

## Legislation Text

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**File #:** 21-1294, **Version:** 1

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**PRESENTER:**

Applicant: Urban Civil (Brian Mendez)

Owner: Jose A. Munoz

**SUBJECT:**

WVR21-398 Discuss and consider a waiver request from Section 118-49 of the Subdivision Platting Ordinance to not require construction of a sidewalk along FM 1044 for the El Real La Laja Subdivision.

**DEPARTMENT:** Planning and Development Services

**COUNCIL DISTRICTS IMPACTED:** Outside City Limits

**BACKGROUND INFORMATION:**

Case #: WVR21-398

Owner: Urban Civil (Brian Mendez)  
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New Braunfels, TX, 78130  
(830) 606-3913 - [bmendez@urbancivil.com](mailto:bmendez@urbancivil.com) <<mailto:bmendez@urbancivil.com>>

Applicant: Jose A. Munoz  
2613 Patron Vlg.  
Cibolo, TX 78180  
(210) 273-2100

Staff Contact: Maddison O'Kelley  
(830) 221-4056 - [mokelley@nbtexas.org](mailto:mokelley@nbtexas.org)

The subject property consists of approximately 14.056 acres with approximately 606 feet of frontage along FM 1044.

Sidewalks:

**The applicant is requesting a waiver from Section 118-49 to not require construction of a sidewalk on FM 1044 frontage road adjacent to the subdivision.**

A minor final plat to subdivide the subject property into two tracts was administratively approved this year. The approved El Real La Laja subdivision is adjacent to FM 1044 between Maverick Lane and Glory Lane. The final plat is comprised 14.056 acres proposed for the development of 2 residential lots and is located in the ETJ.

Section 118-49(a)(1) of the Subdivision Platting Ordinance requires sidewalk 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. The applicant is requesting a waiver to not construct a sidewalk along the frontage of FM 1044.

**ISSUE:**

All sidewalk waiver requests recommended for approval, or approval with conditions, by the Planning Commission must be forwarded to City Council for final consideration. If the Planning Commission denies the waiver request, that denial stands. This process remains in place until final approval of the ordinance amending the Subdivision Platting Ordinance that establishes the Planning Commission as the decision maker for such requests. This is expected to take place on December 13, 2021.

The ordinance authorizes waivers to be granted when:

1. An undue hardship will result from strict compliance with the ordinance, or
2. When the purpose of the regulation may be served to a greater extent by an alternative proposal, so that substantial justice may be done, and the public interest is secured.

**Commission Findings:**

The adopted Subdivision Platting Ordinance indicates the Planning Commission shall not approve/recommend approval of a waiver unless it makes findings 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; and
3. The waiver will not in any manner vary the provisions of the Zoning Ordinance or other ordinance(s) of the City.

In considering this waiver request, the Planning Commission has three options:

1. Deny the waiver request and require sidewalk construction when the property is platted. (The exact location would need to be determined. Section 118-49 requires sidewalks along TxDOT right-of-way to be separated at least four feet from the curb.)
2. Require that the developer escrow the estimated amount for the cost of construction of a 6-foot wide sidewalk for construction by the City at a later date.
3. Recommend approval of the waiver.

**FISCAL IMPACT:**

Sidewalks not constructed by the developer may have to be constructed later at taxpayer expense. Since the property is located outside city limits, the City will not have the authority or ability of adding a sidewalk at a

later date.

**RECOMMENDATION:**

Staff does not recommend waiving the requirement to construct the sidewalk or authorizing escrow in lieu of construction of the sidewalk. Envision New Braunfels Comprehensive Plan identifies several actions related to improving connectivity and prioritizing the sidewalk network.

**Resource Links:**

Chapter 118-49(a)(1) Sidewalks, of the City's Code of Ordinances:

[https://library.municode.com/tx/new\\_braunfels/codes/code\\_of\\_ordinances?nodeId=PTIICOOR\\_CH118SUPL\\_ARTIVDEST\\_S118-49SI](https://library.municode.com/tx/new_braunfels/codes/code_of_ordinances?nodeId=PTIICOOR_CH118SUPL_ARTIVDEST_S118-49SI)

Chapter 118-49(b) Sidewalks, of the City's Code of Ordinances:

[https://library.municode.com/tx/new\\_braunfels/codes/code\\_of\\_ordinances?nodeId=PTIICOOR\\_CH118SUPL\\_ARTIVDEST\\_S118-49SI](https://library.municode.com/tx/new_braunfels/codes/code_of_ordinances?nodeId=PTIICOOR_CH118SUPL_ARTIVDEST_S118-49SI)

**Attachments:**

1. Aerial Map
2. Applicant's Plat Waiver Justification Letter
3. Sidewalk Exhibit
4. Approved Unrecorded Minor Final Plat