

Ordinance 2024-

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEW BRAUNFELS, TEXAS, AMENDING THE NEW BRAUNFELS CODE OF ORDINANCES, CHAPTER 118, PLATTING, TO IMPLEMENT CHANGES REQUESTED BY CITY COUNCIL REGARDING APPROVAL OF WAIVER REQUESTS; REPEALING ALL ORDINANCES IN CONFLICT; CONTAINING A SAVINGS CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of New Braunfels, Texas, has adopted a platting ordinance to provide for orderly development of land within its city limits and extraterritorial jurisdiction in accordance with Chapter 212 of the Texas Local Government Code and consistent with the city's comprehensive plan; and

WHEREAS, the City Council has appointed representatives to the Planning Commission to make final decisions or recommendations as outlined in the platting ordinance; and

WHEREAS, the City Council has identified concerns regarding past waiver approvals impacting items of significant cost to the city and/or to public safety and has requested that staff identify alternatives to the current waiver process to address these concerns; and

WHEREAS, the City of New Braunfels staff met with nearby cities, and outside resources, to analyze options for potential amendments to the platting ordinance; and

WHEREAS, the New Braunfels Planning Commission held a public hearing on November 7, 2023 and recommended approval of the proposed amendments; and

WHEREAS, the New Braunfels City Council held a public hearing on said amendments to the platting ordinance on February 12, 2024; and

WHEREAS, the New Braunfels City Council hereby finds and determines that adopting modifications to the waiver processes in the platting ordinance will address public cost and safety concerns, will provide improved customer service, and are in the best interest of the citizens of New Braunfels, Texas. **Now therefore**,

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NEW
BRAUNFELS, TEXAS:**

SECTION 1

That Chapter 118, Platting, be amended with additions as underlined and deletions as strikeouts as shown below:

Sec. 118-11. Waivers.

- (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 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.

- (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.

(2) Unless otherwise stated herein:

- a. The Planning and Development Services Department shall make a recommendation to the planning commission on all waiver requests.
 - b. 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 request.
 - c. If the planning commission recommendation differs from the City staff recommendation, the request shall be further considered by city council who shall then determine final approval or disapproval of the waiver request.
- ~~(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.~~

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

(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.

Sec. 118-22. Subdivision master plan.

~~(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.~~

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

~~(e)~~ *Layout.* The overall layout if approved by the planning and development services department shall be maintained in the city's records. 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.

~~(f)~~ *Expiration.* The approval of a master plan or an amended master plan expires five years from the date such master plan or amended master plan is approved by the city if progress toward completion is not being made. Progress towards completion of the development for which the master plan was approved includes the following:

~~(g)~~ *Standards for master plan approval.* The planning and development services department shall consider the following when considering approval of a master plan:

~~(h)~~ *Minor revisions to approved master plan.*

~~(i)~~ *Major revisions to approved master plan.*

Sec. 118-44. Blocks.

(d) Waivers

- (1) An application requesting a waiver ~~to~~from the block length requirement 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~~applicant.
- (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 pedestrian and cyclist connections. Multi-use trails shall be designed in compliance with current city standards.
- (4) After the planning and development services department renders its decision on the block length waiver request, t~~The applicant may appeal a~~the ~~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 then 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 shall determine final approval or disapproval of a block length waiver or conditions on a block length waiver request.~~

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:~~
- (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 planning ~~commission~~ and development services department 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~~ right-of-way 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.

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- (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~~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.
 - (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.

- (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.

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

(f) *Flood Hazards*

(3) *Floodplain.*

- 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 and procedures outlined in Section 118-11 of this chapter. ~~considered and decided by the Planning Commission.~~

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~~city, 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(ies) abutting the street, alley or public way is/are 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(ies) 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 forwards its recommendations to the city council, who shall make the final decision.

SECTION 2

THAT, it is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this Ordinance are severable and, if any phrase, clause, sentence, paragraph or section of this Ordinance should be declared invalid by the final judgment or decree of any court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Ordinance.

SECTION 3

THAT all provisions of the Code of Ordinances of the City of New Braunfels not herein amended or repealed shall remain in full force and effect.

SECTION 4

THAT all other ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict only.

SECTION 5

THAT in accordance with the provisions of the City Charter, this Ordinance may be read and published by descriptive caption only. This Ordinance has been publicly available in the office of the City Secretary prior to its adoption.

SECTION 6

THAT this Ordinance shall become adopted and effective upon its second reading, signature required by City Charter, and filing with the City Secretary's Office. This Ordinance must also be published in a newspaper of general circulation at least one time within ten (10) days after its final passage, as required by the City Charter of the City of New Braunfels, Texas.

PASSED AND APPROVED: First reading this the 12th day of February, 2024.

PASSED AND APPROVED: Second reading this the 26th day of February, 2024.

CITY OF NEW BRAUNFELS

Neil Linnartz, Mayor

ATTEST:

Gayle Wilkinson, City Secretary

APPROVED AS TO FORM:

VALERIA M. ACEVEDO, City Attorney