and will be responsible for paying the consultant fees charged by the consultant for conducting the analysis and preparing the reports.

(C) **Waivers and Variances.** The applicant must apply for and obtain approval of any variances or waivers before a preliminary plat application or short form application, as applicable, is submitted to the City.

(D) **Resubmittal Applications.**

(1) Resubmittal Applications are subject to the completeness review process set forth in this subsection and Section 41-47(g)(i).

(2) In addition to containing the portions of the original application that are being modified, the Resubmittal Application shall include a transmittal letter that describes how each reason for disapproval of the particular plat or plan that is the subject of the resubmittal application is being remedied or how each condition of a conditional approval is being satisfied, as applicable, and identifying the location in the Resubmittal Application where each remedy or response to a condition can be found. The transmittal letter shall further

identify whether any other changes to the application have been made other than those necessary to respond to the reasons for disapproval. A Resubmittal Application that modifies the original application beyond what is required to satisfy a conditional approval or to remedy reasons for disapproval shall be considered a new application and must be accompanied by the required application fee and will be reviewed and processed in accordance with the deadlines and procedures applicable to initial applications, including but not limited to the thirty (30) day approval deadlines.

- (3) Except for Construction Plan applications, Resubmittal Applications submitted for the purpose of satisfying a conditional approval or to remedy the reasons for disapproval of a Resubmittal Application shall be accompanied by the Resubmittal Application Fee, which shall be one-half of the application fee for the underlying application.
- (4) If an application is disapproved because a variance or waiver is required and the applicant wishes to obtain a variance or waiver instead of modifying the original application, the Resubmittal Application will not be accepted until the waiver or variance is approved or the applicant modifies the application to comply with applicable regulations.

(h) **Incomplete Application Expirations.** An application shall expire on the 45<sup>th</sup> day after the date the application is submitted to the City if:

- (i) the applicant fails to provide documents or other information necessary to comply with requirements relating to the form and content of the application set forth in this Chapter;
- (ii) within ten (10) business days of the date the application is submitted to the City, the City provides the applicant written notice of the failure that specifies the necessary documents or other information that are missing from the application and the date the application will expire if the documents or other information is not provided; and
- (iii) the applicant fails to provide the specified documents or other information within the time provided in the notice

(i) **Processing of Applications Accepted for Filing.**

- (i) Prior to the Commission meeting at which an application is to be heard, City Staff shall review the plan for consistency and compliance with City codes, policies and plans.
- (ii) For applications acted upon by the Commission, the application shall be scheduled for consideration by the Commission within thirty (30) days of the application Filing Date (or within the applicable extension period if an extension is granted), or within fifteen (15) days of the Resubmittal Date, as applicable. For applications acted upon by the City Council, the application shall be scheduled for consideration by the Council within thirty (30) days of the Commission's approval of the application (or within the applicable extension period if an extension is granted).
- (iii) City staff shall prepare a report analyzing the application, and recommending action on the application. If the recommended action is disapproval or conditional approval, the

report shall include the reasons for disapproval or the conditions for approval, as applicable, and citations to the law or ordinance that is the basis for disapproval or the conditional approval.

**(j) Approval, Disapproval, Conditional Approval.**

- (i) **Initial Application.** The Municipal Authority shall take action on the application within thirty (30) days of the Filing Date. The failure of the Municipal Authority to act within thirty (30) days of the Filing Date (or within sixty (60) days of the Filing Date where an extension has been granted), shall be deemed an approval of the application by the respective body, except as otherwise agreed to by the applicant pursuant to Section 41-47A or 41-47B.
- (ii) **Resubmittal Application.** After disapproval or conditional approval of an application, the applicant may submit a Resubmittal Application that addresses each condition of approval or remedies each reason for disapproval provided. The Resubmittal Application that has been accepted as complete shall be reviewed and processed in accordance with Subsection (i) and (j) above.
- (iii) **Action on Resubmittal Application.** The Municipal Authority shall take action on the Resubmittal Application within fifteen (15) days of Resubmittal Date. Except as otherwise requested by the applicant and approved by the Municipal Authority pursuant to Section 41-47A or 41-47B, the failure of the Municipal Authority to act within fifteen (15) days of the Resubmittal Date, shall be deemed an approval of the application by the Municipal Authority, if the Resubmittal Application satisfies all conditions of a conditional approval or remedies all reasons for disapproval.

**(k) Application Expiration.**

- (i) An application shall expire six (6) months after the date that all initial staff review comments from all reviewing departments have been issued on the application if the application is not approved due to the applicant's failure to cause the application to comply with applicable city regulations.
  - (ii) The Planning Department may grant one six (6) month extension if the applicant can show substantial progress in obtaining approval of the application. Substantial progress shall consist of, at a minimum, a resubmission of the application and all relevant materials by the applicant that address all initial staff review comments from all reviewing departments.
  - (iii) After expiration of an application, any new application will be required to be re-submitted as a new application including re-paying all of the fees associated with this process.
- (l) Approval Does Not Waive Compliance.** Approval of a Plan or Plat under this Chapter does not waive any requirement or regulation under this Chapter or an applicable City Code unless a waiver, exemption, or variance to such requirement or regulation is granted by the City employee, official, or body authorized to grant such waiver, exemption, or variance.

**SECTION 4. Addition of Sections 41-47A and 41-47B.** Sections 41-47A and 41-47B are hereby added to Chapter 41, the Subdivision Ordinance to read as follows:

**SECTION 41-47A. REQUESTS FOR EXTENSION OF APPROVAL DEADLINE OR WAIVERS OF PROCEDURES.**

- (a) The applicant may request an extension of the thirty (30) day approval deadlines set forth in this Chapter by requesting an extension on the application form. The extension request will be considered by the Municipal Authority responsible for approving the particular Plan or Plat application. Approval of an extension request will extend the deadline for approval of a Plan or Plat by thirty (30) days.
- (b) An applicant may also request in writing the waiver of a deadline or procedure set forth in this Chapter. If approved by the Municipal Authority, the waiver shall be documented by letter agreement or other form of agreement approved by the Municipal Authority.

**SECTION 41-47B. ALTERNATIVE REVIEW PROCEDURE; WAIVER OF APPROVAL PROCEDURE.**

- (a) The applicant may request in writing that an application submitted under this Chapter be reviewed under the Alternative Review Procedure described in this Section by electing the Alternative Review Procedure at the time an application is submitted. The Alternative Review Process will be used if approved by the Planning Director. The applicant may at anytime request that the Alternative Review Procedure be terminated and the application be reviewed under the standard approval procedures set forth in this Chapter. The Alternative Review Procedure shall consist of the following:
  - (1) Submission of more than one plan or plat application for simultaneous review and approval.
  - (2) The application shall be made in compliance with the requirements of this Chapter and shall be subject to completeness review set forth in Section 41-47.
  - (3) Review of the application by City Staff and return of comments to the applicant in accordance with the review schedule prepared by the Director of Planning and approved by the Commission. The comments shall consist of the reasons that the application does not comply with City ordinances or state law and references to applicable City ordinances or state law.
  - (4) Submission of the application to the Municipal Authority after the applicant has corrected all deficiencies in the application and City Staff certifies that the application complies with applicable City ordinances.
  - (5) If an applicant requests the Alternative Review Procedure, then the deadlines for action on plats or plans, the requirement for a pre-development meeting, and the requirement for payment of Resubmittal Application Fees will not apply unless the applicant requests in writing submitted on a date established for submission of plats or plans for an application to be moved back into the Standard Approval Procedure.

**SECTION 5. Addition of Section 41-14.** Section 41-14 is hereby added to the Subdivision Ordinance to read as follows:

**SECTION 41-14. CONDITIONS FOR ISSUING A BUILDING PERMIT, ISSUING A SITE DEVELOPMENT PERMIT, OR ACCEPTING IMPROVEMENTS.**

No improvements to be accepted by the City for ownership, maintenance and operation shall be accepted; no building permit shall be issued for any new structure or change, improvement or alteration of any existing structure, on any lot or tract of land; no site development permit shall be issued for any lot or tract of land; and no municipal utility service will be furnished to such lot or tract which does not comply with the provisions of this Chapter and all applicable provisions of the City's Code of Ordinances, except as herein exempted or specifically exempted by the City Council or upon the written application and approval of a variance. Every official and employee of the city vested with the duty or authority to issue an approval, permit or certificate shall not issue an approval, permit or certificate for any application, plan, plat, use, building, improvement, or purpose that conflicts with any provision of this Chapter. Any approval, permit, or certificate issued in conflict with the provisions of this Chapter shall be null and void.

**SECTION 6. Amendment of Section 41-51(a).** Section 41-51(a) of the Subdivision Ordinance is amended in its entirety to read as follows: **Sec. 41-51 (a)** Reserved.

**SECTION 7. Amendment of Sections 41-58(b)(1)-(2).** Sections 41-48(b)(1)-(2) of the Subdivision Ordinance are hereby amended in their entirety to read as follows:

(1) *Without vacating.*

A replat of a subdivision or part of a subdivision may be recorded and is controlling over the preceding plat without vacation of that plat if the replat:

- a. Is signed and acknowledged by only the owners of the property being replatted;
- b. If a variance is requested or the area to be replatted is an area described in subsection (2) below, approved, after a public hearing on the matter at which parties in interest and citizens have an opportunity to be heard, by the planning and zoning commission, and is subsequently approved by the council; and
- c. Does not attempt to amend or remove any covenants or restrictions;

(2) In addition to compliance with subsection (b)(1) of this section, a replat without vacation of the preceding plat is subject to the notice and hearing requirements set forth in subsection (3) below if:

- a. During the preceding five years, any of the area to be replatted was limited by an interim or permanent zoning classification to residential use for not more than two residential units per lot; or
- b. Any lot in the preceding plat was limited by deed restrictions to residential use for not more than two residential units per lot.

**SECTION 8. Amendment of Title of Section 41.110.** Section 41.110 shall be renamed "Final plat package (FPP) and Construction plan package."

**SECTION 9. Amendment of Section 41-110(g).** The first paragraph of Section 41-110(g) of the Subdivision Ordinance is hereby amended in its entirety to read as follows (with subsections (1)-(6) remaining unchanged):

*Construction plans.* Construction plans, regardless of when filed, must be approved by the city engineer/director of public works and a construction permit issued by the City before authority to proceed is given or building permits are issued and before a final plat application will be accepted by the City. The construction and engineering plans for a subdivision shall include the following site improvement data, either separately or combined:

**SECTION 10. Amendment of Section 41-134(a)(7).** Section 41-134(a)(7) of Subdivision Ordinance are hereby amended to read as follows:

(7) *Subdivision construction standards.* All subdivisions shall comply with the city's typical construction standards in effect at the time of the application for plat approval, the criteria manuals adopted herein, this Chapter, applicable City ordinances, and good design and engineering practices. The City Engineer shall prepare and keep on file with the City construction detail standards for sanitary sewer, water lines and associated facilities. The following technical codes are hereby adopted as the City's typical construction standards and shall apply to subdivision improvements, unless a variance is granted by the City Engineer: City of Austin Standard Specification Manual, as amended from time to time; City of Austin Standards Manual, as amended from time to time; City of Austin Transportation Criteria Manual, as amended from time to time; City of Austin Drainage Criteria Manual, as amended from time to time; City of Austin Environmental Criteria Manual, as amended from time to time, and City of Austin Utilities Criteria Manual, as amended from time to time. Variations in standards shall be based on field conditions and the professional judgment of the city engineer. The City Engineer may prepare and keep on file a list of common variances granted to the foregoing manuals.

**SECTION 8. Amendment of Section 18, Chapter 41, Exhibit A.** Section 18, Chapter 41, Exhibit A is hereby amended in its entirety to read as follows:

Sec. 18. – Approval Procedure.

- (A) For the purposes of this section, a capitalized word shall have the meaning set forth in Section 41-1. The Municipal Authority for reviewing Plats submitted under this Ordinance is both the Commission and the Council.
- (B) An application submitted under this Ordinance shall accepted only on the submission dates set forth in the submittal schedule prepared by the Director of Planning. The application shall be reviewed for completeness as provided in Sect 41-47(g)(i). When an application for a subdivision is accepted as complete,

the planning commission shall act on the plat within 30 days of the Filing Date. The city council shall act on such plat within 30 days after the date of approval of the plat by the planning commission. The plat shall be considered approved by the planning and/or the city council, respectively, unless it is disapproved within that period of time.

- (C) In all instances where a plat is considered approved by the inaction of the planning commission, the city council shall act on such plat within 30 days after the effective date of such approval by inaction. A plat is considered approved by the city council unless it is disapproved within that period; provided that an approved by the city council with conditions shall be deemed a disapproval absent such conditions being satisfied.
- (D) A plat that complies with the requirements of V.T.C.A., Local Government Code ch. 212 and that satisfies all the requirements of this ordinance and any written agreements with the landowner, the PUD subdivider, or their predecessors shall be approved by the planning commission and the city council.
- (E) If an application is approved with conditions or disapproved, the Commission or Council, as appropriate shall provide or cause to be provided to the applicant a written statement for the conditions for approval or reasons for disapproval that clearly articulate each specific condition for the conditional approval or reason for disapproval. Each condition or reason specified in the written statement shall include a citation to the law or ordinance that is the basis for the conditional approval or disapproval, as applicable. In the event that the Commission or Council fails to act due to lack of a quorum at the meeting at which an application is posted for action, then: (i) the application will be deemed approved if it meets the requirements of this Chapter and applicable state law; or (ii) the presiding officer of the Commission or Council, as appropriate is authorized to disapprove an application that is recommended by City staff to be disapproved due to failure to comply with this Chapter or applicable law.
- (F) After an application is disapproved, Resubmittal Applications will be reviewed and processed in accordance with the procedures set forth in Section 41.47(j)(ii)-(iii). Resubmittal Applications will be reviewed for completeness in accordance with and will be subject to Section 41-47(D).
- (G) Applications submitted under this Ordinance are subject to the expiration dates set forth in Section 41.47(h) and (k).
- (H) Construction plans shall be reviewed and approved in accordance with the procedures applicable to construction plan applications set forth in Chapter 47.
- (I) Approval of a plat under this Ordinance does not waive any requirement or regulation under this Ordinance or an applicable City Code unless a waiver, exemption, or variance to such requirement or regulation is granted by the City employee, official, or body authorized to grant such waiver, exemption, or variance.

**SECTION 9. Conflicting Ordinances.** Chapter 41, Kyle Code of Ordinances is amended as provided herein. All ordinances or parts thereof conflicting or inconsistent with the provisions of this ordinance as adopted 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 10. 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 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 11. Effective Date.** This ordinance shall take effect on September 1, 2019 and after its passage and publication in accordance with the provisions of the Tex. Loc. Gov't. Code and the City Charter. The amendments adopted by this ordinance shall apply to plat and plan applications filed on or after September 1, 2019.

**SECTION 12. 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 and sections of this Ordinance, since the same would have been enacted by the City Council without the incorporation of 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 13. 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.

**PASSED AND APPROVED** on the 20th day of August of 2019.

**PASSED AND FINALLY APPROVED** on the 3rd day of September of 2019.

**THE CITY OF KYLE, TEXAS**

  
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Travis Mitchell, Mayor

**ATTEST:**

  
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Jennifer Vetrano, City Secretary