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## Sec. 118-2. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. Those terms not expressly defined in this section are to be defined in accordance with chapter 144, the zoning ordinance or other applicable ordinances of the city, or in the absence of such ordinances, then in accordance with customary usage in municipal planning and engineering practices.

*Acreage, gross* means the total acreage of a subdivision.

*Acreage, net* means the total acreage of a subdivision less recreation areas and those areas dedicated to public use such as street and alley rights-of-way. Easements, however, shall be included in net acreage calculations.

*Administrative officers* means any officer of the city referred to in this chapter by title, including but not limited to the city engineer, planning director, city secretary, fire chief, police chief, director of public works and chief building official so retained in that position by the city, or his or her duly authorized representative. This definition shall also include civil engineering, planning, legal, financial, traffic engineering and other consultants retained by the city to supplement or support existing city staff, as deemed appropriate by the city.

*Alley* means a minor public right-of-way not intended to provide the primary means of access to abutting lots, which is used primarily for vehicular service access to the back or sides of properties otherwise abutting on a street.

*Amended or amending plat* means a revised plat correcting errors or making minor changes to a recorded plat.

*Amended master plan* means a master plan previously approved ~~by the planning commission~~ with major revisions that has been approved by the ~~the Planning Commission~~ [city](#).

*Amended master plan (minor revisions)* means a master plan, previously approved ~~by the planning commission~~ that has minor revisions approved by the ~~planning director or the Planning Commission~~ [city](#).

*Amenity* means an improvement to be dedicated to the public or to the common ownership of the lot owners of the subdivision and providing an aesthetic, recreational or other benefit, other than those prescribed by this chapter.

*Applicant* means a person or entity who submits an application for an approval required by this chapter. Also sometimes referred to as "developer", "subdivider", or other similar term.

*Application* means a written request, on forms provided by the city, for an approval required by this chapter.

*Base flood* means the flood having a one percent chance of being equaled or exceeded in any given year.

*Bond* means any form of a surety bond in an amount and form satisfactory to the city.

*Block* means a unit of land bounded by streets or other transportation or utility rights-of-way, parks, streams, waterways, or any other barrier to the continuity of development.

*Building setback line* means a line defining an area on the building lot between the street right-of-way line or property line and the building line within which no building shall be constructed, encroach or project except as specifically authorized in an adopted ordinance of the city.

*Business day* means any day except Saturday, Sunday or a legal holiday.

*Capital improvements program (CIP)* means the official proposed schedule, if any, of all future public projects listed together with cost estimates and the anticipated means of financing each project, as adopted by city council.

*City* means the City of New Braunfels, Texas.

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*City attorney* shall apply only to such attorney, or firm of attorneys, that has been specifically employed by the city to assist in legal matters. This term shall also apply if the city retains a person to perform the functions of city attorney as an official city employee.

*City council* means the duly elected governing body of the City of New Braunfels, Texas.

*City engineer* means the duly authorized person in charge of engineering for the city, or his designated representative.

*City standards* means the city's standards and specifications, together with all tables, drawings and other attachments as may be approved by the council, ~~or the commission,~~ or the city, and those standards so approved shall become a part of this chapter.

*Commission* means the planning commission of the City of New Braunfels, Comal County, Texas.

*Comprehensive plan* means the comprehensive plan of the city and includes any unit or a part of such unit separately adopted and any amendment to such plan or parts thereof.

*Condominium* means a form of real property with portions of the real property designated for separate ownership or occupancy, and the remainder of the real property designated for common ownership or occupancy solely by the owners of the portions. Real property is a condominium only if one or more of the common elements are directly owned in undivided interests by the unit owners. Real property is not a condominium if all of the common elements are owned by a legal entity separate from the unit owners, such as a corporation, even if the separate legal entity is owned by the unit owners.

*Construction plans* means the drawings and technical specifications, including bid documents and contract conditions, where applicable, providing a graphic and written description of the character and scope of the work to be performed in construction of a subdivision.

*Contiguous.* Lots are contiguous when at least one boundary line or point of one lot touches a boundary line, or lines, or point of another lot.

*Cul-de-sac* means a short, minor street having but one outlet to another street and terminating on the opposite end by a vehicular turnaround.

*Dead-end street* means a street, other than a cul-de-sac, with only one outlet.

*Dedication* means a conveyance or donation of property by the owner to the city or Comal or Guadalupe County.

*Developer* means an individual, partnership, corporation, or governmental entity undertaking the subdivision or improvement of land and other activities covered by this chapter, including the preparation of a master plan, subdivision or development plat showing the layout of the land and the public improvements involved therein. The term "developer" is intended to include the term "subdivider" even though personnel in successive stages of a project may vary.

*Development* means the construction of one or more new buildings or structures on one or more building lots, the moving of an existing building to another lot, or the use of open land for a new use. "To develop" shall mean to create development.

*Development agreement* means a contract entered into by the applicant and the city, by which the applicant promises to complete the required public improvements or perform other required obligations within the subdivision or addition within a specified time period following final plat approval. A development agreement may be used to deal with current and future platting issues for a proposed project.

*Development application* means the same as an application.

*Easement* means an area for restricted use on private property upon which the city or a public utility shall have the right to remove and keep removed all or part of any buildings, fences, trees, shrubs and other

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improvements or growths which in any way endanger or interfere with the construction, maintenance or efficiency of its respective systems within said easements. The city and public utilities shall, at all times, have the right of ingress and egress to and from and upon easements for the purpose of constructing, reconstructing, inspecting, patrolling, maintaining and adding to or removing all or part of their respective systems without the necessity at any time of procuring the permission of anyone.

*Engineer* means a person duly authorized under the provisions of the Texas Engineering Registration Act, as amended, to practice the profession of engineering.

*Escrow* means a deposit of cash with the city in accordance with this chapter.

*Extraterritorial jurisdiction (ETJ)* means the unincorporated area, not a part of any other city, which is contiguous to the corporate limits of the city, the outer limits of which are measured from the extremities of the corporate limits of the city outward for such distances as may be stipulated in the Texas Municipal Annexation Act in accordance with the total population of the incorporated city, and in which area, within the terms of the act, the city may enjoin the violation of its subdivision ordinance.

*Final plat* means the one official and authentic map of any given subdivision of land prepared from actual field measurement and staking of all identifiable points by a surveyor or engineer, with the subdivision location referenced to a survey corner, and with all boundaries, corners and curves of the land division sufficiently described so that they can be reproduced without additional references. It shows the exact layout and proposed construction of a proposed subdivision into lots, blocks, streets, and alleys, and may include parks, school sites, drainageways, easements, and/or any other elements as required by this chapter and which an applicant shall submit for approval in accordance with this chapter and is recorded with the appropriate county clerk. A final plat includes: amended, amending, development and minor plats and replats.

*Floodplain* means any and all land area adjoining the channel of a river, stream, lake, watercourse, marshy area, or other drainage element, which has been or may be inundated by stormwater runoff. The extent of the floodplain shall be determined by the crest of a flood having a one percent chance of occurrence in one year.

*Floodway* means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

*Front building setback line* means a line parallel to the street right-of-way which the building faces, and takes its primary access from and that is the required minimum distance establishing the area within which the principle must be exited or placed.

*Gross density* means the number of dwelling units per gross acre within the subdivision.

*Letter of certification (LOC)* means a formal document that is provided to a subdivider/developer by a reviewing entity; an LOC certifies a proposal's compliance with all standards administered by the respective reviewing entity.

*Lot* means an undivided tract or parcel of land having frontage on a street or an approved open space having direct street access, and which is, or in the future may be, offered for sale, conveyance, transfer or improvement, which is designated as a distinct and separate tract, and which is identified by a tract, or lot number, or symbol in a duly approved subdivision plat which has been properly filed of record.

*Lot depth* means the length of a line connecting the midpoints of the front and rear lot lines.

*Lot, double frontage* means any lot, not a corner lot, with frontage on two streets that are parallel to each other or within 45 degrees of being parallel to each other.

*Lot frontage* means the length of street frontage between side property lines.

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*Lot, irregular* means any lot not having equal front and rear lot lines, or equal side lot lines; a lot, the opposite lot lines of which vary in dimension and the corners of which have an angle of either more or less than 90 degrees.

*Lot width* means the average distance between the side lot lines, which is normally that distance measured along a straight line connecting the midpoint of the two side lot lines.

*Master plan, subdivision* means the first or introductory plan of a proposed subdivision, in such case where the developer intends to develop and record only an individual portion to such subdivision, and which exhibits the proposed development of the balance of the subdivision.

*Minor plat* means a subdivision resulting in four or fewer lots, which does not create any new street or necessitate the extension of any municipal facilities to serve any lot within the subdivision. Any property to be subdivided using a minor plat shall already be adequately served by all required city utilities and services, and all lots will have frontage on a public roadway.

*Municipal infrastructure* means water, wastewater, drainage, road, pedestrian and bicycle, utility, and communication easements, rights-of-way and facilities.

*NBU* means New Braunfels Utilities.

*On-site facilities or improvements* are the existing or proposed facilities or improvements constructed within the property boundaries of the plat. Facilities and improvements include, but are not limited to, streets, alleys, water lines, sewer lines, storm drainage facilities, sidewalks, screening devices, and curbs and gutters.

*Off-site facilities or improvements* means those facilities or improvements that are required to serve the site but that are not located within the boundaries of the plat.

*Open space* means private property designated for recreational area, private park (for use of property owners within the subdivision), play lot area, plaza area, building setbacks (other than those required by city ordinance), and ornamental areas open to the general view within the subdivision. "Open space" does not include streets, alleys, utility easements, public parks or required setbacks.

*Owner* (also known as "applicant" or "subdivider" or "developer") means any person or firm, association, syndicate, general or limited partnership, corporation, trust or other legal entity, or any agent thereof, that has sufficient proprietary interest in the land sought to be subdivided or developed, to commence and maintain proceedings to subdivide or develop the same under this chapter. In any event, the term "property owner" shall be restricted to include only the owner(s) or authorized agent(s) of such owner(s), such as a developer, of land sought to be subdivided.

*Park* means land dedicated to, or purchased by, the city for the purpose of providing public recreation and/or open areas.

*Pavement width* means the portion of street available for vehicular traffic; where curbs are laid, it is the portion between the face of curbs.

*Pedestrian way* means an area which provides pedestrian circulation.

*Perimeter street* means any existing or planned street which is adjacent to the subdivision or addition to be platted.

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

*Planned development* means a subdivision that may consist of a variety of land use types, incorporating a single or variety of types of residential dwelling units, and/or compatible commercial and industrial land uses, and may include public land uses and common open space and recreational areas, adequate to service the needs of the tract when fully developed and populated, and which is to be developed as a single entity under unified control.

*Planning commission* means the planning commission of the city.

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*Planning director* means the director of the planning and development services department or his/her designee.

*Planning and development services director* means the director of the planning and development services department or his/her designee.

*Plat* means a map, drawing, chart or plan showing the exact layout and proposed construction of a proposed subdivision into lots, blocks, streets, and may include parks, school sites, drainageways, easements, alleys, and/or any other elements as required by this chapter and which an applicant shall submit for approval in accordance with this chapter.

*Plat, preliminary* means a plat that is submitted to the city for its review of the concept and performance of the subdivision as related to the provisions of this chapter. The preliminary plat and the review thereof are intended to produce a subdivision design in which all planning factors are recognized and reconciled, prior to submission of the final plat.

*Plat revision, replat, resubdivide*, means a plat vacating an existing subdivision in lieu of a new pattern of development, the subdivision of an existing or duly recorded lot or lots, the combining of two or more lots to create one lot, or the subdividing of an existing platted but undeveloped subdivision into a new pattern of lots and blocks.

*Preliminary approval* means approval expressed by the commission [or the city](#) as to the arrangement and approximate size of streets, alleys, parks, reserves, easements, blocks and lots indicated on a preliminary plat.

*Private street* means a private vehicular access way, including an alley, that is shared by and that serves two or more lots, which is not dedicated to the public, and which is not publicly maintained.

*Project* means an endeavor over which the city exerts its jurisdiction and for which one or more plans or plats may be required to initiate, continue, or complete a development.

*Public improvements* (also referred to as "subdivision improvements") mean facilities, infrastructure and other appurtenances, typically owned and maintained by the city (but not necessarily located upon city-owned property or right-of-way—public improvements can be located upon private property), which serve a public purpose in providing a needed service or commodity, such as wastewater collection and treatment and water storage and distribution, and which protect the general health, safety, welfare and convenience of the city's citizens, including efficiency in traffic circulation and access for emergency services. Required public improvements may include, but shall not be limited to, street and alley paving, including any necessary median openings and left turn lanes on major thoroughfares; water lines and pumping stations; sanitary sewer lines and lift stations; storm drainage structures and storm water management devices; water quality and erosion controls; screening and retaining walls; fire lane paving and fire hydrants; landscaping, where such is used for required screening or other required landscaped area, and associated irrigation system; and any required public sidewalks, street lights and street name signs. The term "public improvements" shall not include facilities or infrastructure of private providers of utility services other than water and wastewater, but shall be deemed to include facilities and infrastructure that the city would normally require of a development but which will be owned and maintained by an entity such as a homeowners association, as in the case of private streets.

*Regulatory agency* means the governing body of, or a bureau, department, division, board, commission, or other agency of, a political subdivision acting in its capacity of processing, approving, or issuing a permit.

*Replating or replat* means the re-subdivision of any part or all of a block or blocks of a previously platted subdivision, addition, lot or tract.

*Reserve strip* means a privately owned strip of land, 20 feet wide or less, adjacent to a public right-of-way or easement preventing the extension of such right-of-way or easement without the expressed consent of the adjacent land owner.

*Review* means to read, analyze, assess and act upon.

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*Right-of-way* means a parcel of land occupied, or intended to be occupied, by a public road, street or alley. Where appropriate, right-of-way may include other facilities and utilities such as sidewalks; electrical, communication, oil and natural gas lines and facilities; and water and sanitary and storm sewer facilities. The use of right-of-way shall also include parkways and medians outside of the paved portion of the street. The usage of the term right-of-way for land platting purposes shall mean that every right-of-way hereafter established and shown on a final plat is to be separate and distinct from the lots or parcels adjoining such right-of-way, and shall not be included within the dimensions or areas of such lots or parcels.

*Septic tank* means a watertight receptacle that receives the discharge of sewage from a building, sewer or part thereof, and is designed and constructed so as to permit settling of solids from this liquid, digestion of the organic matter, and discharge of the treated liquid portion into a disposal area.

*Sewerage disposal system, individual private* means any system designed to provide on-site treatment and disposal of sewage flows from individual residences, duplexes, businesses, or any other buildings. The system may be anaerobic, e.g., a septic transpiration bed, or other. The system must not require a permit from the state.

*Sewerage system, public* means a system designed for the wastewater collection, treatment and disposal that is wholly owned and operated by the city or any other legally incorporated town or city or public systems approved by the state.

*Shall/may.* The word "shall" is always mandatory, while the word "may" is merely permissive.

*Sidewalk* means a paved pedestrian way generally located within the public or private street right-of-way, but outside of the roadway.

*Standard street* means a street or road that meets or exceeds the minimum specifications in the city's standard street specifications, and which is constructed to the ultimate configuration for the type of roadway it is designated for on the city's thoroughfare plan.

*Steep slope* means areas that contain slopes over 15 percent grade and are characterized by increased runoff, erosion and sediment hazards.

*Street* means a public or private right-of-way that provides primary vehicular access to adjacent land, whether designated as a street, highway, thoroughfare, parkway, throughway, avenue, lane, boulevard, road, place, drive, or however otherwise designated.

*Street, arterial* means a thoroughfare designated as a freeway, expressway, major arterial, or minor arterial in the most recently adopted city thoroughfare plan. The primary function of an arterial is to carry traffic through the city, and is designed for as high a speed as possible, to carry as much traffic as possible. Also known as a "major thoroughfare."

*Street, collector or sub-collector* means a street that primarily carries traffic from local or residential streets to major thoroughfares and highways, including the principal entrance streets for circulation to schools, parks, and other community facilities within such a development, and also including all streets which carry traffic through or adjacent to commercial or industrial areas.

*Street, local or residential* means a street that is used primarily for access to abutting residential property and circulation of traffic within residential neighborhoods. It is of a width and design to discourage through traffic, thereby protecting the residential area. A local street serves the same purpose in a commercial or industrial district.

*Street, marginal access* means a street that is parallel and adjacent to an arterial street and which primarily provides vehicular access to abutting properties and protection from through traffic.

*Street improvements* means any street or thoroughfare, together with all appurtenances required by city regulations to be provided with such street or thoroughfare, and including but not limited to curbs and gutters, walkways (sidewalks), drainage facilities to be situated in the right-of-way for such street or thoroughfare, traffic

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control devices, street lights and street signs, for which facilities the city will ultimately assume the responsibility for maintenance and operation.

*Structure* means that which is built or constructed, an edifice or building of any kind, or any piece of work built up or composed of parts joined together in some definite manner.

*Subdivider* means any person or any agent thereof dividing or proposing to divide land so as to constitute a subdivision as that term is defined in this section. In any event, the term "subdivider" shall be restricted to include only the owner, equity owner, or authorized agent of such owner or equity owner, of land to be subdivided.

*Subdivision* means a division or re-division of any tract of land situated within the city's corporate limits or its extraterritorial jurisdiction into two or more parts, lots or sites, for the purpose, whether immediate or future, of sale, division of ownership, or building development. Subdivision includes re-subdivisions of land or lots which are part of a previously recorded subdivision.

*Substandard street* means an existing street or road that does not meet the minimum specifications in the city's standard street specifications, and which is not constructed to the ultimate configuration for the type of roadway it is designated for on the city's thoroughfare plan.

*Surveyor* means a licensed state land surveyor or a registered professional land surveyor as authorized by the state statutes to practice the profession of surveying.

*Temporary improvements* mean improvements built and maintained by the property owner that are needed to remedy a circumstance that is temporary in nature, such as a temporary drainage easement or erosion control device, that will be removed upon completion of the subdivision or development or shortly thereafter.

*Thoroughfare plan* means the street plan, which is part of the comprehensive plan of the city.

*Townhouse or rowhouse* means one of a group of not less than four nor more than eight adjoining single-family dwelling units sharing a common wall with one or more of such adjoining dwelling units, each dwelling unit located on a separate lot.

*Vacation* means to cancel, rescind or render an act that has the effect of voiding a subdivision plat as recorded in the county clerk's office.

*Wastewater service* means the collection of waste-bearing water that requires treatment prior to its return to nature and the system of pipes and equipment used to collect and transmit this water to treatment facilities; also called sanitary sewer service.

*Yard* means a required open space, other than a court, unoccupied and unobstructed by any structure or portion of a structure from the general ground level of the graded lot upward; provided however, that fences, walls, poles, posts and other customary yard accessories, ornaments and furniture are not deemed to be obstructions if height limitations and requirements limiting obstruction of visibility are observed.

*Zero lot line* means that no setback is required on one side of a lot.

(Ord. No. 2006-84, § 1(Exh. A), 9-11-06; Ord. No. 2019-89, § 1, 12-9-19)

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**Sec. 118-11. Waiver.**

- (a) *General.* Where the city finds that undue hardships will result from strict compliance with a certain provision(s) of this chapter, or where the purposes of these regulations may be served to a greater extent by an alternative proposal, it may approve a waiver from any portion of these regulations so that substantial justice may be done and the public interest is secured, provided that the waiver shall not have the effect of nullifying the intent and purpose of these regulations, and further provided that ~~the planning commission~~

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~~shall not approve~~ a waiver ~~shall not be approved~~ unless ~~it shall make~~ findings ~~are made~~ based upon the evidence presented to it in each specific case that:

- (1) Granting the waiver will not be detrimental to the public safety, health or welfare, and will not be injurious to other property or to the owners of other property, and the waiver will not prevent the orderly subdivision of other property in the vicinity;
  - (2) Because of the particular physical surroundings, shape and/or topographical conditions of the specific property involved, a particular hardship to the property owner would result, as distinguished from a mere inconvenience, if the strict letter of these regulations is carried out; or an alternate design will generally achieve the same result or intent as the standards and regulations prescribed herein;
  - (3) The waiver will not in any manner vary the provisions of the zoning ordinance or other ordinance(s) of the city.
- (b) *Zoning variance.* If a zoning variance is requested on a particular parcel of property, then it may be decided concurrently with the submittal and consideration of any request for a waiver from any provision of this chapter.
- (c) *Zoning district change.* The ~~commission~~ city may consider a master plan or any type of plat simultaneously with a zoning district change application and may condition approval of a master plan or any type of plat upon final city council approval of the zoning district change that would cause the master plan or plat to be consistent with the zoning.
- (d) *Conditions.* In approving a waiver from any provision of this chapter, the ~~city planning commission~~ may require such conditions as will secure substantially the purposes described in this chapter.
- (e) *Procedures.*
- (1) An application for a waiver request shall be submitted in writing to the planning and development services department by the property owner or agent. This may be a separate request or concurrent with the subdivision application, unless the waiver request is to vary from a procedural process, for example the requirement to include a letter of certification with a plat application. Waiver requests from procedure requirements or process steps must be considered separately before subdivision application submission so that the process resulting from the approved or denied waiver can be followed and to ensure adherence to state statute regarding process timelines. The petition application shall explain the purpose of the waiver, state fully the grounds for the waiver, and all of the facts relied upon by the petitioner. The Planning Commission shall consider waivers unless otherwise stated herein. The Planning and Development Services Department shall make a recommendation on all waivers. If the Planning Commission concurs with the recommendation of the Planning and Development Services Department then the Planning Commission shall be the final determinant for the waiver. However, if the Planning commission recommendation differs from the staff recommendation, the request shall be further considered by City Council which shall then determine final approval or disapproval of the waiver.
  - (2) ~~All waivers, other than for block length, may be approved, disapproved or approved with conditions by the planning commission.~~
  - ~~(3) Block length waivers may be approved, disapproved or approved with conditions by the planning and development services department, pursuant to section 118-44 of this chapter.~~
  - ~~(4) The findings of the planning commission, together with the specific facts upon which such findings are based, shall be incorporated into the official minutes of the planning commission meeting at which a waiver is considered, approved or disapproved.~~

(Ord. No. 2006-84, § 1(Exh. A), 9-11-06; Ord. No. 2014-62, § 1, 9-8-14; Ord. No. 2019-89, § 1, 12-9-19; Ord. No. 2021-91, § 5, 12-13-21; Ord. No. 2023-09, § 2, 2-27-23)

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## Sec. 118-13. Appeal for relief from apportionment of municipal infrastructure costs.

(a) *Purpose and applicability.*

- (1) *Purpose.* The purpose of an appeal for relief from a dedication, reservation, construction, payment of fees, or payment of construction cost requirement is to assure that the application of uniform apportionment of municipal infrastructure costs to a proposed master plan or plat is roughly proportionate to the proposed development, taking into consideration the nature and extent of the demands created by the proposed development on municipal infrastructure.
- (2) *Applicability.* An appeal for relief under this section may be filed only to contest the roughly proportionate nature of any apportionment that is imposed under this chapter to a master plan or plat application or to any other development application authorized under this chapter, whether the requirement is pursuant to uniform standards, or attached as a condition to approval of the application. An appeal under this section shall not be used to seek variation from a standard on grounds applicable to a petition for a waiver under section 118-11. Relief under this provision may not be sought for a recorded plat.
- (3) *Effect.* If the relief requested under the petition is granted in whole or in part by the city council, the requirement initially imposed shall be modified accordingly, and the standards applied or the conditions attached to initial approval of the application shall be thereafter applied in accordance with the relief granted and the property owner will not be required to resubmit the application in order to get the benefit of the relief granted.

(b) *Appeal procedures.*

- (1) *Roughly proportionate analysis; who may appeal.* If an applicant for master plan or plat approval disagrees with the roughly proportionate nature of the apportionment at any time in the master plan's or plat's review process, ~~he~~ the applicant should so advise the city ~~engineer~~ in writing no later than two weeks before such master plan or plat would be considered ~~by the planning commission. The city engineer or other professional engineer who holds license issued under Chapter 1001, Occupation Code, retained by t~~ The city shall prepare a roughly proportionate analysis prior to consideration of the master plan or plat by the commission. If the city or retained engineer's analysis shows the apportionment of the municipal infrastructure costs to the applicant's development do not exceed the amount that is roughly proportionate to the development's impact and the applicant disagrees with such analysis, the applicant may appeal in accordance with this section.
- (2) *Timing.* An applicant may not file a master plan or plat for which an appeal in accordance with this section has been applied until the city council has made its decision on the appeal.
- (3) *Form of appeal.* The appeal for relief from an apportionment requirement shall be in the form of a petition to city council and allege that application of the standard or the imposition of conditions relating to the apportionment is not roughly proportional to the nature and extent of the impacts created by the proposed development on municipal infrastructure.
- (4) *Evidence.* The petitioner shall demonstrate that the apportionment requirement that was applied is not roughly proportional to the proposed development's impact on municipal infrastructure. Written evidence presented on behalf of an appellant at any appeal hearing may include evidence that addresses any of the following information that may be pertinent to the circumstances and any other information the appellant deems necessary to the appeal:
  - a. Total capacity of the particular municipal infrastructure system to be utilized by the proposed development, employing standard measures of capacity and equivalency tables relating the type of

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- development proposed to the quantity of system capacity to be consumed by the development. If the proposed development is to be developed in phases, such information also shall be provided for the entire development proposed, including any phases already developed.
- b. Total capacity to be supplied to the particular municipal infrastructure system by the proposed apportionment. If the development application is part of a phased development, the information may include any capacity supplied by prior apportionments.
  - c. Comparison of the capacity of the municipal facilities system(s) to be consumed by the proposed development with the capacity to be supplied to such system(s) by the proposed apportionment. In making this comparison, the impacts on the municipal infrastructure system(s) from the entire development shall be considered.
  - d. The effect of any credits against any impact fees due the petitioner as a result of the apportionment in accordance with the city's requirements.
  - e. The effect of any city participation in the costs of oversizing the capital improvement to be constructed.
- (5) *Time for filing petition and study.* The petition shall be filed with the engineering division within 90 days of the initial decision on the application. Where the apportionment requirement is applicable to more than one requirement, the petition may be filed following a decision on any application in which the requirement is applied. The study and any evidence in support of the petition shall be filed within 90 days of the date the petition was filed, unless the petitioner seeks an extension in writing. The city engineer may extend the time for submitting the study or other evidence for a period not to exceed an additional 60 days for good cause shown. If the petition for relief impacts New Braunfels Utilities or any other utility provider, the city engineer must provide the chief executive officer of the impacted utility a copy of the petition for relief and any supporting study or other evidence upon the city engineer's receipt thereof.
- (6) *Land in extraterritorial jurisdiction.* Where the subject municipal infrastructure are located in the extraterritorial jurisdiction of the city and are to be dedicated to the applicable county pursuant to an inter-local agreement under V.T.C.A., Local Government Code ch. 242, a petition and evidence in support of the petition shall not be accepted as complete for filing by the city engineer unless the petition or study or other evidence is accompanied by verification that a copy has been delivered to the applicable county in which the facilities are to be located.
- (c) *Processing of petitions and decision.*
- (1) *Administrative official.* The city engineer is the administrative official responsible for processing an apportionment. Where the petition is for the appeal from an apportionment in the city's extraterritorial jurisdiction that is to be dedicated to a county pursuant to an inter-local agreement under V.T.C.A., Local Government Code ch. 242, the city engineer shall coordinate a recommendation with the appropriate county official responsible for reviewing plats in the applicable county. If the petition for relief impacts New Braunfels Utilities or any other utility provider, the city engineer shall coordinate with the appropriate official of the impacted utility. The city engineer shall evaluate the petition and supporting study and other evidence, and shall make a recommendation to the city council based upon the information contained in the study, any comments received from the county, utility provider and the city's planning and development services department. In evaluating the petition and other evidence, the city engineer shall take into account the maximum amount of any impact fees to be charged against the development for the type of municipal infrastructure improvement that is the subject of the petition, and any credits due the petitioner against impact fees, as well as any traffic impact, drainage or other adequate facilities studies evaluating the impacts of the development or similar developments on municipal infrastructure. The city engineer must utilize generally accepted methodology in evaluating the petitioner's study, including but not limited to impact fee methodologies.

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- (2) *Decision-maker.* The city council shall decide the appeal for relief based on the criteria set forth in subsection (d).
- (3) *Appeal hearing and decision time frames.*
- a. The city council shall consider the request after an appeal hearing on the subject is held.
  - b. The city council shall hold the appeal hearing and consider the petition within 30 days of the submission of the study and any other evidence submitted on behalf of the appellant in support of the appeal.
  - c. The city council shall make a final decision within 30 days following the final submission of any testimony or evidence by the developer at the appeal hearing.
- (4) *Decision.* The city council shall consider the petition for relief, the analysis prepared by the city in accordance with subsection (b)(1), and the evidence presented, and based upon the criteria set forth in subsection (d), and shall take one of the following actions:
- a. Deny the appeal for relief, and impose the standard or condition in accordance with the initial decision;
  - b. Deny the appeal for relief, upon finding that the proposed requirements are inadequate to offset the impacts of the development on the municipal infrastructure, and either deny the application or require that additional apportionments for municipal infrastructure be made as a condition of approval of the application;
  - c. Grant the appeal in part and add such conditions of approval to the application as it deems appropriate;
  - d. Grant the appeal for relief, and waive in whole or in part any apportionment requirement necessary to meet the criteria for approval; or
  - e. Grant the appeal for relief, in whole or in part, and direct that the city participate in the costs of the particular municipal infrastructure pursuant to standard participation policies.
- (6) *Notification of decision on appeal.* The petitioner shall be notified in writing of the decision on the appeal for relief by the city engineer within ten days following the decision.
- (d) *Criteria for approval.* In deciding the appeal for relief from an apportionment, the city council shall determine whether the petitioner has demonstrated that the city apportionment is not roughly proportional to the proposed development's impact on municipal infrastructure. In making such determination, the city council shall consider the evidence submitted by the petitioner, the staff's report and recommendation and, where the property is located within the city's extraterritorial jurisdiction, any recommendations from the applicable county.
- (e) *Implementation of appellate decision.*
- (1) *When appeal for relief is granted.* When the city council grants the appeal for relief, the date of the final decision will be deemed the date of approval of the application, and the city must process the application consistent with the relief granted.
  - (2) *When appeal for relief is denied.* When the city council denies the appeal for relief, the date of the final decision will be deemed the date of denial of the application, and the petitioner must either withdraw the application or be prepared to make the required apportionment pursuant to the decision, as appropriate.
  - (3) *Where approval of the appeal was conditioned.* The city engineer or New Braunfels Utilities may require the applicant to submit modified master plans, plats, construction plans, or supporting materials consistent with the relief granted and condition(s) imposed by the city council on the petition.

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- (4) *Period of relief.* The relief granted on a petition shall remain in effect for the period that the master plan or plat approval is in effect, and shall expire upon expiration of the master plan or plat approval. Extension of the master plan or plat approval also shall result in extension of the relief granted on the petition.

(Ord. No. 2006-84, § 1(Exh. A), 9-11-06; Ord. No. 2019-89, § 1, 12-9-19)

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**Sec. 118-15. Right to deny.**

The [city commission](#) may deny a plat and any approval pursuant to this chapter if the applicant does not submit an administratively or technically complete application in accordance with this chapter within the required time frames of the state statute, or pay a full fee.

(Ord. No. 2006-84, § 1(Exh. A), 9-11-06; Ord. No. 2019-89, § 1, 12-9-19)

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**Sec. 118-21. General procedures.**

- (a) *Standards.* All subdivisions, plats, master plans, and replats are to be approved, approved with conditions, or denied by the city in accordance with the requirements of V.T.C.A., Local Government Code ch. 212 as amended.
- (b) *Zoning requirements.* A property within the city's corporate limits that is being proposed for platting or development may be the subject of a rezoning application either before or at the same time as the submission of an application for a master plan or plat.

The city may consider a master plan or any type of plat simultaneously with a zoning district change application or an application for a variance from the standards in the zoning ordinance and may condition approval of a master plan or any type of plat upon final council approval of the zoning district change or board of adjustment approval of a zoning ordinance variance which would cause the master plan or plat to be consistent with the zoning.

Noncompliance with the requirements of the zoning district in which the subject property is located, or lack of the proper zoning, may constitute grounds for denial of the master plan or plat.

- (c) *Administrative procedures.* In addition to the requirements outlined herein for each type of application, the city may maintain separate policies and procedures for the submission and processing of applications consistent with the provisions of this chapter including, but not limited to, application forms, fee schedules, checklists, language blocks for plats, and other similar items. These policies and procedures may be amended from time to time, and it is the applicant's responsibility to be familiar with, and to comply with, these policies and procedures.
- (d) *Processing of subdivision plats.*
  - (1) [Pursuant to state statute, the Planning Commission shall only consider residential replats, and the Planning and Development Services Department shall consider all other plats.](#) Prior to submitting an application to have a plat considered by the city, the applicant shall secure letters of certification (LOCs) from all reviewing entities, including but not limited to the engineering division of the public works department, water and wastewater utility providers, local counties and pertinent state agencies including the Texas Department of Transportation (TxDOT).

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- (2) The applicant shall submit the plat with the planning and development services department in accordance with the approved ~~commission meeting~~ plat submittal calendar described in subsection (7). In addition, such plat shall be accompanied by an application, nonrefundable application fee and associated documents required on the application checklists including approved LOCs.
  - (3) The planning and development services department shall conduct a completeness review of the application to ensure all required items are included. If the application meets the completeness review, the plat is considered filed on the final day of completeness review. If the application is incomplete, it will be returned to the applicant who may resubmit their application at a later time.
  - (4) The planning and development services department will conduct a review of the plat as to its conformity with any associated master plan, the major thoroughfare plan, future land use plan, zoning ordinance, the city's comprehensive plan and the standards and specifications set forth in this chapter or referred to in this chapter, and other city ordinances.
  - (5) The planning commission shall meet in accordance with the approved commission meeting calendar described in subsection (7).
  - (6) If the plat ~~planning commission does is~~ not approved, approved with conditions, or ~~denied~~ the plat within 30 days from the filing date the plat shall be deemed to have been approved ~~by the planning commission~~. A certificate showing the filing date and the failure to take action thereon within the periods prescribed in this section shall, on demand by the applicant, be issued by the city planning commission. Such certificate shall be sufficient in lieu of the written endorsement or other evidence of approval required in this section for recordation.
  - (7) Submittal and Meeting calendars. The commission city shall ~~approve-post~~ a meeting plat submittal calendar for every calendar year for consideration of administratively approved plats. Such calendar shall prescribe at a minimum the "application deadline date" for submission of plats. The Planning Commission shall approve a meeting calendar for every calendar year including the application deadline and the "commission's meeting date" on which non-administrative plats will be considered.

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**Sec. 118-22. Subdivision master plan.**

- (a) *Master plan submittal.* Where the proposed subdivision constitutes a unit of a larger tract that is to be subsequently subdivided, the applicant is required to submit a subdivision master plan of the entire area. The subdivision master plan shall be submitted in sufficient copies as determined by the planning director and drawn at a scale of not less than one inch to 500 feet on a topographic map. The master plan shall include:
  - (1) Names and addresses of the developers/subdividers, record owner, engineer and/or surveyor;
  - (2) Proposed name of the subdivision;
  - (3) Location in relation to the rest of the city and boundaries of proposed subdivision;
  - (4) A schematic layout of the entire tract and its relationship to adjacent property and existing adjoining development, including tentative proposed layouts of streets, blocks, drainage and utilities;
  - (5) The phases of development of the tract;
  - (6) Proposed major categories of land use and proposed zonings;
  - (7) Number of dwelling units per acre;
  - (8) Arterial, collector and local street layout;
  - (9) Location of sites for parks, schools and public uses where applicable;

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- (10) Significant natural features, including floodplains and wooded areas;
  - (11) Significant manmade features, such as railroads, buildings and utilities; and
  - (12) Master drainage plan report including existing drainage site plan, existing watershed map, preliminary drainage site plan and master drainage plan summary.

(b) *Processing.*

- (1) Prior to submitting an application to have a master plan considered by the city, the applicant shall secure letters of certification (LOCs) from all reviewing entities, including but not limited to the engineering division of the public works department, water and wastewater utility providers, local counties and pertinent state agencies including the Texas Department of Transportation (TxDOT).
- (2) The applicant shall submit the master plan with the planning and development services department. The master plan shall be accompanied by an application, application fee and associated documents required on the application checklists including approved LOCs.
- (3) The planning and development services department shall conduct a completeness review of the application to ensure all required items are included. If the application meets the completeness review, the master plan is considered filed on the final day of completeness review. If the application is incomplete, it will be returned to the applicant who may resubmit their application at a later time.
- (4) The planning and development services department will conduct a review of the master plan against the requirements of this chapter and other city ordinances. No master plan shall be approved unless it conforms to all applicable requirements of the City Code and is consistent with the city's comprehensive plan.
- (5) If the planning and development services department does not approve, approve with conditions, or deny the master plan within 30 days from the filing date, the master plan shall be deemed to have been approved. A certificate showing the filing date and the failure to take action thereon within the periods prescribed in this section shall, on demand by the applicant, be issued by the planning director. Such certificate shall be sufficient in lieu of the written endorsement or other evidence of approval required in this section for recordation.
- (6) If a master plan is approved with conditions or denied, the planning and development services department shall provide the applicant a written statement of the conditions for the conditional approval or reasons for denial. Each condition or reason must be directly related to the requirements of the local ordinance or state statute and include citations to the specific law/ordinance.
- (7) To obtain approval after a conditional approval or denial, an applicant shall submit a written response demonstrating how they have satisfied each condition, or remedied each reason for denial.
- (8) The city and all reviewing entities shall determine whether to approve or disapprove a previously conditionally approved or disapproved master plan within 15 days of receipt of the applicant's response.
  - a. The city may disapprove the master plan only for a specific condition or reason provided to the applicant in response to the initial conditional approval or denial.
  - b. If the applicant's response adequately addresses each condition or reason for denial, then the city shall approve the master plan.
  - c. If the city does not approve or disapprove the master plan within 15 days, the master plan is deemed approved.

~~(c) *Waivers.* Requests for waivers from requirements of this chapter cannot be approved administratively. If an applicant for a master plan also requests a waiver, the master plan and waiver must be considered by the planning commissions in accordance with sections 118-11 and 118-21.~~

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~~(c)~~(c) *Application and fees.*

- (1) Formal application for master plan approval shall be made to the planning director by the applicant on forms prescribed by the planning and development services department ~~director~~.
- (2) The master plan shall be submitted to the planning director in sufficient copies as determined by the planning and development services department ~~director~~.
- (3) The master plan shall be accompanied by an application fee as set out in appendix D of the City Code, which is nonrefundable.

~~(e)~~(d) *Layout.* The overall layout if approved by the planning and development services department shall be maintained in the city's records in accordance with state statutes. ~~Thereafter plats of subsequent units of such subdivision shall conform to the approved overall layout unless changed by the planning director or the planning commission as provided for in this chapter.~~ Approval of a subdivision master plan shall not constitute automatic approval of the preliminary or final plat.

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**Sec. 118-23. Preliminary plat—Optional.**

- (a) The applicant may cause to be prepared a preliminary plat by a surveyor in accordance with this chapter. The preliminary plat and final plat and all accompanying data may be submitted together, or the applicant may submit a final plat and all accompanying data required by this chapter without submitting a preliminary plat.
- (b) Application and fees.
  - (1) Formal application for preliminary plat approval shall be made to the planning and development services department by the applicant on forms prescribed by the planning director.
  - (2) The preliminary plat shall be submitted to the planning director in sufficient copies as determined by the planning director along with the required preliminary street, utility and drainage layouts in accordance with the ~~planning commission's~~ approved ~~meeting or~~ plat submittal calendar.
  - (3) The preliminary plat shall be accompanied by an application fee as set out in appendix D of the City Code, which is nonrefundable.

(Ord. No. 2006-84, § 1(Exh. A), 9-11-06; Ord. No. 2019-89, § 1, 12-9-19)

Editor's note(s)—Ord. No. 2019-89, § 1, adopted December 9, 2019, changed the title of section 118-23 from "Preliminary plat" to "Preliminary plat—Optional." The historical notation has been preserved for reference purposes.

**Sec. 118-24. Form and contents.**

The preliminary plat shall be drawn on sheets 18 inches wide and 24 inches long with a border of not less than ½-inch on all sides. The plat shall be drawn to a scale of no smaller than 100 feet to one inch. When more than one sheet is necessary to accommodate the entire area, an index sheet showing the entire subdivision at an appropriate scale shall be attached to the plat. The plat shall show the following:

- (1) A location map of the subdivision indicating its relation to adjacent arterials or collectors with sufficient information to locate the subdivision in relation to the rest of the city.
- (2) Names and addresses of the applicant, record title owner, engineer and/or surveyor.
- (3) The proposed name of the subdivision shall not have the same spelling or be pronounced similar to the name of any other subdivision located within the city or the city's extraterritorial jurisdiction, unless the subdivision is contiguous to a recorded subdivision and the plat represents an additional installment or increment of the original subdivision.

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- (4) Names of contiguous subdivisions and the owners of contiguous parcels of un-subdivided land, and an indication of whether or not contiguous properties are platted.
  - (5) The locations of contiguous lots, blocks, streets, easements, rights-of-way, parks and public facilities.
  - (6) Subdivision boundary lines indicated by heavy lines and the computed acreage of the subdivision.
  - (7) Existing site information as follows:
    - a. The exact location, dimensions, name and description of all existing or recorded streets, alleys, drainage structures, reservations, easements or public rights-of-way within the subdivision, intersecting or contiguous with its boundaries or forming such boundaries;
    - b. The exact location, dimensions, description and name of all existing or recorded residential lots, parks, public areas and significant sites within or contiguous with the subdivision.
  - (8) The location, dimensions, description and name of all proposed streets, alleys, parks, public areas, reservations, easements or rights-of-way, blocks, and lots.
  - (9) Date of preparation, scale of plat, and north arrow.
  - (10) Topographical information shall include contours on the basis of five vertical feet in terrain with a slope of two percent or more, and on a basis of two vertical feet in terrain of less than two percent. Contour lines shall be based upon city datum, if available.
  - (11) Location of city limits line, the outer border of the city's extraterritorial jurisdiction, and zoning district boundaries if they traverse the subdivision, form part of the boundary of the subdivision, or are contiguous to such boundary.
  - (12) The preliminary plat shall indicate by lot the proposed land use and proposed density on all copies submitted. This information will not be required on the final plat.
  - (13) A number or letter to identify each lot or site and each block.
  - (14) Any setback lines that are proposed to vary with the zoning ordinance.
  - (15) Additional information as may be required by state [statute law](#), ~~the planning director~~, [or the city engineer](#), ~~or the commission~~.
  - (16) Land subject to any special flood hazard zone according to the city's adopted flood maps.

(Ord. No. 2006-84, § 1(Exh. A), 9-11-06; Ord. No. 2019-89, § 1, 12-9-19)

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**Sec. 118-26. Processing of preliminary plat.**

- (a) Processing. Preliminary plats shall be processed in accordance with section 118-21.
- (b) Approval or conditional approval of a preliminary plat by the city shall be deemed an expression of approval of the layout submitted on the preliminary plat as a guide to the installation of streets, water, sewer and other required improvements and utilities and to the preparation of the final or record plat. Approval or conditional approval of a preliminary plat shall not constitute automatic approval of the final plat.
- (c) Approval or conditional approval of a preliminary plat shall be effective for five years, if progress toward completion is being made. Progress towards completion of the development for which the preliminary plat was approved includes the following:
  - (1) An application for a final plat is submitted;
  - (2) A good faith effort is made to file with a regulatory agency an application for a permit necessary to begin or continue towards completion of the project;
  - (3) Costs have been incurred for developing the project including, without limitation, costs associated with roadway, utility, and other infrastructure facilities designed to serve in whole or in part, the project (but exclusive of land acquisition) in the aggregate amount of five percent of the most recent appraised market value of the real property on which the project is located;
  - (4) Security is posted with the city to ensure performance of an obligation required by the city; or
  - (5) Utility connection fees or impact fees for the project have been paid to the city, New Braunfels Utilities, or other pertinent utility provider.
- (d) The planning director may upon application extend approval for an additional 12 months. At the end of this 12-month extension, the preliminary plat approval shall expire. ~~be revoked in writing by the city to the applicant unless extended by the planning commission.~~
- (e) If a final plat for all or part of the preliminary plat is approved before the preliminary plat expires, the preliminary plat shall not expire.

(Ord. No. 2006-84, § 1(Exh. A), 9-11-06; Ord. No. 2019-89, § 1, 12-9-19)

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**Sec. 118-28. Filing and fees.**

- (a) Formal application for final plat approval shall be made to the planning and development services department by the applicant on forms prescribed by the planning director. Construction plans and site improvement data shall be approved by the city engineer and/or public works director prior to final plat application.
- ~~(b) Copies of the final plat in sufficient quantities as determined by the planning director shall be tendered to the planning director in accordance with the commission's approved plat submittal meeting calendar.~~
- (e**b**) The final plat shall be accompanied by an application fee as set forth in appendix D of the City Code, which is nonrefundable.
- (e**c**) If the applicant proposes street names whose names have not been previously approved by the applicable street name approval authorities, the application shall include a street name approval letter from the applicable street name approval authorities.
- (e**d**) An application for a final plat for a subdivision that requires public improvements shall be accompanied by a letter of approval from the city engineer and/or the public works director approving the construction plans showing details of streets, alleys, culverts, bridges, storm sewers, water mains, sanitary sewers and other engineering details of the proposed subdivision. Such plans shall be prepared by a registered professional engineer and shall conform to the standard specifications established by the city. The letter of approval will serve as the required LOC for the engineering division, water and wastewater utility providers and the Texas Department of Transportation.

(Ord. No. 2006-84, § 1(Exh. A), 9-11-06; Ord. No. 2017-64, § 1, 9-11-17; Ord. No. 2019-89, § 1, 12-9-19)

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**Sec. 118-30. Certificates and statements.**

- (a) A surveyor's certificate in the following form shall be placed on the subdivision plat:  
KNOW ALL MEN BY THESE PRESENTS:  
  
I, the undersigned \_\_\_\_\_, a Registered Professional Land Surveyor in the State of Texas, hereby certify that this plat is true and correctly made under my supervision and in compliance with City and State survey regulations and laws and made on the ground and that the corner monuments were properly placed under my supervision.  
  
(Seal) \_\_\_\_\_  
  
Registered Professional Land Surveyor No. \_\_\_\_
- (b) An engineer's certificate in the following form shall be placed on the subdivision construction plans:  
KNOW ALL MEN BY THESE PRESENTS:  
  
I, the undersigned, \_\_\_\_\_, a Professional Engineer Registered in the State of Texas, hereby certify that proper engineering consideration has been given to these plans and all engineering aspects are in compliance with City and State engineering regulations and laws.  
  
(Engineer Seal)  
  
Registered Professional Engineer  
P.E. Registration No. \_\_\_\_\_
- (c) An owner's acknowledgement and certificate of dedication in the following form shall be placed on the subdivision plat:

Owner's acknowledgement:

State of Texas

County of \_\_\_\_\_

I (We) the undersigned owner(s) of the land shown on this plat, and designated herein as the \_\_\_\_\_ subdivision to the City of New Braunfels, County of \_\_\_\_\_, Texas, and whose name is subscribed hereto, do hereby subdivide such property and dedicate to the use of the Public all streets, alleys, parks, drains, easements, and public places thereon shown for the purposes and consideration therein expressed.

	_____ (Owner)
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State of Texas

County of \_\_\_\_\_

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_.

	_____ Notary Public
	State of
	My Commission Expires:

This owner's acknowledgement may be omitted if there is also filed with the plat a dedication deed adopting such plat as a part thereof, executed by such owner in recordable form and incorporating therein all of the pertinent provisions of such owner's acknowledgement.

- (d) A certificate of approval and acceptance by the [planning commission city](#) shall be placed on the subdivision plat, as follows:

1)For administratively approved plats:

Approved this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by the [Planning Commission of the](#) City of New Braunfels, Texas.

	_____ <b>Chairman</b>
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Approved for Acceptance

_____ Date	_____ Planning and Development Services Director
_____ Date	_____ City Engineer
_____ Date	_____ New Braunfels Utilities

2) For non-administrative plats:

A certificate of approval and acceptance by the planning commission shall be placed on the subdivision plat, as follows:

Approved this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by the Planning Commission of the City of New Braunfels, Texas.

	_____ Chair
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Approved for Acceptance

_____ Date	_____ Planning and Development Services Director
_____ Date	_____ City Engineer
_____ Date	_____ New Braunfels Utilities

(e) A certificate of recordation in the following form shall be placed on the subdivision plat:

For Comal County

I, \_\_\_\_\_, do hereby certify that the foregoing instrument was filed for record in the Map and Plat Records, Doc # \_\_\_\_\_ of Comal County on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ m.

Witness my hand official seal, this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

	County Clerk, Comal County, Texas
	_____ Deputy

For Guadalupe County

State of Texas

County of \_\_\_\_\_

I, \_\_\_\_\_ County Clerk of said County, do hereby certify that the foregoing instrument of writing with its certificate of authentication was filed for record in my office, on the \_\_\_\_\_ day of \_\_\_\_\_, A.D. 20\_\_ at \_\_\_\_\_ m. and duly recorded the \_\_\_\_\_ day of \_\_\_\_\_ A.D. 20\_\_ at \_\_\_\_\_ m. in the map and plat records of \_\_\_\_\_ County, Texas in Volume \_\_\_\_\_, Page \_\_\_\_\_, in testimony whereof, witness my hand and official seal of office this \_\_\_\_\_ day of \_\_\_\_\_, A.D. 20\_\_.

County Clerk, \_\_\_\_\_ County, Texas

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**Sec. 118-32. Processing of final plat.**

- (a) Processing. Final plats shall be processed in accordance with section 118-21.
- (b) Approval or conditional approval of a final plat shall be effective for five years. The plat shall expire and be void within five years of approval ~~by the commission~~ if progress toward completion is not being made. Progress towards completion of the development for which the final plat was approved includes the following:
  - (1) A good faith effort is made to file with a regulatory agency an application for a permit necessary to begin or continue towards completion of the project;
  - (2) Costs have been incurred for developing the project including, without limitation, costs associated with roadway, utility, and other infrastructure facilities designed to serve in whole or in part, the project (but exclusive of land acquisition) in the aggregate amount of five percent of the most recent appraised market value of the real property on which the project is located;
  - (3) Subdivision development has begun;
  - (4) Security is posted with the city to ensure performance of an obligation required by the city; or
  - (5) Utility connection fees or impact fees for the project have been paid to the city, New Braunfels Utilities, or other pertinent utility provider.
- (c) The planning ~~and development services department director~~ may upon application extend approval of a final plat for an additional 12 months. At the end of this 12-month extension the final plat ~~shall expire approval shall be revoked in writing by the city to the applicant~~ unless:
  - ~~(1) Extended by the planning commission upon application by the applicant in accordance with the planning commission approved meeting schedule;~~
  - ~~(1)~~ Subdivision development has begun; or
  - ~~(2)~~ Surety has been provided for in accordance with this chapter.
- (d) Revisions to an approved final plat prior to filing at the county. Occasionally minor revisions are needed before the final plat can be filed at the applicable county(s). Such minor revisions as correction of bearings or distances, correction of minor labeling errors, addition of erroneously omitted informational items and labels, etc. may occur on the record plat prior to filing it without the planning commission or city having to re-approve the final plat. An applicant may submit an application for a determination of whether or not revisions are "minor" in nature which is subject to the judgment of the city's planning director and the city engineer. Revisions such as obvious corrections, reconfiguration of lot lines or easements, relocation of roads or driveways or access easements, any modification to the perimeter or boundary of the property, and relocation or addition or deletion of any public improvement (including corresponding easement), may necessitate re-submission and re-approval of the plat as a "revised final plat" unless otherwise approved by the planning director and the city engineer as applicable. If the planning director or city engineer considers ~~revisions~~ to be other than minor revisions the plat shall be re-submitted to the ~~planning commission city~~ as a "revised final plat".

(Ord. No. 2006-84, § 1(Exh. A), 9-11-06; Ord. No. 2017-64, § 1, 9-11-17; Ord. No. 2019-89, § 1, 12-9-19)

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**Sec. 118-34. Replatting.**

- (a) Replat required. Unless otherwise expressly provided for herein, a property owner who proposes to replat any portion of an already approved and recorded final plat, other than to amend or vacate the plat, must

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first obtain approval for the replat under the standards and procedures prescribed for the replatting of land by this chapter. All improvements shall be constructed in accordance with the same requirements as for a final plat as provided herein. The planning director may waive or modify requirements for a preliminary replat under certain circumstances where the proposed replat does not involve a large land parcel or an existing structure or business on the subject property, and where the proposed plat revisions are relatively simple in nature.

- (b) Replatting without vacating preceding plat. A replat of a final plat or portion of a final plat may be recorded and is controlling over the preceding plat without vacation of that plat if the replat:
- (1) Is signed and acknowledged by only the owners of the property being replatted; and
  - (2) Does not attempt to amend or remove any covenants or restrictions previously incorporated in the final plat.
- (c) Public hearing. In addition to compliance with subsection (b), a public hearing is required as follows:
- (1) Any replat that requires approval of a waiver; and/or
  - (2) Is a residential replat.
    - a. During the preceding five years any of the area to be replatted was limited by an interim or permanent zoning district 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.
  - (3) Notice of the public hearing required under subsection (b) shall be given before the 15th calendar day before the date of the hearing by publication in an official newspaper or a newspaper of general circulation in the applicable county and the city web site. Notice of the public hearing shall also be given by written notice before the 15th calendar day before the date of the hearing, with a copy or description of any requested waivers and a copy of V.T.C.A., Local Government Code § 212.015(c), sent to the property owners, as documented on the most recently approved ad valorem tax roll of the city of lots that are in the original subdivision and that are within 200 feet of the lot(s) to be replatted. In the case of a subdivision in the extraterritorial jurisdiction, the most recently approved county tax roll shall be used. The written notice may be delivered by depositing the notice, properly addressed with appropriate postage paid, in a post office or postal depository within the boundaries of the city.
  - (4) If the proposed residential replat requires a waiver and the property owner(s) of 20 percent or more of the total land area of lots to whom notice is required to be given under subsection (b) file with the city a written protest of the replatting before or at the public hearing, ~~and the replat~~ then approval of the replat will require the affirmative vote of at least three-fourths of the commission members present. For a legal protest, written instruments signed by the owners of at least 20 percent of the total land area of the lots or land immediately adjoining the area covered by the proposed replat and extending 200 feet from that area, but within the original subdivision, must be filed with the city prior to the close of the public hearing. In computing the percentage of land area subject to the "20 percent rule" described above, the area of streets and alleys shall be included.
- (d) Any replat that adds or deletes lots must include the original subdivision and lot boundaries. If a replat is submitted for only a portion of a previously platted subdivision, the replat must reference the previous subdivision name and recording information, and must state on the replat the specific lots which have changed along with a detailed "purpose for replat" statement.
- (e) If the previous plat is vacated as prescribed in V.T.C.A., Local Government Code § 212.013, as amended, and as provided in this chapter, a public hearing is not required for a replat of the area vacated. It would, instead, be submitted as a "preliminary or final plat" and reviewed accordingly.

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- (f) The replat of the subdivision shall meet all the requirements for a final plat for a new subdivision that may be pertinent, as provided for herein.
- (1) Replats not requiring a public hearing may be considered for approval by the planning and development services department. ~~The planning director may, for any reason, elect to present the replat to the planning commission for consideration and approval. Should the planning director believe he/she is unable to approve the replat, then the plat shall be referred to the planning commission for review and approval within the time period required by state law.~~
- (2) Replats requiring public hearings shall be considered by the planning commission.
- (g) The title shall identify the document as a "Final Plat" of the "\_\_\_\_\_ Addition, Block \_\_\_\_\_, Lot(s) \_\_\_\_\_, being a Replat of Block \_\_\_\_\_, Lot(s) \_\_\_\_\_ of the \_\_\_\_\_ Addition, an addition to the City of New Braunfels, Texas, as recorded in Volume \_\_\_\_\_, Page \_\_\_\_\_ of the Plat Records of \_\_\_\_\_ County, Texas".
- (h) An application submittal for a replat shall be the same as for a final plat, and shall be accompanied by all items required for final plats including the required number of copies of the plat, a completed application form, and the required application fee.
- (i) The replat shall also bear a detailed "purpose for replat" statement which describes exactly what has been changed on the plat since the original (or previous) plat was approved by the city and filed at the county.
- (j) The replat shall be recorded at the applicable county in the same manner as prescribed for a final plat, and approval of a replat shall expire if all filing materials are not submitted to the planning director, and if the replat is not recorded at the applicable county within the time periods specified for a final plat.
- (Ord. No. 2006-84, § 1(Exh. A), 9-11-06; Ord. No. 2019-89, § 1, 12-9-19)

### **Sec. 118-35. Amending plats.**

- (a) An amended plat shall meet all of the informational and procedural requirements set forth for a final plat, including the required number of copies of the plat, a completed application form, and the required application fee.
- (b) The planning director may approve an amending plat which may be recorded and is controlling over the preceding or final plat without vacation of that plat if the amending plat is signed by the applicants only and if the amending plat is for one or more of the purposes set forth in this section. The procedures for amending plats shall apply only if the sole purpose of the amending plat is to:
- (1) Correct an error in a course or distance shown on the preceding plat;
- (2) Add a course or distance that was omitted on the preceding plat;
- (3) Correct an error in a real property description shown on the preceding plat;
- (4) Indicate monuments set after the death, disability, or retirement from practice of the engineer or surveyor responsible for setting monuments;
- (5) Show the location or character of a monument that has been changed in location or character or that is shown incorrectly as to location or character on the preceding plat;
- (6) Correct any other type of scrivener or clerical error or omission previously approved by the municipal authority responsible for approving plats, including lot numbers, acreage, street names, and identification of adjacent recorded plats;

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- (7) Correct an error in courses and distances of lot lines between two adjacent lots if:
- a. Both lot owners join in the application for amending the plat;
  - b. Neither lot is abolished;
  - c. The amendment does not attempt to remove or modify recorded covenants or restrictions or easements; and
  - d. The amendment does not have a material adverse effect on the property rights of the owners in the plat;
- (8) Relocate a lot line to eliminate an inadvertent encroachment of a building or other improvement on a lot line or easement;
- (9) Relocate one or more lot lines between one or more adjacent lots if:
- a. The owners of all those lots join in the application for amending the plat;
  - b. The amendment does not attempt to remove or modify recorded covenants or restrictions or easements; and
  - c. The amendment does not increase the number of lots; or
- (10) To make necessary changes to the preceding plat to create six or fewer lots in the subdivision or a part of the subdivision covered by the preceding plat if:
- a. The changes do not affect applicable zoning and other regulations of the city;
  - b. The amendment does not attempt to remove or modify recorded covenants or restrictions or easements; and
  - c. The area covered by the changes is located in an area that the city council has approved, after a public hearing, as a residential improvement area.
- (11) To replat one or more lots fronting on an existing street if:
- a. The owners of all those lots join in the application for amending the plat;
  - b. The amendment does not attempt to remove recorded covenants or restrictions;
  - c. The amendment does not increase the number of lots; and
  - d. The amendment does not create or require the creation of a new street or make necessary the extension of municipal facilities.
- (12) To remove one lot line between two adjacent lots if: (The plat does not have to be prepared by a registered surveyor. Application may be made by the owner of the lots.)
- a. The applicant is the owner of both lots;
  - b. Proof is provided from the utility providers that any easements are not needed currently or in the future; and
  - c. The amendment does not attempt to remove or modify recorded covenants or restrictions.
- ~~(c) The planning director may approve amending plats. The planning director may, for any reason, elect to present the amending plat to the planning commission for consideration and approval. Any decision made on the amending plat by the planning director shall be approval of the plat. Should the planning director refuse to approve the amending plat, then the plat shall be referred to the commission for review and approval within the time period required by state law.~~
- ~~(d) Notice, a public hearing, and the approval of other lot owners is not required for the approval and issuance of an amending plat.~~
- (ec) The amended plat shall be entitled and clearly state that it is an "amended plat", and it shall include a detailed "purpose for amended plat" statement which describes exactly what has been changed on the plat since the original (or previous) plat was approved by the city and recorded at the applicable county. It shall

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also state the specific lots affected or changed as a result of the amended plat, and shall include the original subdivision plat boundary. All references to "final plat" or "replat" shall be removed.

- (fd) The amending plat shall be recorded at the applicable county in the same manner as prescribed for a final plat, and approval of an amending plat shall expire if all filing materials are not submitted to the city, and if the plat is not recorded at the applicable county within the time periods specified for a final plat.

(Ord. No. 2006-84, § 1(Exh. A), 9-11-06; Ord. No. 2008-40, § 1, 6-9-08; Ord. No. 2019-89, § 1, 12-9-19)

### **Sec. 118-36. Minor plats.**

- (a) A minor plat is a subdivision or development plat resulting in four or fewer lots and provided that the plat does not create any new street nor necessitate the extension of any municipal facilities, except sidewalks, as determined by the city engineer to serve any lot within the subdivision. Any property to be subdivided using a minor plat shall already be adequately served by all required city utilities, and all lots will have frontage on a public roadway.
- (b) A minor plat shall meet all of the informational and procedural requirements set forth for a final plat, and shall be accompanied by all items required by the planning director, including the required number of copies of the plat, a completed application form, and the required application fee.

~~(c) Upon receipt of a favorable recommendation for approval by the city engineer, the planning director may approve, or approve with conditions a minor plat, or may for any reason elect to present the minor plat to the planning commission for consideration. The planning director may not deny a minor plat. Should the planning director believe he/she is unable to approve the minor plat, then the plat shall be referred to the planning commission for review and approval within the time period required by state law.~~

~~(d) Notice, a public hearing, and the approval of other lot owners are not required for the approval a minor plat.~~

(ec) The minor plat shall be entitled and clearly state that it is a "minor plat."

- (fd) The minor plat shall be recorded at the applicable county in the same manner as prescribed for a final plat, and approval of a minor plat shall expire if all filing materials are not submitted to the city and if the plat is not recorded at the applicable county within the time periods specified for a final plat.

(Ord. No. 2006-84, § 1(Exh. A), 9-11-06; Ord. No. 2019-89, § 1, 12-9-19)

### **Sec. 118-37. Development plats.**

- (a) *Authority.* This section is adopted pursuant to the V.T.C.A., Local Government Code ch. 212, subchapter B, §§ 212.041—212.050, as amended.
- (b) *Purpose.* Development plats may be required only to ensure that adequate easements and rights of way will be provided with respect to land not subject to platting requirements. Site plan approval is not required.
- (c) *Applicability.* For purposes of this section the term "development" means the new construction of any building or structure of any nature (residential or nonresidential). "Development" does not include construction of any building or improvement used for agricultural purposes. This section shall apply to any land lying within the city or within its extraterritorial jurisdiction, as follows:
- (1) The development of any tract of land which has not been platted or replatted prior to the effective date of this section, unless expressly exempted herein;
  - (2) The development of any tract of land for which the property owner claims an exemption from the city's subdivision ordinance, including requirements to replat, which exemption is not expressly provided for in such regulations;

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- (3) The development of any tract of land for which the only access is a private easement or street; and/or
  - (4) The division of any tract of land resulting in parcels or lots each of which is greater than five acres in size, and where no public improvement is proposed to be dedicated or constructed.
- (d) *Exceptions.* No development plat shall be required where:
- (1) The tract to be developed has received final plat or replat approval or was created prior to the effective date of this chapter, or
  - (2) A subdivision plat is also required under the ordinances of the city.

~~The planning commission may from time to time exempt other development or land divisions from the requirements of this section.~~

- (e) *Prohibition on development.* No development shall commence, nor shall any building permit, utility connection permit, electrical connection permit or similar permit be issued for any development or land division subject to this section, until a development plat has been reviewed and approved by the ~~planning commission, or the planning director if a minor plat~~ city, and filed of record at the applicable county.
- (f) *Standards of approval.* The development plat shall not be approved until the following standards have been satisfied:
  - (1) The proposed development conforms to the comprehensive plan, plans, rules and ordinances of the city concerning its current and future streets, sidewalks, alleys, and public utilities facilities;
  - (2) Public dedications to serve the development have been tendered; and
  - (3) The proposed development conforms to the general plan, rules and ordinance of the city that are related to development of a land parcel not otherwise subject to the city's platting requirements.
- (g) *Conditions.* The ~~city planning director, in the case of a minor plat, or otherwise the planning commission,~~ city may impose such conditions on the approval of the development plat as are necessary to insure compliance with the standards in subsection (f).
- (h) *Approval procedure.* The application for a development plat shall be submitted to the city in the same manner as a final plat and shall be approved, conditionally approved, or denied by the ~~city planning commission or the planning director, if a minor plat,~~ city in a similar manner as a final plat. Upon approval, the development plat shall be recorded at the applicable county in the same manner as prescribed for a final plat. Approval of a development plat shall expire if all filing materials are not submitted to the planning and development services department, and if the plat is not recorded at the county within the time periods specified for a final plat.
- (i) *Submittal.* All application materials for a development plat shall be submitted to the planning and development services department for review in the same form and manner as for a final plat, or the application shall be deemed incomplete.

(Ord. No. 2006-84, § 1(Exh. A), 9-11-06; Ord. No. 2019-89, § 1, 12-9-19; Ord. No. 2019-89, § 1, 12-9-19)

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**Sec. 118-38. Guarantee of performance; inspection and acceptance of public improvements, licensing.**

- (a) If the applicant chooses to construct the required improvements prior to recordation of the final plat, all such construction shall be inspected while in progress by the appropriate city department and must be approved upon completion by the city engineer, New Braunfels Utilities, and any other public utility if that utility provides service to the development. Written notification by such officials stating that the construction conforms to the specifications and standards contained in or referred to in this chapter must be presented to the planning director prior to recordation of the final plat.
- (b) If the applicant chooses to file security in lieu of completing construction prior to the recording the plat the applicant may provide a:
  - (1) Performance bond or surety bond;
  - (2) Letter of credit; or
  - (3) Escrow funds equal to the total installation cost of the required improvements.
- (c) Security shall be in an amount equal to 100 percent of the estimated cost of completion of the required public improvements. The issuer of any surety bond and letter of credit shall be subject to the approval of the city engineer and the city attorney.
- (d) Performance bond. The performance bond shall comply with the following requirements:
  - (1) All performance bonds must be in the forms acceptable to the city engineer and the city attorney.
  - (2) All performance bonds must be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies", as published in Circular 570, as may be amended, by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury.
  - (3) All performance bonds must be signed by an agent, and must be accompanied by a certified copy of the authority for him or her to act.
  - (4) All performance bonds shall be obtained from surety or insurance companies that are duly licensed or authorized in the state to issue performance bonds for the limits and coverage required.
- (e) Letter of credit. The letter of credit shall:
  - (1) Be irrevocable;
  - (2) Be for a term sufficient to cover the completion of the required public improvements; and
  - (3) Require only that the city present the issuer with a sight draft and a certificate signed by credit.
- (f) As portions of the public improvements are completed in accordance with the approved engineering plans, the applicant may make written application to the city engineer to reduce the amount of the original security. If the city engineer is satisfied that such portion of the improvements has been completed in accordance with city standards, the city may, but is not required to, cause the amount of the security to be reduced by such amount that it deems appropriate, so that the remaining amount of the security adequately insures the completion of the remaining public improvements.
- (g) Guarantee of materials and workmanship.

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- (1) The applicant or developer shall require of the construction contractors with whom he contracts and shall himself be responsible for guaranteeing that all materials required under this chapter and workmanship in connection with such improvements are free of defects for a period of two years after acceptance of the improvements by the city engineer and New Braunfels Utilities or other utility.
  - (2) Maintenance bond. Prior to acceptance of public improvements or approval of private improvements for each phase a maintenance bond or other surety instrument shall be accepted by the city in compliance with the following:
    - a. Shall be in an amount equal to ten percent of the cost of improvements for the first two calendar years following acceptance of said improvements.
    - b. Shall cover all street and utilities improvements. The construction value or final pay estimate shall be provided to the city engineer to support said warranty and maintenance bond amounts.
    - c. Shall be satisfactory to the city attorney as to form, sufficiency, and manner of execution.
    - d. In an instance where a maintenance bond or other surety instrument has been posted and a defect or failure of any required improvement occurs within the period of coverage, the city may declare said bond or surety instrument to be in default and require that the improvements be repaired or replaced.
    - e. Whenever a defect or failure of any required improvement occurs within the period of coverage, the city shall require that a new maintenance bond or surety instrument be posted for a period of one full calendar year sufficient to cover the corrected defect or failure.
  - (h) The city shall inspect all required improvements to ensure that construction is being accomplished in accordance with the plans and specifications approved by the city. The city shall have the right to inspect any construction work being performed to ensure that it is proceeding in accordance with the intent of the provisions of this chapter. Any change in design that is required during construction should be made by the licensed professional engineer whose seal and signature are shown on the plans. Another engineer may make revisions to the original engineering plans if so authorized by the owner of the plans, and if those revisions are noted on the plans or documents. All revisions shall be approved by the city engineer. If the city's engineer finds, upon inspection, that any of the required public improvements have not been constructed in accordance with the plans and specifications approved by the city then the developer shall be responsible for completing and correcting the deficiencies at the developer's expense.
  - (i) The developer/applicant shall pay for testing services that verify conformance with the approved plans and specifications. All expenses for tests that fail to meet these specifications shall also be paid for by the developer.
  - (j) Upon completion, inspection, and acceptance of the required utility improvements, NBU or the other utility provider shall submit a letter to the city engineer and the developer/applicant stating that all required utility improvements have been satisfactorily completed and accepted by the utility provider.
  - (k) Subject to the provisions of subsection 118-6(f), the city may withhold all city services and improvements of whatsoever nature, including the maintenance of streets and the furnishing of all other city services from any subdivision or property until all of the street, utility, storm drainage and other public improvements are properly constructed according to the approved construction plans, and until such public improvements are dedicated to and accepted by the city.
  - (l) If the surety on any performance bond furnished by the applicant is declared bankrupt, or becomes insolvent, or its right to do business is terminated in the state, or the surety ceases to meet the requirements listed in Circular 570, the developer shall, within 20 business days thereafter, substitute another performance bond and surety, both of which must be acceptable to the city.

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- (m) When all of the improvements are found to be constructed and completed in accordance with the approved plans and specifications and with the city's standards, and upon receipt of one set of "record drawing" plans, and a digital copy of all plans (in a format as determined by the city engineer) the city engineer shall accept such improvements for the city, subject to the guaranty of material and workmanship provisions in this section.
- (n) Temporary improvements. The applicant shall build and pay for all costs of temporary improvements required by the city, and shall maintain those temporary improvements for the period specified by the city.
- Any temporary public improvement (e.g., a temporary cul-de-sac, alley turnout, drainage swale, erosion control device, etc.) shall be placed within an easement established specifically for that purpose. The recording information of the instrument establishing the temporary easement shall be by instrument and approved by the city engineer. A temporary easement for a required public improvement shall not be abandoned without the city engineer's approval and without written consent by the city.
- (o) Government units. Governmental units to which these contract and security provisions apply may file, in lieu of the contract and security, a certified resolution or ordinance from officers or agents authorized to act in their behalf, agreeing to comply with the provisions of this chapter.
- (p) Acceptance of dedication offers. Acceptance of formal offers for the dedication of streets, public areas, easements or parks shall be by authorization of the city engineer. The approval by the ~~city planning commission~~ of a preliminary or final plat shall not, in and of itself, be deemed to constitute or imply the acceptance by the city of any public improvements required by the plat. The city may require the plat to be endorsed with appropriate notes to this effect.
- (q) No applicant or contractor shall begin construction of public improvements, including grading, within a subdivision until the construction plans are approved by the city engineer. The developer/applicant shall notify the city engineer prior to commencement of construction. This notice shall give the location and date of the start of construction.
- (r) Acceptance of the development shall mean that the developer has transferred all rights to all the public improvements to the city for use and maintenance. The city engineer may, at his option, accept dedication of a portion of the required public improvements if the remaining public improvements are not immediately required for health and safety reasons, and if the property owner has posted a performance bond, letter of credit or cash bond in the amount of 100 percent of the estimated cost of those remaining improvements for a length of time to be determined by the city engineer.
- (s) Upon acceptance of the required public improvements, the city engineer (or designee) shall submit a letter to the developer/applicant stating that all required public improvements have been satisfactorily completed and accepted by the city.
- (t) Contractor licensing. Any contractor wishing to construct a public improvement must be licensed in accordance with chapter 14. In addition to the license requirements of chapter 14, contractors working on public improvements shall be approved by the city engineer. The city engineer may deny or approve a public improvement contractor, approve with conditions, require reasonable bonding of the contractor's work, suspend or revoke a public improvement contractor's license. The city engineer may withhold approval of said license for reasonable cause to include failure to construct public improvements to code or city specifications, for violations of this Code, for failure to provide accurate or complete data as required by the city engineer, or for failure to correct subdivision public improvements which fail within a year of their acceptance in accordance with this chapter. The contractor may appeal the city engineer's licensing decisions to the construction board of appeals in accordance with chapter 14.

(Ord. No. 2006-84, § 1(Exh. A), 9-11-06; Ord. No. 2011-28, § 1, 4-11-11)

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( Supp. No. 33, Update 4)

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### Sec. 118-39. Deferral of required improvements.

- (a) The ~~planning commission~~ city may upon petition of the property owner and favorable recommendation of the city engineer defer at the time of plat approval, subject to appropriate conditions, the provision of any or all public improvements as in its judgment, are not required in the immediate interests of the public health, safety and general welfare.
- (b) Whenever a petition to defer the construction of any public improvements required under this chapter is granted by the city ~~planning commission~~, the property owner shall deposit in escrow with the city their share of the costs of the future public improvements as approved by the city engineer prior to filing of the plat, or the property owner may execute a separate improvement agreement secured by a cash escrow or, where authorized, a letter of credit guaranteeing completion of the deferred public improvements upon demand of the city.

(Ord. No. 2006-84, § 1(Exh. A), 9-11-06)

### Sec. 118-40. Recordation.

- (a) After approval of any final plat by the city or planning commission and construction plans by the city engineer and New Braunfels Utilities or other utility, the ~~city planning commission~~ shall ~~cause the city to~~ record such final plat with the appropriate county clerk upon the applicant's performance of one of the following:
  - (1) Completion of the construction of required improvements prior to recordation in compliance with this chapter.
  - (2) Filing of security in lieu of completing construction prior to recordation in a form approved by the city attorney, and in compliance with this chapter.
- (b) In addition to the performance required under subsection (a), the applicant shall provide as appropriate the following:
  - (1) A check or checks payable to the county clerk in the amount of the recordation fee for filing the final plat.
  - (2) A tax certificate from the city, county and school district showing that no taxes are currently due or delinquent against the property.
  - (3) The applicant shall provide dedication of all streets, alleys, parks, easements and other land intended for public use, signed by the owner or owners and by all other persons owning an interest in the property subdivided and platted, which shall be acknowledged in the manner prescribed by the laws of the state for conveyance of real property, and which shall be submitted and attached to or placed in the final plat in accordance with the provisions in this chapter.
  - (4) The city shall cause such plat to be recorded with the county clerk upon compliance with this chapter. The applicant shall provide a digital copy of the final plat in a format acceptable to the city and the necessary materials and fees required to record said plat with the appropriate county clerk.

(Ord. No. 2006-84, § 1(Exh. A), 9-11-06; Ord. No. 2009-58, § 1, 9-14-09; Ord. No. 2019-89, § 1, 12-9-19)

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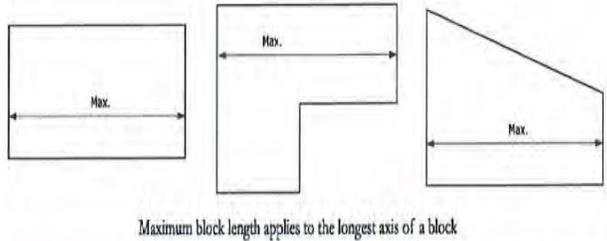
**Sec. 118-43. Generally.**

- (a) *Conformity to design requirements.* No plat shall be approved by the city or the planning commission, and no completed improvements shall be accepted by the city engineer, unless they conform to the following design requirements and applicable standards, or unless waived ~~by the planning commission~~ in accordance with section 118-11. Although the intention of this section is to establish uniform design standards, it neither replaces the need for engineering judgment nor precludes the use of information not presented. Other accepted engineering procedures may be used if approved by the city engineer.
- (b) *Adequate public facilities policy.* The land to be divided or developed must be served adequately by essential public facilities and services. No subdivision shall be approved unless and until adequate public facilities exist or provision has been made for water, wastewater, drainage, electric and road facilities which are necessary to serve the development proposed, whether or not such facilities are to be located within the property being platted or off-site. This policy may be defined further and supplemented by other ordinances adopted by the city. Wherever, the subject property adjoins undeveloped land, or wherever required by the city to serve the public good, utilities and drainage systems shall be extended to adjacent property lines to allow connection of these utilities and drainage systems by adjacent property owners when such adjacent property is platted and/or developed.

(Ord. No. 2006-84, § 1(Exh. A), 9-11-06)

**Sec. 118-44. Blocks.**

- (a) *Measurement.* The length of a block is measured along the longest axis, as illustrated below:



- (b) Block lengths shall not exceed 1,200 feet except along arterial streets.
- (c) Maximum block lengths along an arterial shall be 1,600 feet, except under special conditions as determined by the planning and development services department.
- (d) *Waivers.*
  - (1) An application requesting a waiver to block length shall be submitted in writing to the planning and development services department by the property owner or agent concurrent with the subdivision application. The petition application shall explain the purpose of the waiver, state fully the grounds for the waiver, and all of the facts relied upon by the petitioner.
  - (2) Block length waivers are subject to the requirements outlined in subsection 118-11(a) of this chapter.
  - (3) In making a determination regarding a requested block length waiver, the planning and development services department shall consider the street design and provision of multi-use trails that create

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pedestrian and cyclist connections. Multi-use trails shall be designed in compliance with current city standards.

- (4) The applicant may appeal a decision of the planning and development services department to deny a block length waiver. The appeal shall go to the Planning Commission for a recommendation and to City Council for the final determination of the appeal. ~~or disagrees with the conditions placed upon an approved block length waiver to the planning commission.~~ The appeal request shall include supporting documents, and the decision by the planning and development services department. The ~~planning commission~~ city council can affirm, reverse, or modify the decision.

~~(5) The planning commission city council shall determine final approval or disapproval of a block length waiver or conditions on a block length waiver request.~~

(Ord. No. 2006-84, § 1(Exh. A), 9-11-06; Ord. No. 2019-89, § 1, 12-9-19; Ord. No. 2021-91, § 6, 12-13-21)

### **Sec. 118-45. Lots.**

- (a) Lots shall conform to the minimum requirements of the established zoning district, if located within the city's corporate limits.
- (b) Each lot on a subdivision plat shall front onto a dedicated, improved public street unless platted as an approved private street subdivision in accordance with this chapter. Lot width and access shall conform with the provisions of the city's zoning ordinance, chapter 114, the comprehensive plan, and any other applicable city code or ordinance. In all cases, single-family and two-family residential lots, except townhouse lots, which shall have a minimum of 25 feet of frontage, shall have a minimum of 36 feet of frontage. Non-residential lots shall have a minimum of 60 feet of frontage along a dedicated, improved street.
- (c) Irregular-shaped lots shall have sufficient width at the building line to meet lot width and frontage requirements of the appropriate zoning district (if within the city's limits) and shall provide a reasonable building pad without encroachment into front, side or rear yard setbacks or into any type of easement. Also, the rear width shall be sufficient to provide access for all necessary utilities, including access for driveways and solid waste collection when rear alleys are present (minimum 20-foot alley frontage). In general, triangular, severely elongated or tapered, "flag" or "panhandle" lots should be avoided. The city or planning commission reserves the right to disapprove any lot which, in its sole opinion, will not be suitable or desirable for the purpose intended, which is an obvious attempt to circumvent the purpose and intent of lot configuration or lot width minimums, or which is so oddly shaped as to create a hindrance to the logical lot layout of surrounding properties.
- (d) On-site sewage facilities (OSSF)—Septic tanks. Where public wastewater lines are not available, as determined in chapter 130, OSSF such as septic tanks may be used. Minimum lot sizes shall be as follows:
- (1) One-family and two-family lots inside the city limits.
- a. Lots served by public water supply: One-half acre.
- b. Lots not served by public water supply: One acre.
- c. Any lot over the Edwards Aquifer Recharge Zone: governed by the Texas Commission on Environmental Quality (TCEQ); please see TCEQ's current standards.
- (2) Multifamily and non-residential lots. As determined by the city sanitarian based on a study provided by the subdivider/developer.
- (3) If in the ETJ or otherwise outside the city limits, the respective county's standards apply.
- (e) Extra depth and width in certain cases. Where a lot in a one, two or multifamily residential area backs up to a railroad right-of-way, a high-pressure gasoline easement, oil or gas line easement, electric transmission lines

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(69 kv or higher) easement, an arterial street, an industrial area or other land use which may have a depreciating effect on the residential use of the property, and where no marginal access street or other street is provided at the rear of such lot, additional depth may be required by the [city or](#) planning commission. In no case shall a depth in excess of 140 feet be required. Where a lot sides to any of the above-described cases, additional width may be required by the [city or](#) planning commission, but in no event shall a width in excess of 75 feet be required.

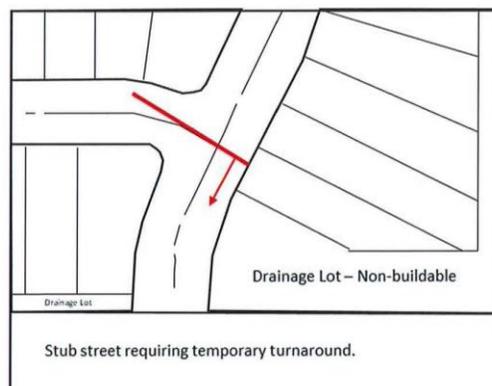
- (f) Lots adjacent to or in floodplains. Subdivision of property in a designated floodplain must meet the requirements of the adopted ordinances of the city regulating land use and development in the floodplain.
- (g) Common areas.
  - (1) Areas held in common by a homeowners' or property owners' association shall be shown on the plat as a separate lot.
  - (2) If the common areas or easements shown on a plat are not properly maintained as determined by the planning director and the city engineer, the city may make notice to the association to at least begin maintenance. Such notice shall be given at least 14 days prior to any action on the part of the city to enforce proper maintenance provisions of this or any other chapter of this Code. If the common area is not properly maintained, the city may take any appropriate action allowed by law in a court of competent jurisdiction to enforce the provisions of this section.
  - (3) In addition, the city may, after at least 14 days notice to the association, complete such improvements or maintenance as determined by the city engineer and place a lien on all the property in the subdivision in which common improvement or easement is located for each lot's pro-rata share of the work completed by the city at the city's expense. A note to this effect shall be placed on the final plat of any subdivision which has common areas or easements maintained by a homeowners' or property owners' association.

(Ord. No. 2006-84, § 1(Exh. A), 9-11-06; Ord. No. 2019-89, § 1, 12-9-19)

## **Sec. 118-46. Streets.**

- (a) *Street layout.* Adequate streets shall be provided by the subdivider and the arrangement, character, extent, width, grade and location of each shall be considered in their relation to existing and planned streets, topographical conditions, public safety and convenience, and in their appropriate relationship to the proposed uses of land to be served by such streets. Local residential streets should be laid out so as to discourage their use by through traffic. A waiver may be considered for local residential streets as defined in subsection (s) that may curve, meander, and otherwise deviate from the radius and tangent requirements set forth in subsection (s) when:
  - (1) The developer's engineer designs streets that meet recognized standards, and
  - (2) The planning commission [or city](#) determines that such design is not contrary to the best interest of the city and the users of its street system.
- (b) *Streets on city comprehensive plan or thoroughfare plan.*
  - (1) With regard to the comprehensive plan, the city council has adopted the city comprehensive plan as a guide for growth and development of the entire city and its extraterritorial jurisdiction. In particular the future land use plan, shall not be nor be considered a zoning map, nor constitute zoning regulations or establish zoning boundaries and shall not be site nor parcel specific and shall be used to illustrate generalized locations. The thoroughfare plan shall depict generalized locations of new alignments which are subject to modification to fit local conditions and are subject to refinement as development occurs.

- (2) Whenever a tract to be platted borders on or embraces any part of any street shown on the thoroughfare plan, such part of such proposed street shall be shown on the master plan or the plat. All arterial and collector street locations, alignments, right-of-way widths, pavement widths, and cross sections shall be determined by the [city](#), planning commission and city council in accordance with its adopted thoroughfare plan.
- (c) *Relation to adjoining street system.* Where necessary to the neighborhood pattern, existing streets in adjoining areas shall be continued and shall be at least as wide as such existing streets and in alignment therewith.
- (d) *Projection of streets.* Where adjoining areas are not subdivided, the arrangement of streets in the subdivision shall make provision for the proper projection of streets into such unsubdivided area.
- (e) *Street names.* Names of new streets shall not duplicate or cause confusion with the names of existing streets, unless the new streets are a continuation of or in alignment with existing streets, in which case names of existing streets shall be used.
- (f) *Street jogs.* Street jogs with centerline offsets of less than 150 feet shall be prohibited. A street intersecting with or extending to meet an existing street shall be tied to the existing street on centerline with distances and angles to show relationships.
- (g) *Half streets or half alleys.* All subdivisions shall have access to an adequate perimeter street or approach street as defined in this section.
- (h) *Street intersections.* Street intersections shall be as nearly at right angles as practicable, giving due regard to terrain and topography, site distances and safety. Curb radii shall conform to city standards.
- (i) *Dead-end streets.* Permanent dead-end streets shall be prohibited except as short stubs to permit future expansion and shall not exceed the depth of one lot or 250 feet, whichever is less, unless a temporary turnaround is installed in accordance with subsection (j).
- (j) *Temporary turnarounds.* Temporary turnarounds shall be required if:
- (1) The stub street extends beyond one buildable lot or 250 feet, whichever is less, or
  - (2) Where the buildable lot width fronts and only has access to the stub street. For purposes of this subsection only, a stub street is measured from the centerline of the nearest intersecting street with the stub street, as illustrated below.



- (k) *Culs-de-sac.* A cul-de-sac shall not be more than 1,000 feet in length unless:
- (1) A "turn around bubble" is provided in accordance with this chapter, or

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- (2) It is recommended by the city engineer and approved by the [city or](#) planning commission for specific reasons of topography or engineering design.

All culs-de-sac longer than 1,000 feet shall have a "turn around bubble" with the same radius and driving surface noted above located at least every 1,000 feet. "T" or "hammerhead" turnarounds may be approved by the [city or](#) planning commission if recommended by the city engineer.

All cul-de-sac streets greater than 150 feet from the centerline of the cross street's pavement to the center point of the cul-de-sac turnaround shall be designed with a minimum right-of-way radius of 65 feet and a minimum driving surface radius of 55 feet. Cul-de-sac streets less than or equal to 150 feet shall be designed with a minimum right-of-way radius of 58 feet and a minimum driving surface radius of 48 feet. Larger culs-de-sac may be required dependent on the development as recommended by the city engineer and approved by [the city](#), planning commission and city council.

- (l) *Medians and traffic calming.* A median is the portion of the roadway separating opposing directions of the traveled way. Medians are desirable on collectors and arterials carrying four or more lanes of traffic for operations, access management and safety. Other uses of a median are that it may offer an open green space, may provide a refuge area for pedestrians and may control the location of intersection traffic conflicts. Median design shall meet recognized engineering design standards. Landscaping, vegetation and other natural features in medians may constitute roadside obstacles and shall meet recognized roadside and sight distance standards. Traffic calming is the use of physical devices to influence vehicle operations in order to reduce anticipated speeds and through traffic, and increase driver awareness in residential areas. Traffic calming may be placed on local and residential collector streets adjacent to one- and two-family residential lots. Traffic calming measures may include road narrowing, midblock medians, cul-de-sac islands, curb extensions, traffic circles and roundabouts. Traffic calming measures shall meet recognized engineering design standards.
- (m) *Access and driveways.* The provisions of this section and chapter 114 shall apply to all access and driveways. Access shall be approved in accordance with the approved plat and by the local agency with permitting authority.
- (1) *Frontage and access on collector or major thoroughfare streets.* Access to collector or major thoroughfare streets shall not be allowed for residential lots that require backing maneuvers onto a street. Residential lots having direct access on a collector or major thoroughfare streets may be platted only if:
- a. All lots are greater than one acre in size, have a minimum lot frontage of 100 feet, and provide for permanent vehicular turnaround on the lot to prevent backing onto the street. A note shall be placed on the plat stating a permanent vehicular turnaround shall be provided on each lot to prevent a vehicle from backing onto the street.
  - b. Access points which would permit vehicular access to lots less than one acre in size may be allowed if a marginal access street or easement to serve two or more lots spaced a minimum of 200 feet apart and 200 feet from an existing driveway or street is constructed. The marginal access street or easement shall be designed to prevent a vehicle from backing onto collector or major thoroughfare streets.
  - c. The street is classified as a residential collector with a minimum of 36 feet of pavement, has daily traffic volumes of less than 2,000 vehicles per day, and includes traffic calming measures.
  - d. The street is classified as a residential collector with a minimum of 40 feet of pavement, has daily traffic volumes of less than 4,000 vehicles per day, and includes traffic calming measures.
- (2) *Marginal access street or easement.* Where a developer furnishes a marginal access street or easement, it shall be designed to allow for emergency access, on-street parking, sidewalk connection to the collector or major thoroughfare street, and solid waste operations that do not require backing within the marginal access street or easement.

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- (n) *Local residential streets.* Local streets serving residential property shall be laid out so as to discourage their use by through traffic.
  - (o) *Pavement widths and rights-of-way of streets forming part of the subdivision boundary.* Where the proposed subdivision abuts upon an existing street or half-street that does not conform to this section, the subdivider shall dedicate or reserve the needed right-of-way width, if such dedication or reservation does not result in a disproportionate burden on the property owner or his property.
  - (p) *Reserve strips prohibited.* There shall be no reserve strips controlling access to land dedicated or intended to be dedicated to public use.
  - (q) *Non-access easement.* Where deemed necessary by the [city or](#) planning commission, a vehicular non-access easement may be required on a lot or lots for the purpose of controlling ingress and egress to vehicular traffic.
  - (r) *Additional right-of-way.* Where deemed necessary by the [city or](#) planning commission, a subdivider may be required to dedicate or reserve additional right-of-way on any street or thoroughfare within the city or its extraterritorial jurisdiction, if such dedication or reservation does not result in a disproportionate burden on the property owner or his property.
  - (s) *Pavement and rights-of-way widths, street grades and horizontal curves for public streets.* Pavement widths shall be measured from the face of one curb to the face of the other curb. Pavement and rights-of-way widths, street grades, horizontal curves and sidewalks shall be in accordance with the adopted regional transportation plan and as follows, unless an exception is granted by the city council after review and recommendation by [city or](#) planning commission and the city engineer:
    - (1) *Interstate.*
      - a. Right-of-way (min.): 300—450 feet.
    - (2) *Expressway.*
      - a. Right-of-way (min.): 200—300 feet.
    - (3) *Parkway.*
      - a. Right-of-way (min.): 200 feet.
    - (4) *Principal arterial.*
      - a. Right-of-way (min.): 150 feet.
      - b. Pavement width (min.): 72 feet.
      - c. Centerline radius (min.): 1,200 feet.
      - d. Tangent between reverse curves (min.): 375 feet.
      - e. Minimum grade: One-half percent.
      - f. Maximum grade: Five percent.
      - g. Design speed: 50 miles per hour.
      - h. Sidewalks: Yes.
      - i. Parking allowed: No.
    - (5) *Minor arterial.*
      - a. Right-of-way (min.): 120 feet.
      - b. Pavement width (min.): 48 feet.
      - c. Centerline radius (min.): 1,200 feet.
      - d. Tangent between reverse curves (min.): 375 feet.
      - e. Minimum grade: One-half percent.
      - f. Maximum grade: Five percent.

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- g. Design speed: 45 miles per hour.
  - h. Sidewalks: Yes.
  - i. Parking allowed: No.
- (6) *Major collector.*
- a. Right-of-way (min.): 90 feet.
  - b. Pavement width (min.): 48 feet.
  - c. Centerline radius (min.): 770 feet.
  - d. Tangent between reverse curves (min.): 250 feet.
  - e. Minimum grade: One-half percent.
  - f. Maximum grade: Six percent.
  - g. Design speed: 40 miles per hour.
  - h. Sidewalks: Yes.
  - i. Parking allowed: Varies depending on lane configuration.
- (7) *Minor collector.*
- a. Right-of-way (min.): 60 feet.
  - b. Pavement width (min.): 40 feet.
  - c. Centerline radius (min.): 510 feet.
  - d. Tangent between reverse curves (min.): 100 feet.
  - e. Minimum grade: One-half percent.
  - f. Maximum grade: Eight percent.
  - g. Design speed: 35 miles per hour.
  - h. Sidewalks: Yes.
  - i. Parking allowed: Varies depending on lane configuration.
- (8) *Residential collector.*
- a. Right-of-way (min.): 60 feet.
  - b. Pavement width (min.): 36 feet.
  - c. Centerline radius (min.): 340 feet.
  - d. Tangent between reverse curves (min.): 100 feet.
  - e. Minimum grade: One-half percent.
  - f. Maximum grade: Ten percent.
  - g. Design speed: 30 miles per hour.
  - h. Sidewalks: Yes.
  - i. Parking allowed: Yes.
  - j. Average daily traffic: Less than 5,000.
- (9) *Local street, multifamily, industrial and commercial.*
- a. Right-of-way (min.): 60 feet.
  - b. Pavement width (min.): 40 feet.
  - c. Centerline radius (min.): 340 feet.
  - d. Tangent between reverse curves (min.): 50 feet.
  - e. Minimum grade: One-half percent.
  - f. Maximum grade: Ten percent.
  - g. Design speed: 30 miles per hour.
  - h. Sidewalks: Yes.
  - i. Parking allowed: Yes.
  - j. Average daily traffic: Less than 1,000.
- (10) *Local street, one- and two-family residential.*

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- a. Right-of-way (min.): 50 feet.
  - b. Pavement width (min.): 30 feet.
  - c. Centerline radius (min.): 125 feet.
  - d. Tangent between reverse curves (min.): 50 feet.
  - e. Minimum grade: One-half percent.
  - f. Maximum grade: 12 percent.
  - g. Design speed: 20 miles per hour.
  - h. Sidewalks: Yes.
  - i. Parking allowed: Yes.
  - j. Average daily traffic: Less than 1,000.

(11) *Local street, one-family large lot residential (minimum 100 feet lot frontage).*

- a. Right-of-way (min.): 60 feet.
- b. Pavement width (min.): 24 feet.
- c. Centerline radius (min.): 125 feet.
- d. Tangent between reverse curves (min.): 50 feet.
- e. Minimum grade: One-half percent.
- f. Maximum grade: 12 percent.
- g. Design speed: 20 miles per hour.
- h. Sidewalks: No.
- i. Parking allowed: No.
- j. Average daily traffic: Less than 1,000.

Design standards not specified in this section shall conform to the latest edition of the American Association of State Highway and Transportation Officials A Policy on Geometric Design of Highways and Streets. Design standards on state highways shall conform to the requirements of the Texas Department of Transportation.

(t) *Responsibility for right-of-way dedication and public street construction.*

(1) *Internal streets.*

- a. The developer shall be responsible for the dedication and construction of all local and collector streets within his subdivision at his own expense. The developer may also be required to construct at least two lanes of an arterial street, if such is supported by a traffic impact analysis (TIA), and if such construction does not impose a disproportionate burden on the property owner or his property.
- b. The developer may be required to dedicate additional ROW and construct additional lanes of an arterial street or TxDOT road based on the [city or](#) planning commission review of a traffic impact analysis (TIA), and if such construction does not impose a disproportionate burden on the property owner or his property.
- c. The [planning commission](#) [city](#) may allow in lieu of construction an escrow be deposited for a period no longer than ten years equal to the developer's roughly proportionate share of the cost of constructing streets, the value of which shall be approved by the city engineer.
- d. Streets shall be constructed in accordance with this chapter.

(2) *Perimeter streets.*

- a. The developer shall, at his own cost, dedicate or reserve such right-of-way for approach and perimeter streets, if such dedication or reservation does not impose a disproportionate burden on the property owner or his property.
- b. The city may at the city's sole option pay for street right-of-way acquisition or street construction that is in excess of the demand caused by the subdivision or development.
- c. Adequate access.

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1. All subdivisions shall have access to an adequate perimeter or approach street. An adequate perimeter or approach street is a dedicated public street that has an average pavement width of at least 24 feet adjacent to the area being platted, even though such pavement is not to city standards at the time of platting. If the approach or perimeter street is adequate, the developer shall not be required to build additional approach or perimeter streets, but shall be required to dedicate or reserve right-of-way according to this section. If a subdivision does not have access to an adequate perimeter or approach street, as defined above, the [city or](#) planning commission may deny the plat, the developer may construct an adequate street as determined by the [city or](#) planning commission, or the developer may offer to enter into a development agreement with the city for sharing in the cost of constructing an adequate street. Such development agreement may be approved by the city council.
  2. If there is more than one perimeter or approach street adjacent to the area being platted, at least one of those streets must be adequate, or be constructed to be adequate, and improvement of the other(s) perimeter or approach street(s) is (are) not required to be adequate. However, right-of-way shall be dedicated or reserved according to this section for all perimeter or approach roads.
  3. If the area being platted has adequate access but is adjacent to other inadequate perimeter or approach street(s), the developer may either improve the inadequate street(s) to city specifications in the area adjacent to the area being platted or not take access to the inadequate street(s). The [city or](#) planning commission may require a "stub out" of an internal street to the inadequate perimeter or approach street and the developer may be required to provide a temporary turn around for a dead end street in accordance with this chapter.
  4. The construction of an adequate access shall be according to the standards of this chapter and chapter 114.
- d. Based on a traffic impact analysis, the [city commission](#) may require a developer to dedicate or reserve right-of-way and/or construct street improvements to mitigate adverse traffic impacts shown by the analysis which the [city commission](#) deems appropriate and roughly proportionate to the development's impact.
- (u) *TxDOT access.* All plats that require access from a TxDOT-maintained roadway shall be submitted by the applicant to the TxDOT district office for review prior to submission of a plat application to the city. No final plat shall be recorded unless TxDOT has notified the city in writing that the proposed access to and proposed right-of-way dedication or reservation to the TxDOT roadway is acceptable.
- (v) *Slope easements.* The dedication of easements, in addition to dedicated rights-of-way, may be required whenever, due to topography, additional width is necessary to provide adequate earth slopes.
- (w) *Intersection improvements and traffic control devices.* Intersection improvements and traffic control devices shall be installed as warranted in accordance with the traffic impact analysis required by this section, or as may be required by the [city planning commission](#) for traffic safety and efficiency. Construction and design standards shall be in accordance with this chapter.
- (x) *Private streets.* The layout for new subdivisions with private streets may be approved at the time of master plan or plat approval. All private streets must be designated as a lot or lots on the subdivision plat and must be conveyed by the developer or owner to a homeowners' association or property owners' association. The subdivision plat shall provide a note that the street is a private street and shall be maintained by the homeowners' or property owners' association and that the city shall have no maintenance or repair responsibilities. The city may periodically inspect private streets and may require any repairs necessary to ensure efficient emergency access and to protect the public health, safety, convenience and welfare. The following are the requirements for subdivisions with private streets:
- (1) *Private streets—Construction and maintenance cost.* The dimensional, but not structural, standards for private streets shall be designed by a licensed professional engineer, and do not have to meet the

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standards for public streets contained in this chapter, if a waiver of such standards is approved ~~by the commission~~ in accordance with this chapter. The city shall not pay for any portion of the cost of constructing or maintaining a private street. A HOA or property owners' association is required to maintain private streets.

- (2) *Private streets—Restricted access.* The entrances to all private streets shall be clearly marked with a sign, placed in a prominent and visible location, stating that the streets within the subdivision are private and that they are not maintained nor regularly patrolled by the city. All restricted access entrances shall provide a reliable means of ensuring access into the subdivision by the city, by emergency service providers, and by other utility or public service providers, such as postal carriers and utility companies. The method to be used to ensure city and emergency access into the subdivision shall be approved by the city's fire department and by any other applicable emergency service providers. If the association fails to maintain reliable access as required herein, the city may enter the private street subdivision and remove any gate or device that is a barrier to access at the sole expense of the HOA or property owners' association.
- (3) *Private streets—Waiver of services.* Certain city services may not be provided for private street subdivisions. Among the services that may not be provided are: routine law enforcement patrols, enforcement of traffic and parking regulations, and preparation of accident reports. Depending upon the characteristics of the development and upon access limitations posed by the design of entrances into the subdivision, other services (such as sanitation) may not be provided as well.
- (4) *Private streets—Petition to convert to public streets.* The HOA or property owners' association may petition the city council to accept private streets and any associated property as public streets and right-of-way upon written notice to all association members and upon the favorable vote of a majority of the membership. Such petition shall be submitted to the planning commission in accordance with the ~~commission's~~ [city's plat submittal](#) calendar for master plans and plats, who shall make a recommendation to the city council. However, in no event shall the city be obligated to accept said private streets as public streets. Should the city elect to accept the private streets as public streets, the city has the right to inspect the private streets and to assess the lot owners for: (i) the expense of improving the private streets to meet city standards for public streets and (ii) the expense of needed repairs, if any, prior to the city's acceptance of the streets. The city shall be the sole judge of whether improvements and/or repairs are needed. The city may also require, at the association's or the lot owners' expense, the removal of any guard houses, access control devices, landscaping or other aesthetic amenities, appurtenances or objects, located within the street lot or within any other common area.

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### **Sec. 118-47. Alleys.**

- (a) Alleys may be required in business and industrial areas. Alleys may be provided by the developer in residential areas. Alleys, if required or provided, shall be constructed at the expense of the developer and shall conform to the provisions of this chapter.
- (b) Dedicated alleys must be approved by the [city or](#) planning commission at the time of plat approval before they can become public alleys. Otherwise, they shall be treated as service drives or private alleys and the developer, HOA or property owners' association shall be responsible for maintenance.
- (c) Alley rights-of-way, except as provided in subsection (f), shall be a minimum of 20 feet right-of-way with 20 feet of paving in business and industrial areas and a minimum of 12 feet of paving in residential areas. All alley paving shall be done in accordance with city standards.

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- (d) Where two alleys or utility easements intersect or turn at a right angle, a cutoff or corner clip of not less than ten feet from the normal intersection of the property or easement line shall be provided along each property or easement line.
  - (e) If alleys are not themselves straight within each block, or if the alleys do not connect on a straight course with the alleys of adjoining blocks, then an easement shall be provided for the placing of guy wires on lot division line in order to support poles set on curving or deviating rights-of-way of alleys.
  - (f) Lots that have rear entry garages or access will be provided with a service drive or private or public alley abutting the rear lot line. Such service drive or alley shall have a minimum right-of-way width of 25 feet, a minimum paved surface width of 22 feet, and shall be constructed in accordance with city standards. Service drives and private or public alleys shall not exceed 900 feet in length without providing access at the midsection of the alley to a public street. Dead-end service drives serving less than eight units will be permitted. Service drives shall not be dedicated to the city and maintenance of such service drives shall be the responsibility of the owner or owners within the subdivision.

(Ord. No. 2006-84, § 1(Exh. A), 9-11-06)

### **Sec. 118-48. Utility easements.**

- (a) The location and width of sanitary sewer system, water, electrical, communication or other such utility easements shall be determined by New Braunfels Utilities in accordance with standards published by NBU in accordance with sections 118-18 and 118-31 or other utility provider. Drainage and storm water easements and rights-of ways shall be determined in accordance with chapter 143 and the Drainage and Erosion Control Design Manual.
- (b) Where easements are required for other than public utilities, then the location and width must be acceptable to the private utility company concerned with the approval of the [city or](#) planning commission
- (c) Where any public or private utility line is required to be adjusted in location or elevation, the developer shall cause such changes to be made with the approval of the city engineer and the utility using the easement.
- (d) Where the proposed subdivision adjoins an unplatted property and a utility easement is to be dedicated on the adjacent property, then the adjacent property owner shall join in the dedication of the easement, which shall be shown on the plat.
- (e) Where utility easements are not themselves straight within each block, or if such easements do not connect on a straight course with the utility easements of adjoining blocks, then an additional easement shall be provided for the placing of guy wires on lot division lines in order to support utility poles.
- (f) Where two utility easements intersect or turn at a right angle, a cutoff or corner clip of not less than ten feet from the normal intersection of the property or easement line shall be provided along each property or easement line.

(Ord. No. 2006-84, § 1(Exh. A), 9-11-06)

### **Sec. 118-49. Sidewalks.**

- (a) *Requirement for installation.* Sidewalks shall be required, unless [a waiver](#) ~~an exception~~ is granted, ~~by the planning commission, in accordance with the following:~~

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- (1) On the subdivision or development side or sides of all major thoroughfares or arterial streets as indicated on the city's thoroughfare plan, ~~or a major thoroughfare as determined by the planning commission~~, and on perimeter streets.
  - (2) On both sides of a street that serves as a local or collector street, except:
    - a. No sidewalks are required along a local residential large-lot street section, as shown in this chapter, where there is no parking on the street and where each lot has at least 100 feet of frontage;
    - b. When an alternative pedestrian access plan is approved; and
    - c. When a waiver as outlined in subsection 118-11(a) and 118-49 (i) of this chapter is granted. ~~by the planning commission.~~
  - (3) As deemed necessary by the ~~city planning commission~~ in any area based on uniformity along the street and conformity with the surrounding area.
- (b) *Installation.* Sidewalks shall be installed at the street front of lots, along the street side of corner lots, and as required on perimeter streets. Sidewalks shall be constructed in accordance with city standards and specifications at such time as the lot is improved unless otherwise determined by the ~~city in accordance with the provisions of this section. planning commission. For instance, where there would be no building improvement to the area adjacent to the sidewalk.~~
- (c) *Escrow.* With regard to sidewalks on perimeter streets, the ~~City Council~~ ~~planning commission~~, upon request of the applicant, may allow the applicant to deposit in escrow the cost of sidewalks, as approved by the city engineer, for installation of sidewalks at a later date. The escrow money or letter of credit shall be deposited with the city prior to filing of the final plat.
- (d) *Plat note.* A plat note shall be placed on the final plat indicating that sidewalks were required, upon which streets sidewalks were required and who is responsible for installation.
- (e) *Location of sidewalks.*
- (1) Sidewalks shall usually be constructed in the right-of-way of the adjacent street, but may be in easements as approved by the ~~city. planning commission.~~ For instance, along TxDOT ROW where future improvements would damage the sidewalk or where the walk is not adjacent to a street.
  - (2) Sidewalks adjacent to single-family or two-family lots, along a local street, shall be placed in the right-of-way at least three feet from the curb or adjacent to the curb.
  - (3) All sidewalks adjacent to collector streets, arterial streets, or TxDOT highways shall be separated by at least four feet from the curb or edge of the shoulder.
- (f) *Reserved.*
- (g) *Pedestrian and bikeways.* Pedestrian and bikeways, six feet in width, located in the right-of-way or in a public access easement, shall be dedicated and constructed where deemed necessary by the ~~city planning commission~~, to provide circulation or access to schools, playgrounds, parks, shopping centers, arterial streets and community facilities, or to provide pedestrian circulation within the subdivision. For instance, the ~~city commission~~ may require such pedestrian or bikeways between lots at the end of culs-de-sac. Pedestrian and bikeways shall be constructed by the developer with a surface approved by the ~~city. planning commission.~~ Such pedestrian and bikeways may be required along perimeter streets.
- (h) *Sidewalk widths.* Sidewalk widths shall be as follows:
- (1) Along one or two family lots: Four feet.
  - (2) Along multifamily or non-residential lots: Six feet.

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- (3) In front of a commercial or multifamily building(s) where there is less than a ten-foot building setback:  
Ten feet.

(i) *Waivers.*

- (1) Sidewalk waivers are subject to the requirements outlined in section 118-11 of this chapter.
- (2) In making a determination regarding a requested sidewalk waiver, ~~the planning commission shall consider~~ the following shall be considered:
  - a. The presence of unique or unusual topographic, vegetative, or other natural conditions exist so that strict adherence to the sidewalk requirements contained herein is not physically feasible;
  - b. That strict adherence to the sidewalk requirements contained herein is not in keeping with the purposes and goals of the Code of Ordinances and the city's comprehensive plan;
  - c. Proximity to existing or planned pedestrian generators, such as schools, libraries, shopping centers, community centers, transit stops, parks and other government buildings;
  - d. Whether any public sidewalk or roadway improvements are planned or contemplated in the area; and
  - e. Any other information deemed appropriate in the professional judgment of the planning and development services staff and city engineer.

~~(3) —The planning commission shall determine final approval or disapproval of sidewalk waivers.~~

(j) *Alternate pedestrian access plan.* Rather than requiring sidewalks on both sides of all streets within a subdivision, or along a perimeter street, the applicant may present for the planning and development services department approval an alternate plan showing pedestrian access within and to destinations outside the subdivision such as schools and shopping. Such a plan might provide for no sidewalks on cul-de-sac bubbles, on both sides of all streets, or where the street was wider than the minimum standards.

- (1) Alternate pedestrian access plans may be approved, disapproved or approved with conditions by the planning and development services department.
- (2) The alternate pedestrian circulation plan shall contain at a minimum the following information:
  - a. Letter explaining the purpose of the request;
  - b. Location and arrangement of sidewalks, multiuse trails and pathways;
  - c. Phasing or time schedule for the construction of the sidewalks, multiuse trails and pathways; and
  - d. Identification of the sidewalk segments required under this section that will not be constructed.
- (3) In making a determination regarding approval of an alternate pedestrian access plan, the following factors shall be considered:
  - a. The presence of unique or unusual topographic, vegetative, or other natural conditions exist so that strict adherence to the sidewalk requirements contained herein is not physically feasible;
  - b. The linear distance of the travel path of the sidewalks in the alternative pedestrian access plan must be comparable to the linear distance of the travel path of the sidewalk if constructed adhering to the requirements within this section;
  - c. If the proposed sidewalks are not located within a public right-of-way, a private street or an existing irrevocable ingress/egress easement, then public access easements shall be included on the plat;
  - d. All sidewalk construction shall conform to the latest criteria of the Americans with Disabilities Act (ADA).
- (4) In considering the plan, the planning and development services department may require and impose conditions to ensure that access to and along the sidewalk areas is safe, convenient, and provides pedestrians with adequate paths of movement.

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- (5) The applicant may appeal a decision of the planning and development services department ~~to deny an alternate pedestrian access plan or disagrees with the conditions placed on an approved alternate pedestrian access plan~~ to the planning commission. The appeal shall include supporting documents, and the decision by the planning and development services department. The planning commission can affirm, reverse, or modify the decision.
  - (6) The planning commission shall determine final approval or disapproval of an alternate pedestrian access plan.

(Ord. No. 2006-84, § 1(Exh. A), 9-11-06; Ord. No. 2013-28, § 1, 5-13-13; Ord. No. 2019-89, § 1, 12-9-19; Ord. No. 2021-91, § 7, 12-13-21)

### **Sec. 118-50. Off-street bikeways and trails.**

- (a) Off-street bikeways or trails shall be provided by the subdivider/developer as shown on the bikeway plan of the comprehensive plan and this section, if the city agrees to maintain the bikeway or trail.
- (b) The easement or right-of-way width and surface width of the bikeway or trail shall be determined by the planning commission or the city at the time of plat approval.

(Ord. No. 2006-84, § 1(Exh. A), 9-11-06)

### **Sec. 118-51. Water, sewer and drainage facilities; flood hazards.**

- (a) *Generally.* The subdivider/developer shall dedicate, at his own cost, such rights-of-way and/or easements, and construct such water mains, water lines, fire hydrants, sanitary sewers, storm sewers, and drainage of such a size as to adequately serve the area being subdivided, as determined by the city engineer or the utility company under whose jurisdiction the subdivision falls. All facilities shall be constructed in accordance with the standards as set forth in this chapter and approved construction plans.
- (b) *Water.*
  - (1) All subdivisions or developments shall be provided with water supply and water distribution systems constructed in compliance with this chapter.
  - (2) Standard fire hydrants shall be installed as part of the water distribution system per specifications established by this chapter.
  - (3) Fire flow. A subdivision or development, which does not provide each lot with fire flow according to chapter 54, is declared a subdivision or development with an inadequate water system. Subdividers/developers shall provide all lots with fire flow according to the standards of chapter 54.
- (c) *Wastewater.* All subdivisions or developments shall be provided with a sewage disposal system constructed in compliance with this chapter and approved construction plans. Connection with the sanitary sewer system shall be required except where the ~~city planning commission, upon the recommendation of the planning director,~~ determines that such connection will require unreasonable expenditure, when compared with other methods of sewage disposal.
- (d) *Extension to adjacent development.* Wherever the subject property adjoins undeveloped land, or wherever required by the city, or the commission to serve the public good, utilities shall be extended to adjacent property lines to allow connection of these utilities by adjacent property owners when such adjacent property is platted and/or developed.
- (e) *Drainage.*

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- (1) *Drainage requirements.* The subdivider or developer shall be responsible for submitting a drainage study with construction plans to the city engineer in accordance with the requirements of this chapter, chapter 143, and the drainage and erosion control and design manual. The drainage study shall be prepared by a professional engineer registered in the state. The study shall demonstrate to the city engineer's satisfaction that all ordinance and drainage and erosion control manual requirements are met. The developer shall be responsible for constructing the drainage improvements in accordance with the construction plans approved by the city engineer. The requirements of chapter 143 are adopted by reference in this chapter, except that in the ETJ, no provision concerning fees or charges is applicable.
  - (2) *Easement.* Natural waterways and channels should be used to carry runoff, wherever practical. Any modification to existing waterways and channels must be approved by the city engineer. Where a subdivision is traversed by a watercourse, drainageway, natural channel or stream, there shall be provided an easement or right-of-way conforming substantially to the one percent annual chance floodplain limits of such watercourse, plus additional width to accommodate future needs.
    - a. Storm drainage easements of 15 feet minimum width shall be provided for existing and proposed enclosed drainage systems. Easements shall be centered on the systems. Larger easements, where necessary, shall be provided as directed by the city engineer.
    - b. Storm drainage easements along proposed or existing open channels shall provide sufficient width for the required channel and such additional width as may be required to provide ingress and egress of maintenance equipment, to provide clearance from fences and space for utility poles, to allow maintenance of the channel bank, and to provide adequate slopes necessary along the bank.
    - c. Storm drainage easements shall provide emergency overflow drainageways of sufficient width to contain within the easement stormwater resulting from a one percent annual chance frequency storm assuming fully developed upstream watershed frequency storm less the amount of stormwater carried in any enclosed system.
    - d. For one- and two-family residential subdivisions, drainage easements crossing lots and property lines are prohibited. Drainage easements shall be placed in separate common area lots.
  - (3) *Installation of drainage system.* The subdivider/developer shall be responsible for providing an adequate drainage system approved by the city engineer that may consist of pipes, swales, natural features and manmade improvements that effectively carry runoff from the development. Detention ponds, retention ponds, and siltation ponds and/or improved storm water conveyance facilities, either on or off site, shall be used individually or in concert to control runoff and protect downstream interests from increased flooding from the subdivision or development.
  - (4) *Topography of the land.* In order to help reduce storm water runoff and resulting erosion, sedimentation and conveyance of non-point source pollutants, the layout of the street network, lots and building sites shall, to the greatest extent possible, be sited and aligned along natural contour lines and shall minimize the amount of cut and fill on slopes in order to minimize the amount of land area that is disturbed during construction.
- (f) *Flood hazards.*
- (1) *Generally.* Proposed subdivisions or developments shall be developed to assure that:
    - a. All such proposals are consistent with the need to minimize flood damage.
    - b. All public utilities and facilities, such as sewer, gas, electric and water systems are located, elevated and constructed to minimize or eliminate flood damage.
    - c. Adequate drainage is provided so as to reduce exposure to flood hazards.
  - (2) *Water and/or wastewater systems.* New or replacement water supply systems and/or wastewater systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems

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discharges from the systems into floodwaters and to require on-site waste disposal systems to be located so as to avoid impairment of them or contamination from them during flooding.

(3) *Floodplain.*

- a. When a proposed subdivision or development has within it a drainageway where no regulatory floodway has been designated, no new construction, substantial improvements or other development, including fill, shall be permitted in an area that may have flood hazards, unless it is demonstrated that the cumulative effect of the proposed development or improvements, when combined with all other existing and anticipated development and improvements will not substantially increase the water surface elevation.
- b. In areas where there is an approved and mapped floodway, the subdivider or developer shall designate a drainage easement(s) for the floodway.
- c. In areas where a floodway is mapped and approved by the city, a flood study or demonstration of "no flood height increase" shall be required.
- d. If a proposed subdivision is within an area where flooding may occur, where there is no floodplain shown on a city-approved floodplain map, or where there is located an approved floodplain but no floodway, the subdivider shall:
  1. Conduct a study of where the base flood elevation would be, assuming a fully developed watershed, show a drainage easement on the plat, and show the elevation of the flood plain at intervals of every 500 lineal feet;
  2. Conduct a study, using HEC or similar modeling that is approved by the city engineer, to insure that the proposed development would not increase the elevation of the one percent annual chance base flood; or
3. Request a waiver from the above requirements. The request for waiver shall be assessed with respect to proposed density, land use, lot sizes, building sizes, anticipated impervious cover, and the width and depth of the existing floodplain. All waiver requests shall be [subject to the requirements outlined in Section 118-11 of this chapter.](#) ~~considered and decided by the Planning Commission.~~

(4) *System design requirements.* Drainage improvements shall accommodate runoff from the upstream drainage area in its anticipated maximum "build-out" or "fully developed" condition, and shall be designed to prevent overloading the capacity of the downstream drainage system.

(5) *Alterations to existing drainageways.* No person, individual, partnership, firm or corporation shall deepen, widen, fill, reclaim, reroute or change the course or location of any existing ditch, channel, stream or drainageway without first obtaining written permission (or approved engineering and drainage studies) and a grading permit from the city engineer and any other applicable agency having jurisdiction, such as FEMA or the U.S. Army Corps of Engineers. The costs of such study, if required, shall be borne by the developer.

(g) *Access to subdivision.* New "island" subdivisions, lots or streets that would be surrounded by the floodwater of the one percent annual chance flood shall not be allowed unless:

- (1) The area is accessible to high ground by a street elevated above the one percent annual chance flood level.
- (2) The evidence presented shows that the surface area and elevation of the "island" is sufficient to sustain the residents safely during a .75 percent annual chance flood.

(h) *Drainage and floodplain easements.* All storm drainage and flood easements and all base flood elevations shall be shown on the final plat with a plat note stating that no development or building or structure is permitted within the easement and stating who will be responsible for maintaining the easement. Flood and

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storm drainage easements shall be of adequate width to accommodate drainage flows and the width of such easements shall be subject to approval of the city engineer.

(Ord. No. 2006-84, § 1(Exh. A), 9-11-06; Ord. No. 2008-40, § 2, 6-9-08; Ord. No. 2015-55, § I, 10-26-15)

### **Sec. 118-52. Escrow policies and procedures.**

- (a) *Request for escrow.* Whenever this chapter requires a property owner to construct a street, sidewalk, drainage improvement, or other type of public improvement, the property owner may petition the city to construct the street or other public improvement, at a later date, in exchange for deposit of escrow as established in this Section, if there exists unusual circumstances, such as a timing issue due to pending roadway improvements by another agency such as TxDOT or the applicable county, that would present undue hardships or that would impede public infrastructure coordination or timing. If more than one street or thoroughfare must be constructed in order to meet adequacy requirements for roadways, for instance as demonstrated by a traffic impact analysis, the ~~planning commission~~ city may prioritize roadways for which escrow is to be accepted and require the deposit of all funds attributable to the development in escrow accounts for one or more of such affected roadways. The city engineer shall review the particular circumstances involved (a traffic impact analysis may be required to facilitate the city engineer's deliberations on the matter), and shall determine, at its sole discretion, whether or not provision of escrow deposits will be acceptable in lieu of the property owner's obligation to construct the street, sidewalk or other public improvement with his or her development.
- (b) *Escrow deposit with the city.* Whenever the ~~city commission~~ agrees to accept escrow deposits in lieu of construction by the owner of the property under this chapter, the property owner or developer shall deposit in escrow with the city an amount equal to his or her share of the costs of "turnkey" design, construction, permits, reviews and approvals, inspections, any additional land acquisition, and an appropriate inflation factor to be determined by the city engineer to ensure that the actual "future dollar" costs will be covered when actual bid pricing and construction occur in the future. Such amount shall be reviewed by the city engineer, and shall be paid prior to release of construction plans by the city engineer, or if there are no construction plans, prior to recording the plat. The obligations and responsibilities of the property owner shall become those of the property owner's transferees, successors and assigns; and the liability therefore shall be joint and several.
- (c) *Termination of escrow.* Escrows or portions of escrowed amounts, which have been placed with the city under this section and which have been held for a period of ten years from the date of such payment or agreement, in the event that the city has not authorized the preparation of plans and specifications for construction of such roadway facilities for which the escrow was made, shall, upon written request, be returned to the property owner along with one-half of its accrued interest. Such return does not remove any obligations of the property owner for construction of the required facilities if a building permit has not been issued on the subject lot or if a new building permit is applied for.
- (d) *Refund.* If any street or highway for which escrow is deposited is constructed by a party other than the city or is reconstructed by another governmental authority at no cost to the city, the escrowed funds and accrued interest shall be refunded to the property owner or applicant who originally paid the escrow amount after completion and acceptance of the public improvements. In the event that a portion of the cost is borne by the city and the other portion of the cost by another party or governmental authority, the difference between the property owner's actual proportionate cost and the escrowed funds, including accrued interest, if any, shall be refunded after completion and acceptance of the improvements.
- (e) *Interest limitation.* If money is refunded within six months of deposit, only the principal will be refunded. Monies returned after this date will be refunded with one-half of its accrued interest.
- (f) *Credit toward impact fees.* All escrowed funds may be subject to credits against applicable impact fees.

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(g) *Petition for relief.* The requirements of this section are subject to a petition for relief from a dedication or construction requirement, pursuant to this chapter.

(Ord. No. 2006-84, § 1(Exh. A), 9-11-06)

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**Sec. 118-56. Closure, abandonment, and sale of public right-of-way.**

- (a) *Procedures.* All persons desiring to have the city council exercise its powers under Article X, Section 10.05, Home Rule Charter, regarding the abandonment or closing of public streets, alleys, or other public ways, shall file their request in writing with the planning director, in writing, directed to the planning commission. Such request shall contain a legal description, including metes and bounds, of the street, alley or public way as well as a plan or survey showing the street, alley or public way and the surrounding property within 400 feet therefrom. If the property(s) abutting the street, alley or public way is under separate ownership, the applicant shall provide with such request, together with the last known address of all such owners joining in the request and a copy of the deed of said property. Unless all owners of abutting property(s) join in the request, a statement shall be attached giving reason for nonparticipation by those who have not signed the request. The city shall evaluate the request and make a recommendation. The planning commission shall consider staff's recommendation and forward its recommendations to the city council, who shall make the final decision.
- (b) *Fee.* Each request shall be accompanied by the payment of a nonrefundable application fee in the amount specified in appendix D of this Code to cover the expense of administrative processing, notification, and legal publication incurred by the city.
- (c) *Sale or exchange.* The city may sell or exchange the public street, alley, or other public way to be abandoned either to:
  - (1) Abutting property owners in the same subdivision, if the land had been subdivided; or
  - (2) Abutting property owners in proportion to their abutting ownership, provided that the apportionment among such abutting owners of the land to be sold or exchanged shall be made in an equitable manner.However, nothing in this section obligates the city to complete a proposed sale or exchange.
- (d) *Appraisal.* The sale or exchange price of the public street, alley, or other public way to be abandoned shall be the fair market value of the land, which price shall be conclusively determined by an appraisal obtained by the city. The applicant shall reimburse the city for the cost of the appraisal prior to consideration by the planning commission. To affect the sale or exchange, the city council shall adopt an ordinance authorizing the mayor or city manager to execute the conveyance.
- (e) *Land exchange.* Any land acquired by the city in exchange for any portion of the public street, alley or other public way to be abandoned shall also be appraised at fair market value and shall be devoted to use for streets, rights-of-way or other similar public purposes after the exchange is completed. An exchange within the meaning of this section may be accomplished by simultaneous dedication of other street, alley or public right-of-way designed to provide traffic circulation meeting the requirements of the city's thoroughfare master plan or other street plan acceptable to the city. The city may also accept in exchange other land or easements, such as park land and drainage easements.
- (f) *Fund established.* All payments received by the city pursuant to this section, other than administrative fees and expenses, shall be paid into a fund which is hereby established as the "street trust account" to be used for land acquisitions and improvements related to street projects in the city.

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(g) *Updating plat records.* Upon the abandonment, closure or alteration of any public street, under the terms of this section, the applicant shall be required to plat or replat the affected properties so that the plat records shall accurately reflect the revised subdivision of the property.

(Ord. No. 2006-84, § 1(Exh. A), 9-11-06; Ord. No. 2018-21, § 3, 3-26-18)

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**Sec. 118-60. General requirements.**

- (a) The city manager or his/her designee shall administer this article, with certain review, recommendation and approval authorities being assigned to the city, the planning commission, the parks and recreation advisory board and various city departments as specified herein.
- (b) As a condition of subdivision development, a developer of residential property shall be required to dedicate land for neighborhood/community and regional parks, pay of a fee in lieu thereof or a sanctioned alternative or a combination of both. In addition to the land dedication a developer of residential property shall park development fees for neighborhood/community and regional parks.
- (c) Requirements herein are based on actual dwelling units for an entire development. Increases or decreases in final unit count may require an adjustment in fees paid or land dedicated.
- (d) The required land dedications and schedules of fees are attached hereto as Appendix B and incorporated and made a part of this article for all purposes.
- (e) Implementation process, minimum design and construction standards are set forth by the parks and recreation department in the park land dedication manual and the minimum drainage standards set forth by the city's drainage manual, as may be amended from time to time, referenced herein and incorporated by reference.
- (f) The total amount of land dedicated for the development, public or private, shall be dedicated:
  - (1) In fee simple by filed deed, if dedicated to the city; and
  - (2) Prior to the issuance of any site development building permits for multi-family development,
  - (3) Prior to recordation of the final plat for a single-family, duplex, or townhouse development, or
  - (4) For a phased development the entire park shall be platted concurrently with the plat of the first phase of the development.

(Ord. No. 2018-33, 5-14-18)

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