

CITY OF FATE, TEXAS UNIFIED DEVELOPMENT ORDINANCE

Article VI – Subdivision

6.1 General Provisions

6.1.1 AUTHORITY, PURPOSE & APPLICABILITY

(A) AUTHORITY

The regulations of this Subdivision Ordinance are authorized under the authority of Texas Local Government Code, Chapter 212 (including Subchapter B) and the City's charter. The provisions of this Subdivision Ordinance expressly extend to all areas inside the City limits and throughout the City's extraterritorial jurisdiction (ETJ), as either may be adjusted in the future, and as may be provided in an interlocal agreement with Rockwall County in accordance with Chapter 242 of the Texas Local Government Code.

(B) PURPOSE

- (1) The development and subdivision of land, as they affect a community's quality of life, are activities for which regulation is a valid function of municipal government. The regulations contained within this Subdivision Ordinance are intended to protect the interests of the public and of private parties by granting certain rights and privileges. The requirements in this Ordinance are also intended to establish a fair and rational procedure for developing and subdividing land such that land will be developed in accordance with the Comprehensive Plan and existing physical, social, economic and environmental conditions.
- (2) The provisions of this Ordinance are intended to implement standards and requirements provided for herein, and shall be requirements for the platting and developing of subdivisions within the City and its ETJ.
- (3) The provisions of this Ordinance are intended to implement the following objectives:
 - a. Promote the development and the utilization of land in a manner that provides an attractive and high-quality community environment in accordance with the Comprehensive Plan and the Zoning Ordinance of the City;
 - b. Guide and assist property owners and applicants in the correct procedures to be followed, and to inform them of the required standards;
 - c. Protect the public interest by having standards for, but not limited to, the location, design, class and type of streets, sidewalks, trails, alleys, utilities and essential public services;
 - d. Assist orderly, efficient and coordinated development within the City's limits and its ETJ;
 - e. Integrate the development of various tracts of land into the community, and coordinate the future development of adjoining tracts;
 - f. Promote the most efficient and beneficial provision of public facilities and services for each tract being subdivided;
 - g. Provide for compatible relationships between land uses and buildings; Provide for efficient traffic circulation throughout the municipality;

- h. Provide for pedestrian circulation that is appropriate for the various uses of land and buildings;
- i. Minimize pollution of the air, streams, bodies of water, and aquifers; promote the adequacy of storm drainage facilities; minimize erosion; safeguard both surface and groundwater supplies, as well as natural resources and endangered or threatened plant and animal life; and encourage the wise use and management of natural resources throughout the municipality in order to preserve the integrity, stability and beauty of the community and the value of the land;
- j. Preserve the natural beauty and topography of public and private properties by encouraging where possible that natural features and land forms are incorporated into developments as amenities;
- k. Establish adequate and accurate records of land subdivision;
- l. Provide for public or private facilities that are available and will have sufficient capacity to serve proposed and future developments and citizens within the City and its ETJ;
- m. Provide for adequate light and privacy; improve safety from fire, flood and other dangers; and prevent overcrowding of the land and undue congestion of population;
- n. Encourage the development of residential areas that incorporate a range of housing and lifestyle choices.

(C) APPLICABILITY

- (1) The provisions of this Subdivision Ordinance apply to any non-exempt division of land, combination of separate land parcels, and/or development of land within the corporate boundaries of the City and within its ETJ.
- (2) No permit shall be issued for any building or structure on a property until a plat has been approved and filed for record unless specifically exempted herein.

(D) SUBDIVISION RULES

The provisions of this Subdivision Ordinance, the standards governing constructed facilities applicable to plats in other portions of the Municipal Code of Ordinances, and the technical standards contained in the *Infrastructure Design Standards*, constitute the subdivision rules of the City, which apply to applications for plat approval inside City limits and within the City's ETJ.

(E) ENGINEERING STANDARDS

The *Design Criteria and Construction Standards* and other engineering design guidelines may be drafted and amended from time to time, at the discretion and determination of the City Manager, or his/her designee. As the *Design Criteria and Construction Standards* are drafted and amended, they must subsequently be approved and/or adopted by City Council. After approval/adoption by City Council, said standards shall be included and substituted for the existing *Design Criteria and Construction Standards* and shall thereafter have the same force of law and effect as if originally adopted hereby. A copy of the current *Design Criteria and Construction Standards* shall be kept on file and available for review with the Department of Planning and Development Services office and on the Department of Planning and Development Services website.

(F) COMPLIANCE WITH CITY PLANS AND ORDINANCES REQUIRED

Compliance with all City ordinances pertaining to the subdivision and development of land, the provision of infrastructure, and the Comprehensive Plan (where applicable), shall be required prior to approval of any application pursuant to this Ordinance. All such ordinances and the Comprehensive Plan shall be construed to mean those documents as they exist or

may be amended. It is the property owner's responsibility to be familiar with, and to comply with, City ordinances, the Comprehensive Plan, and the provisions of this Ordinance. Applicable City ordinances and plans with which all applications must comply include, but are not limited to, the following:

- (1) Comprehensive Plan (including all associated maps and plans);
- (2) Building Codes;
- (3) International Fire Code;
- (4) Impact Fee Ordinance;
- (5) Engineering Documents including:
 - a. *Design Criteria and Construction Standards*, and
 - b. Other development-related engineering standards.
- (6) Federal, State and Local Environmental Regulations.
- (7) Capital Improvement Plans for streets, drainage, parks and trails, and water and wastewater facilities

(G) NATURE OF ARTICLE

This article is not a zoning regulation and is not subject to the procedural requirements of Chapter 211 of the Texas Local Government Code.

6.2 Subdivision Platting

6.2.1 PLATS

(A) GENERAL SUBDIVISION AND PLATTING POLICIES

- (1) Refer to **Article II** of this Ordinance for applicability of each type of plat, application requirements, and review and approval procedures and criteria.
- (2) Exemptions – The following land divisions are exempt from the requirements of this Subdivision Ordinance that apply to plats:
 - a. Use of existing cemeteries complying with all State and local laws and regulations; and
 - b. A division of land created by order of a court of competent jurisdiction, provided however, that prior to construction of improvements, a plat meeting the requirements of this Ordinance shall be approved and recorded prior to the issuance of permits.
- (3) Zoning – Inside the City limits of the City, the following shall apply:
 - a. Conformance with Existing Zoning – All applications shall be in conformance with the existing zoning on the property (if applicable).
 - b. Request to Rezone First – If an applicant seeks to amend the zoning for the property, the request to rezone the land shall be submitted and approved prior to acceptance of an application for filing a plat unless as otherwise provided below.
 - c. Site Plan Approval – Where Site Plan approval is required prior to development, a Preliminary Plat may be approved prior to the approval of a Preliminary Site Plan if the Preliminary Site Plan is under review. No application for a Final Plat shall be accepted for filing until a Site Plan and Construction documents have been approved for the land subject to the proposed plat.

(B) EASEMENTS

- (1) All existing and proposed easements shall be shown on the Preliminary and Final Plats. All easements shall be labeled on the Final Plat and dedicated for the specific purpose intended (e.g., “City Utility Easement”, “City Drainage Easement”, “CoServ Electric Easement”, etc.).
- (2) Off-site easements that are necessary to fulfill City requirements or are required by the City shall be dedicated to the City (unless easement(s) contain no City infrastructure or have no City purpose) by separate instrument (unless the abutting property is platted) and shall be approved by the City Council. If the abutting property is platted, then an Amended Plat or Replat of that property shall be required to establish the off-site easement.

(C) PLAT PURPOSE AND APPROVAL PROCEDURES

- (1) Refer to Article II for purpose and applicability, application requirements, and approval procedures for all plats including, Preliminary Plats, Final Plats, Replats, Amending Plats, Plat Vacations, and Minor Plats.

6.3 Lots and Blocks

(A) ZONING COMPLIANCE

All lots shall conform with the zoning district requirements, unless located in the ETJ in which they shall comply with any agreements between the City and Rockwall County.

(B) RESIDENTIAL LOTS ADJACENT TO DRAINAGE AREAS

Lots shall be exclusive of any portion of a natural drainage area (i.e., Major Creek, stream, tributary, etc.), maintenance access, and/or erosion hazard setback. Retaining walls may be allowed on lots adjacent to natural drainage areas as approved by the Administrator.

(C) LOT SHAPE

The City reserves the right to disapprove any lot which, in its sole discretion, will not be suitable or desirable for the purpose intended, or which is so oddly shaped as to create a hindrance to the logical lot layout of surrounding properties and/or create an irregular building envelope. The following requirements shall also apply.

- (1) Lots shall be generally rectangular in shape. Sharp angles (typically ninety (50°) degrees and less) between lot lines shall be avoided. Flag lots are prohibited unless an exemption is granted by the Administrator.
- (2) Irregularly shaped lots shall have sufficient width at the building line to meet minimum lot width and frontage requirements for the appropriate zoning district (if applicable), and shall provide the minimum building pad required by zoning without encroachment into front, side or rear yard setbacks or into any type of easement.

(D) LOT LINES AND BUILDABILITY

- (1) Side Lot Lines – Side lot lines shall be at ninety degree (90°) angles or radial to street right-of-way lines to the greatest extent possible. A Minor Waiver may be granted if unusual circumstances exist on the subject property or on adjacent property that make it impossible to comply with this requirement.
- (2) Lot Lines and Jurisdictional Boundaries – All lot lines shall, to the greatest extent possible, align along county, school district, and other jurisdictional boundary lines such that lots are fully within one county, school district, or other jurisdiction. A Minor Waiver to this requirement may be granted if a county, school district or other jurisdictional boundary line will bisect a lot, provided that the entire residential dwelling or main structure is constructed entirely within one county, school district or

other jurisdiction (i.e., the structure does not “straddle” school district or jurisdictional boundary line).

- (3) Lot Buildability – Any portion of a lot that is non-buildable for any reason shall be clearly shown as such on the Preliminary and Final Plats. A “Lot Buildability” detail shall be submitted along with the Preliminary and Final Plats, and shall verify that the buildable portion of such a lot can accommodate a dwelling or main structure that complies with applicable City zoning regulations (if located within the City’s limits) and building codes.

(E) LOT ORIENTATION RESTRICTIONS

- (1) Type A6D and Type A4D Thoroughfares – No single-family, two-family, or townhome lot(s) shall front onto or have a driveway onto Type A6D or Type A4D thoroughfares.
- (2) Type, A4U, C2U Thoroughfares – Single-family, two-family, or townhome residential lots are prohibited from backing to TypeA4U, and C2U thoroughfares.

(F) LOT FRONTAGES

- (1) Street Frontage
 - a. *Adequate Frontage* – Each lot shall have adequate access to a street (or an approved public way) by having frontage on such a street that is not less than forty feet (40’) at the street right-of-way line, or as otherwise specified in this Ordinance for the lot’s specific zoning or a Planned Development (PD) Ordinance, if applicable. Lots fronting onto an eyebrow or bulb portion of a cul-de-sac shall also have a minimum frontage of forty feet (40’) at the street right-of-way line. All residential lots shall directly abut a public or private street. An access easement shall not serve as the primary access to the street.
 - b. *Frontage Exception* – For non-residential developments ten (10) acres or greater, the lots may be platted to a public way instead of a dedicated street upon approval by the Administrator.
- (2) Double Frontage
 - a. *Single-Family, Two-Family and Townhome Lot(s)* – Double frontage lots are prohibited, except that single-family, two-family or townhome lots may back or side onto a Type A4D or larger thoroughfare with appropriate screening as described in this Ordinance. Where lots back or side onto a Type A4D or larger thoroughfare, no driveway access is allowed onto the thoroughfare from the rear or side of the lot. Where lots side onto two R2U thoroughfares, a front building line shall be established for each street.
 - b. *Multi-Family and Non-Residential Lots* – Where lots have frontage on more than one street, a front building line shall be established for each street.
- (3) Lots Facing Other Lots – Each residential lot shall face the front of a similar lot, or shall face a park or open space if one exists or is planned across the street. An arrangement placing adjacent lots at right angles to each other shall be avoided. A Minor Waiver may be granted if unusual circumstances exist on the subject property or on adjacent property that make it impossible to comply with this requirement.

(G) LOTS IN RELATION TO PARKS/OPEN SPACE

All lots that are located directly across a street from a park/open space shall face onto the park/open space.

(H) LARGE LOTS AND TRACTS

If the lots or tracts of land in a proposed development are large enough to suggest possible further subdivision in the future, or if portions of the property are not subdivided or

developed immediately, then the Preliminary Plat shall show how such large tracts or remainder portions of the property can be subdivided into conforming lots at a later time, and shall also show how streets can be extended and how median openings can be aligned and shared in the future.

(I) LOT AND BLOCK NUMBERING

All lots within each phase of a development are to be numbered consecutively within each block. Each block shall have an alpha or numeric, designation (e.g., "Block A", "Block 6", etc.).

(J) LOT ADDRESSING

- (1) Addressing shall be performed by the 911 Addressing department in accordance with the adopted addressing procedures. No address shall be issued prior to approval of and submission of final documents for recording of subdivisions.
- (2) Upon recording of a final plat, replat, or amending plat, addresses shall be assigned to each lot created by such plat. Whenever possible, a current or previous address of an unplatted parcel of land shall be assigned if the address meets the following criteria:
 - (a) The address is in accordance with county 9-1-1 recommended guidelines.
 - (b) Address sequencing is not affected.
- (3) Addresses will be assigned in the following manner:
 - (a) Even address will be assigned to the right side of streets (when facing north or east) as proceeding with increasing street address numbers at intervals of four (4).
 - (b) Odd addresses will be assigned to the left side of streets (when facing north or east) as proceeding with increasing street address at intervals of four (4).
- (4) The City is responsible for distributing assigned addresses to all government offices, including utility companies both public and private.
- (5) An owner may request an address change in writing to the City Manager stating the purpose of the request. A new address will not be considered and assigned if the assigned address is out of sequence or if it is determined that public safety services and delivery services are compromised with the assigned address. Notifications for address changes are supplied to all government offices, including county 9-1-1, utility companies both public and private, and the owner or his designee.
- (6) Street name signs for "private" streets shall be distinguished from "public" street name signs by using the standards described in the City's standard details.

(K) BUILDING LINES

Building lines along all streets shall be shown on the Preliminary and Final Plats on lots and shall conform with the minimum setbacks for front, side and rear yards as required by this Ordinance (if within the City's limits) on the basis of the respective districts.

(L) BLOCK REQUIREMENTS

Subdivision block lengths shall be a minimum of 200 feet and shall not exceed 600 feet in length, except along arterial thoroughfares. The maximum block length along an arterial thoroughfare shall be 1,200 feet.

- (1) The length, width, and shape of blocks shall be determined with due regard to:
 - a. Provision of adequate building sites suitable to the special needs of the type of use contemplated;
 - b. Zoning requirements as to lot size and dimensions; and
 - c. Need for convenient and safe access, circulation, and control of street traffic.

- (2) In general, intersecting streets determining the block lengths and widths shall be provided at such intervals as to serve cross traffic adequately, and to meet existing streets. Where no existing subdivision establishes control, the block lengths shall not exceed 600 feet, nor be less than 200 feet in length. However, in cases where physical barriers or property ownership creates conditions where it is appropriate that these standards be recommended by the Planning and Zoning Commission and varied by the City Council, the length may be increased or decreased to meet the existing conditions, having due regard for connecting streets circulation of traffic and public safety. Prior to recommendation for block length variance is given, developer must present adequate evidence to the Administrator that standard block lengths would result in a significant reduction in lots.
- (3) Where blocks are adjacent to a school or public park, or are platted 800 feet or longer, the city may require a walkway near the middle of the block or at a street that terminates between the streets at the ends of the block. The walkway shall be concrete and shall not be less than five feet or more than eight feet in width, and shall extend through the block from sidewalk to sidewalk, or to the rear property line of the lots that front the street, if a double row of lots do not exist.

(M) MONUMENTS

- (1) Survey Pins, General Placement – Survey pin monumentation consisting of minimum three-eighths inch (3/8") diameter steel rods, at least twenty-four inches (24") long, shall be placed at all:
 - a. Lot and block corners (wherever a lot line bearing changes);
 - b. Intersection points of alley and block lines; and
 - c. Curve and tangent points along block, lot and right-of-way lines within the subdivision.
- (2) Subdivision Monumentation – At least two (2) property corners shall be marked with monuments of three dimensional coordinates. The corners so marked should be at opposing ends of the property unless otherwise approved by the Administrator.

(N) SUBDIVISION NAMES

New subdivisions shall be named so as to prevent conflict or “sound-alike” confusion with the names of other subdivisions. Subdivisions with similar names shall be located in proximity to each other, not in different areas of the City. A Minor Waiver may be approved upon a finding that the proposed subdivision name will not cause confusion, especially for emergency responders.

(O) SUBDIVISION AMENITIES

- (1) Description & Definition – The term “amenity” is defined as the aesthetic or other physical improvements to a development that increase its quality, desirability, and/or marketability to the public.
- (2) Requirements – Where amenities are proposed in conjunction with a development, such amenities shall be reviewed and approved in accordance with the following:
 - a. Preliminary plans and illustrations, along with a written statement of such concepts, shall be submitted for review and approval with the Preliminary Plat.
 - b. Plans for amenities shall then be incorporated into the Screening Plan and/or Landscape Plan as appropriate, for submittal as part of the Construction Plans.
 - c. Structural elements shall be sealed by a licensed professional engineer and shall be considered for approval by the City.

- d. A Site Plan, reviewed and approved in accordance with this Ordinance, is required for private recreational facilities and parks;
 - e. City review and approval of plans for amenities and review of the HOA documents required in subsection (4) below shall be required prior to issuance of a Letter of Final Acceptance for the subdivision improvements.
- (3) Design of Amenities – The design of amenities shall conform to the following:
- a. Entry features shall be constructed entirely on privately owned property (i.e., not within public right-of-way), and shall not suspend over a public right-of-way, unless otherwise approved by the grant of a license by the City Council. Minor elements of an entry feature (such as landscaping, hardscaping, monumentation signage, etc) may be placed within an entry street median upon City Council approval, provided that such street median is platted as a non-buildable lot and dedicated to a mandatory HOA for private ownership and maintenance in the form described below. An entry feature having a water pond shall only be allowed if approved by the Administrator and the Director of Public Safety.
 - b. No entry feature, other than screening walls or extensions of screening walls, may be constructed on any portion of a single-family, two-family, or townhome lot(s). All such features shall be constructed on lots that are platted as “non-buildable” lots and dedicated to a mandatory HOA for private ownership and maintenance.
 - c. Entry features shall not encroach into visibility easements or otherwise impair pedestrian or vehicular visibility.
 - d. The maximum height for entry features and structures shall be the maximum height of the governing zoning district, if applicable, as measured from the nearest street or sidewalk grade, whichever is higher.
 - e. Private recreation facilities, if provided in a development, shall, to the greatest extent possible, be centrally located within the overall development.
- (4) The developer shall provide for maintenance of the amenities in the form described in *Section 5.3.2(H)*.

6.4 Adequate Public Facilities and Dedication Required

6.4.1 PROVISION OF ADEQUATE PUBLIC FACILITIES

Each subdivision shall provide adequate public facilities. Adequate public facilities shall include adequate water, sanitary sewer, drainage, parks and transportation facilities necessary to serve the proposed development, whether or not the facilities are to be located within the property being platted or offsite.

6.4.2 CRITERIA FOR ADEQUATE PUBLIC FACILITIES

Public facilities are considered adequate if they meet the minimum level of service established in the appropriate sections of this Ordinance and the following standards:

(A) STREET ACCESS

All platted lots shall have safe and reliable street access for daily use and emergency purposes. All platted lots shall have direct access to a paved public street, private street, or an approved access easement not less than 27 feet in width. Refer to *Section 6.5, Street and Right-of-Way Requirements* for additional criteria.

(B) WATER

All lots platted after the date of this Ordinance shall be connected to a public water system that provides water for health and emergency purposes. The water system shall be consistent with the Water Distribution System Model and Master Plan, the most current version of the City's *Design Criteria and Construction Standards*.

(C) SANITARY SEWER

All lots platted after the date of this Ordinance shall be connected to a public sanitary sewer collection and treatment system. On-site sanitary sewer treatment systems are not permitted, except for the pretreatment of industrial waste or if approved by the Administrator. The projected sanitary sewer discharge of a proposed development shall not exceed the capacity of the sanitary sewer system. The sanitary sewer system shall be consistent with the Wastewater System Model and Master Plan, and the most current version of the City's *Design Criteria and Construction Standards*.

(D) DRAINAGE AND STORMWATER MANAGEMENT

Drainage and stormwater facilities are adequate when:

- (1) Stormwater runoff attributable to new development or redevelopment complies with the minimum standards of this Ordinance and the *Design Criteria and Construction Standards*.
- (2) To the maximum extent practicable, permanent Best Management Practices (BMPs), as described in the *Design Criteria and Construction Standards*, maintain the predevelopment characteristics of any natural creek that ultimately receives stormwater runoff from the development.

(E) PARKS AND RECREATION

Parks and recreation facilities are adequate when all land dedication and participation agreements and applicable fees are paid in accordance with **Article X** of this Ordinance.

(F) ELECTRICITY

All lots platted after the date of this Ordinance shall have access to a public utility that provides electricity for retail consumption.

(G) TELECOMMUNICATIONS

All lots platted after the date of this Ordinance shall have access to a public utility that provides telecommunications for retail consumption.

(H) NATURAL GAS

All lots platted after the date of this Ordinance shall have access to a public utility that provides natural gas for retail consumption.

6.4.3 DEDICATION REQUIRED

(A) Generally

Property necessary for the orderly development of streets, roadways, thoroughfares, utilities, parks, stormwater facilities, or other public purposes shall be dedicated to the City as required by this Ordinance and in accordance with the Comprehensive Plan, Utility

(Water and Wastewater) Master Plans, the Master Thoroughfare Plan, the Parks Master Plan, and the Hike and Bike System Master Plan. Dedication of and acceptance by the City of the property is a condition of plat approval.

(B) Proportionality Required

The dedication requirements for a specific plat shall be roughly proportional to the projected impact of the proposed development as determined by the City Engineer.

(C) Underground Utilities

1. Lateral and service lines

All lateral and service lines serving residential and non-residential development shall be placed and maintained underground.

2. Feeder lines

Overhead feeder lines are not allowed unless they are located:

- a. Adjacent to a public or private street where overhead lines exist;
- b. Along the perimeter of a subdivision where overhead lines exist; or

(D) Property Owners' Association Responsibility

1. Property Owners' Association Required

In subdivisions developed with amenities or property held in common ownership, including but not limited to private streets, amenity lots, drainage features subject to a maintenance agreement, and perimeter fencing, a mandatory property owners' association shall own and is responsible for the maintenance of the amenity or property. The association documents shall comply with Section 6.6.1

(E) Platting Exemptions for Single Tracts Prior to Construction

Any owner of an unplatted single tract of land shall submit for approval and have filed of record a plat of the tract prior to the commencement of construction or issuance of a building permit. However, nothing in these regulations requires a plat to be approved and recorded as a prerequisite to construction under the following conditions:

1. The tract is zoned residential in accordance with **Article III** and the construction is for any of the following purposes, and the addition or alteration conforms with this Ordinance:
 - a. Adding to or altering an existing lawfully conforming single-family building or structure;
 - b. Adding a fence on the tract; or
 - c. Adding an accessory building or structure to an existing lawfully conforming single-family use.
2. The tract is not zoned residential as noted above or is zoned residential but contains a permitted non-residential land use, the construction is for any of the following purposes, and the alteration conforms with this Ordinance:
 - a. Adding an accessory building to an existing lawfully conforming use on the same tract;
 - b. Adding a fence on the tract;
 - c. Remodeling or altering an existing commercial or industrial building;
 - d. Adding a wireless communications antenna to an existing utility transmission tower or existing telecommunications tower; or
 - e. Any improvement that does not create infrastructure impacts or more intensive development than the exceptions listed above.

(F) Exclusions from Charges and Reimbursements

- (1) All facilities shown in the capital improvements plan used to determine impact fees adopted under V.T.C.A., Local Government Code Chapter 395, shall be excluded from proportionality charges and reimbursement. There shall be no pro rata reimbursement for streets, water, and sanitary sewer improvements where reimbursement is due or has been paid under the most current version of the City's Impact Fee Ordinance.
- (2) All facilities included in a planned development, public improvement district, development agreement or other entity, contract, agreement, or mechanism whereby the owner will receive reimbursement for improvements that have been oversized or extended to serve other than the owner's property.

(G) Enforcing Payment of Proportional Cost

The City shall have the authority to enforce payment of costs by all legal means available including the disconnection of water and sanitary sewer service to a development or lot. Nothing in this Section shall be deemed in any way to be an exclusive method of enforcing the payment of the pro rata cost against the consumers and property owners, and this Section shall not be deemed in any manner to be a waiver of the City's right to assess the property owners and/or consumers pro rata fees concerned for cost of the installation of water, wastewater, and street improvements and to fix and enforce liens against such property, all of which may be done as provided by Ordinance in the manner prescribed by law.

(H) Oversizing

- (1) The extent of the city's participation in the costs of oversized mains shall be determined by comparing costs computed by the following two methods:
 - a. Method 1. The owner shall take at least three bids on installation of the improvements that are to be eligible for pro rata reimbursement. Copies of the bids, tabulations and figures shall be submitted to the Administrator. Calculations shall delineate the total and unit cost for installation of the improvements.
 - b. Method 2. The Administrator shall establish unit prices for similar types of construction done in the previous 12 months. These unit prices shall establish costs based upon estimates obtained on similar projects within the last 12 months or base unit costs used to determine the cost of the installation of the improvements.
- (2) City engineer's option. The Administrator shall have the option to establish the method to compute costs whenever he considers the results of the method to be unreasonable or whenever the owner fails to submit the proper information as required.
- (3) Engineering costs. The city shall pay a maximum of six percent of the city's cost for engineering fees that includes surveying, construction staking and supervision.

(I) Application of Charges

- (1) On lots or tracts of land which extend through from one street to another, with frontage on both streets, and where the distance between the street lines is 260 feet or more, then the proportionality charges herein provided for shall be paid on both frontages when a connection is secured to the lot or tract.
- (2) Where lots or tracts are used for other than single-family residential purposes, then the proportion herein provided shall be paid on the frontage on all streets which the property may abut.
- (3) Where lots or tracts are used for single-family residential purposes, and which abut upon two streets, the proportionality charges herein provided shall be payable only on the shorter frontage on which a sewer line or water main exists.

- (4) For property in the state of development for which a building permit has been issued at the time of passage of the ordinance from which this chapter is derived, any proportionality charges due shall be at the rate in effect at the time the building permit was issued. A property owner eligible for street pavement or a sanitary sewer or water main extension, and whose request had been accepted prior to the passage of the ordinance from which this chapter is derived, shall be charged proportionality charges due under the then applicable ordinance, if any.
- (5) In addition to the proportionality charges on sanitary sewer or water main, the property owner must pay the tapping and impact fee charges, as established by the city.

(J) Refunds

- (1) All refunds provided for in this chapter shall be made on May 1 of each year, and include funds then accrued to the credit of the owner and others. The contract entered into by any property owner in the City, under the provisions of this Section, shall be effective only for a period of five years after the date of the installation of the facility. No refunds will be made by the City to any applicant or contracting party after this five-year period has expired, nor shall the city ever be liable for payment of interest on any deposits, payments or refunds provided for herein.
- (2) Owners shall be eligible for refunds of certain portions of the costs incurred by them in the installation of sanitary sewer mains, water mains, and street pavement under certain conditions. For street pavement and mains 12 inches and smaller, which have been constructed by the owner entirely at his own expense, as approach mains, and for mains lying along one or more sides of a subdivided tract, which serve property other than the subdivision for which the extensions were made, the owner shall be credited with refunds equal to the pro rata charges which may be collectable from other parties under the terms of this chapter.
- (3) If such mains are larger than 12 inches in size, and if the owner did not receive a credit for oversize cost at the time of installation, he shall receive a credit for refund equal to one-half the difference between the cost of such sanitary sewer and water main and the cost of a 12-inch main, or such sizes as are required to serve the subdivision for which the extensions are required.

(K) Temporary Lines

Where temporary lines are constructed as an expedient to develop a particular area, such as across easements within the subdivision of which no frontage can be connected, or where sanitary sewer and water are constructed which otherwise are not required in the ultimate plan of development for the sanitary sewer and water system, the owner will bear the total cost without refund.

(L) No Funds Available

In no event may the City be required to make extensions under the provisions of this Section if there are no funds available on hand for that purpose.

(M) Charges to be Credited with Proportionality Fund

Any and all sums of money hereinafter collected as a proportionality charge or deposit for pavement and sanitary sewer and water extensions, at the rates set forth in this Section, shall be credited to the proportionality fund of the City and all refunds shall be paid from this same account. Interest earned on proportionality fund investments shall be used to accelerate the retirement of the City's water and sewer revenue bonds or street improvement bonds.

(N) Lift Stations and Special Installations

In the event a lift station or other special installations are required, the same shall be installed under separate agreements between the City and the property owner.

(K) Petition Purpose and Applicability

- (1) Purpose – The purpose of a petition for relief from a dedication or construction requirement is to ensure that the imposition of uniform dedication and construction standards to a proposed development does not result in a disproportionate burden on the property owner, taking into consideration the nature and extent of the demands created by the proposed development on the City's roadways and public facilities systems.
- (2) Applicability. A petition for relief under this Section may be filed by the applicant to contest any requirement to dedicate land or to construct public improvements as required by this Ordinance or attached as a condition to approval of the application. A petition shall not be used to waive standards on grounds applicable to any Waiver application.

(L) Petition Requirements

- (1) Form of Petition – The petition for relief from a dedication or construction requirement shall allege that application of the standard relating to the dedication or construction requirement is not roughly proportional to the nature and extent of the impacts created by the proposed development on the City's water, wastewater, storm drainage, parks or roadway system, as the case may be, or does not reasonably benefit the proposed development.
- (2) Study Required – The applicant shall provide a study in support of the petition for relief that includes the following information:
 - a. Total capacity of the City's water, wastewater, storm drainage, parks or roadway system to be utilized by the proposed development, employing standard measures of capacity and equivalency tables relating the type of 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 City's water, wastewater, storm drainage, parks or roadway system by the proposed dedication of an interest in land or construction of public improvements. If the application is part of a phased development, the information shall include any capacity supplied by prior dedications or construction of public improvements.
 - c. Comparison of the capacity of the City's public facilities system(s) to be consumed by the proposed development with the capacity to be supplied to such system(s) by the proposed dedication of an interest in land or construction of public improvements. In making this comparison, the impacts on the City's public facilities system(s) from the entire development shall be considered.

- d. The effect of any City participation in the costs of oversizing the public improvement to be constructed in accordance with the City's requirements.
 - e. Any other information that shows the alleged disproportionality between the impacts created by the proposed development and the dedication or construction requirement imposed by the City.
- (3) Time for Filing Petition and Study – A petition for relief from a dedication or construction requirement shall be filed with the Administrator within fourteen (14) calendar days following the Commission's decision to conditionally approve or deny an application for approval of an application. The study in support of the petition shall be filed within sixty (60) calendar days following the initial decision, unless the applicant (petitioner for relief) seeks an extension in writing. The Administrator may extend the time for submitting the study for a period not to exceed an additional thirty (30) calendar days for good cause shown.
- (4) Land in Extraterritorial Jurisdiction (ETJ) – Where land or facilities to be dedicated are located in the ETJ of the City and are to be dedicated to Rockwall County, a petition for relief or study in support of the petition shall be accepted as complete for review by the Administrator only when such petition or study is accompanied by verification that a copy has been delivered to and accepted by Rockwall County, as applicable.

(M) Processing of Petitions and Decisions

- (1) Responsible Official – The Director of Planning and Development Services shall be the responsible official for a petition for relief from a dedication or construction requirement. Where the petition is for relief from dedication of rights-of-way or construction of a facility in the City's ETJ that is to be dedicated to Rockwall County, the Administrator shall coordinate a recommendation with the appropriate County official responsible for reviewing plats.
- (2) Evaluation & Recommendation
- a. The Administrator shall evaluate the petition and supporting study and shall make a recommendation to the Commission for their consideration and recommendation to the City Council.
 - b. In evaluating the petition and study, the Administrator shall take into account the maximum amount of any impact fees to be charged against the development for the type of public improvement that is the subject of the petition, or similar developments on the City's water, wastewater, roadway, storm drainage or parks systems. The Administrator may utilize any reasonable methodology in evaluating the applicant's study, including impact fee methodologies.
 - c. In order to achieve proportionality between the demands created by a proposed development on public facilities and the obligation to provide adequate public facilities, the City may participate in the costs of public improvements, credit or offset the obligations against payment of impact fees, or relieve the property owner any of the obligations in response to a petition for relief from a dedication or construction requirements.
- (3) Decision-Maker – The Commission shall decide the petition for relief from a dedication or construction requirement.
- (4) Public Hearing – The Commission shall conduct a public hearing within sixty (60) calendar days after the study supporting the petition is filed with the Administrator.

- (5) Burden of Proof – The applicant bears the burden of proof to demonstrate that the application of a dedication or construction requirement that is uniformly applied imposes a disproportionate burden on the applicant.
- (6) Decision – The Commission shall consider the petition for relief from a dedication or construction requirement based upon the following criteria:
 - a. The Commission shall determine whether the application of the standard or condition is roughly proportional to the nature and extent of the impacts created by the proposed development on the City's water, wastewater, storm drainage, parks or roadway system, and whether the application of the standard or condition reasonably benefits the development.
 - b. In making such determination, the Commission shall consider the evidence submitted by the applicant, the report and recommendation of the Administrator and, where the property is located within the City's ETJ, any recommendations from Rockwall County, as applicable.
- (7) Action – The Commission shall take one of the following actions:
 - a. Deny the petition for relief, and impose the dedication or construction requirement as required by this Ordinance; or
 - b. Grant the petition for relief, and waive any dedication or construction requirement to the extent necessary to achieve proportionality; or
 - c. Grant the petition for relief, and direct that the City participate in the costs of acquiring land for or constructing the public improvement under standard participation policies.
- (8) Notification of Decision on Petition – The applicant shall be notified of the decision on the petition for relief by the Administrator within fourteen (14) calendar days following the Commission's decision.

(N) Appeal of the Decision on a Petition for Relief

- (1) Initiation of an Appeal – The applicant or no less than four (4) voting members of City Council may appeal the decision of the Commission by submitting a written notice of appeal to the Administrator within fourteen (14) calendar days following the date of the Commission's decision.
 - a. For a City Council-initiated appeal, the Council shall consider and act on whether it will appeal the Commission's decision at its first regular meeting (for which there is time to include such appeal on its posted agenda, as required by State law) that occurs after the Commission meeting at which the decision was made.
 - b. Written notice of the City Council's vote to appeal shall be submitted to the Administrator within seven (7) calendar days following the City Council's vote to appeal the decision.
 - c. For an applicant-initiated appeal, a letter stating the reasons for the appeal, citing the specific applicable section(s) of this Subdivision Ordinance, shall be submitted by the applicant.
 - d. The Administrator may, on his/her own initiative, appeal the decision of the Commission by scheduling an appeal on the City Council's next regular meeting (for which there is time to include such appeal on its posted agenda as required by State law) that occurs after the Commission meeting at which the decision was made.
- (2) Council Decision – The City Council shall consider the appeal at a public meeting no later than thirty (30) calendar days after the date on which the notice of appeal is submitted to the Administrator. The City Council may affirm, modify or reverse

the decision of the Commission by simple majority vote. The decision of the City Council is final.

(O) Expiration or Failure to File Application

Where an application was denied based upon the imposition of the standard requiring dedication of land or construction of a required public improvement and the Commission's decision (or decision on appeal) is to grant some level of relief, the applicant shall resubmit the application within sixty (60) calendar days following the date the petition for relief is granted, in whole or in part, showing conformity with the Commission's decision (or decision on appeal) on the petition.

- (1) If such re-submittal of the application is not made within the sixty-day (60-day) period, the relief granted by the Commission on the petition shall expire.
- (2) If the re-submittal of the application is modified in any other way, a new petition for relief may be required by the Administrator.
- (3) If the application for which relief was granted is denied on other grounds, a new petition for relief may be required by the Administrator.

(P) Effect of Relief

- (1) The Administrator may require the applicant to submit a modified application or supporting materials consistent with the relief granted by the Commission on the petition.
- (2) The relief granted on the petition shall remain in effect for the period the application is in effect, and shall expire upon expiration of the plat or related application.

6.5 Street and Right-of-Way Requirements

6.5.1 DEDICATION

Consistent with the requirements of Chapter 212 of the Texas Local Government Code, the property owner shall dedicate all rights-of-way and easements for, and shall construct and extend, all necessary on-site and off-site public improvements for water distribution, wastewater collection and treatment, streets, storm drainage conveyance, and other improvements that are necessary to adequately serve each phase of a proposed development at service levels that are consistent with the City's applicable master facilities plans and construction design standards.

6.5.2 CONSTRUCTION AND INSPECTIONS

(A) CONSTRUCTION

- (1) Street construction shall be in accordance with the *Design Criteria and Construction Standards* and approved Construction Plans. Any significant change in design required during construction shall be made by the applicant's engineer, and shall be subject to approval by the City.

(B) INSPECTIONS

- (1) The Administrator and/or his designee shall inspect the construction of improvements while in progress in accordance with the inspection schedule maintained in the Development Services office, as well as upon completion. The

applicant, or his contractor, shall maintain contact with the Administrator and/or his designee during construction of improvements.

- (2) If the Administrator and/or his designee finds, upon inspection, that any of the required public improvements have not been constructed properly and/or in accordance with the approved Construction Plans, the applicant shall be responsible for completing and/or correcting the public improvements to bring such into compliance.
- (3) Failure to request the required inspections is a violation of this Ordinance and in addition to the criminal penalty established for such violation may require removal of the work that has not been inspected.

6.5.3 IMPROVEMENTS REQUIRED

(A) PUBLIC STREETS

- (1) Application of Requirements – Street design requirements are subject to the provisions included in the *Design Criteria and Construction Standards* and this Ordinance.
- (2) Conformity to the Comprehensive Plan – The general location of streets shall conform to the Master Thoroughfare Plan. For streets that are not shown on the Master Thoroughfare Plan, such as local residential streets, the arrangement of such streets shall:
 - a. Provide for the continuation or appropriate projection of existing streets or street stubs from or into surrounding areas (refer to street stub and connectivity requirements outlined in this Section);
 - b. Conform to any plan for the neighborhood approved or adopted by the City to address a particular situation where topographical or other conditions make continuance or conformity to existing streets impractical; and
 - c. Not conflict with existing or proposed streets or driveway openings, including those on the opposite side of an existing or planned thoroughfare, as described within the *Design Criteria and Construction Standards*. New streets shall align with opposite streets and driveway openings such that median openings can be shared.
- (3) Relation to Adjoining Street System – The proposed street system shall extend all existing major streets and such existing secondary and local streets as may be necessary for convenience of traffic circulation and emergency ingress and egress.
- (4) Street Widths & Rights-of-Way – Street(s) widths and related rights-of-way shall be designed in accordance with the City's:
 - a. Master Thoroughfare Plan;

- b. *Design Criteria and Construction Standards*; and
- c. **Article V – Design and Development Standards**, if applicable to the subject property.

All streets shall be paved with a permanent type of pavement in accordance with the *Design Criteria and Construction Standards*.

(5) Street Names, Street Name Signs, and Traffic Control Signs

- a. Street Names – New streets shall be named so as to provide name continuity with existing streets, and so as to prevent conflict or “sound-alike” confusion with similar street names. All street names shall be approved by the Administrator prior to any Plat approval, and prior to approval of the Construction Plans. Street name suffixes such as "Place" or "Court" shall be designated on streets that are cul-de-sac streets. Suffixes such as "Boulevard" or "Parkway" shall be confined to designated arterial or collector streets. Street name prefixes such as "North," "South," "East," and "West" may be used to clarify the general location of the street, however the prefixes shall be consistent with the existing and established street naming and address numbering system of the general area in which the street is located.
- b. Street Signs –
 - i. The total cost of street signs and posts shall be borne by the owner for all intersections within or abutting the subdivision. Such signs shall be of a type approved by the City's designated official, and shall be installed by the owner as per City standards.
 - ii. Street signs shall be installed at all intersections providing access to development on a block prior to the issuance of a certificate of occupancy on that block. Block numbers are required on all street signs unless otherwise approved by the City's designated official.
- c. City Standards. All street name signs and traffic control signs shall conform to the City's details for street name sign design and the latest edition of the *Texas Manual of Uniform Traffic Control Devices*.

(6) Street Lengths

- a. See the block requirements in this Article for street length design requirements.
- b. A Preliminary Plat or Final Plat approved and adopted by City Council prior to the effective date of this Subdivision Ordinance shall be exempted from the street length requirement. However, the City may consider, and shall be

authorized to enforce, application of these requirements if major changes to the approved Preliminary Plat or Final Plat are sought by the applicant. Major changes include, but are not limited to:

- i. Rerouting or removal of streets; or
- ii. Increasing or decreased the lot count by five percent (5%) or more from the previously approved Preliminary Plat or Final Plat.

(7) Street Lighting – Street lighting shall be provided along all streets and thoroughfares and within the medians of divided roadways in accordance with the *Design Criteria and Construction Standards*. The Administrator shall be the responsible official for decisions related to street lighting.

(B) ALLEYS

Alleys shall be prohibited unless they are part of an approved Special District or Planned Development. If approved, alleys shall be constructed according to design criteria in the *Design Criteria and Construction Standards*.

6.5.4 ACCEPTANCE AND MAINTENANCE

(A) MAINTENANCE DURING CONSTRUCTION – The owner shall maintain all required public improvements during construction of the development, or shall provide proof that a separate entity will be responsible for the operations and maintenance of the facilities.

(B) SUBMISSION OF RECORD DRAWINGS – The City shall accept required public improvements when the owner’s engineer has certified to the Administrator, through submission of detailed “record” drawings of the project and filed copies of any off-site easements, unless otherwise noted within the Subdivision Ordinance, that the public improvements have been built in accordance with the approved Construction Plans. The City shall not accept improvements until the Final Plat is approved by the City and recorded at the County. Each record drawing sheet shall show all changes made in the plans during construction, and on each sheet, there shall be a “record” stamp bearing the signature of the engineer and date. Detailed requirements for such drawings are available in the office of Development Services.

(C) ACCEPTANCE OR REJECTION OF IMPROVEMENTS

- a. Responsible Official – The Building Official shall be responsible for inspecting all required public improvements shown in the Construction Plans, and for accepting completed subdivision improvements intended for dedication to the City.
- b. Final Inspection – After completion of all improvements (both public and private), franchise utilities, grading, and erosion control, the Building Official,

and other designated representatives (as applicable) will perform a final inspection before recommending acceptance of the improvements.

- c. Letter of Final Acceptance – If all improvements are completed, inspected, tested (if applicable), and determined by the City to be in conformance with this Subdivision Ordinance, the City’s design standards, and the approved construction plans, then the Building Official shall issue a Letter of Final Acceptance to the applicant, thereby notifying the applicant of the City’s acceptance.
- d. Meaning of Acceptance – Acceptance of the improvements shall mean that the owner has transferred all rights to all the public improvements to the City for title, use and maintenance.
- e. Rejection – The Building Official shall reject those improvements that were not inspected in accordance with the requirements herein or that fail to comply with the City’s standards and specifications. The City shall enforce the guarantee provided by agreement(s).

(D) DISCLAIMER – Approval of a Preliminary Plat or Final Plat by the Commission, or Construction Plans by the Administrator, shall not constitute acceptance of any of the public improvements required to serve the subdivision or development. No public improvements shall be accepted by the City except in accordance with this Section.

(E) ACCEPTANCE OF IMPROVEMENTS FOR LAND IN EXTRATERRITORIAL JURISDICTION (ETJ) – Where the improvements to be constructed under a Development Agreement are located within the City's ETJ and are to be dedicated to a County, the Building Official shall inform the County that the public improvements have been constructed in accordance with approved Construction Plans, and are ready for acceptance by the County.

(F) MAINTENANCE BOND FOLLOWING ACCEPTANCE – The applicant or applicant’s contractor shall furnish to the Building Official a sufficient maintenance bond with a reputable and solvent corporate surety registered with the State of Texas, in favor of the City, to indemnify the City against any failure, repair or maintenance of the public improvements. The bond shall be in effect for two (2) years from the date of final acceptance of the entire project. The bond, which is a part of the requirements for final acceptance, shall be a minimum of one hundred and ten percent (110%) of the value of the work constructed. Final acceptance shall be withheld until said maintenance bond is furnished to the City in a form acceptable by the City Attorney. Once the maintenance bond has been examined and approved by the City Attorney, the City Attorney shall certify the bond is valid and enforceable as provided by law prior to recommending acceptance by the Building Official. The applicant shall

reimburse the City for all related legal costs for review (this reimbursement shall be paid in full prior to filing of the Final Plat).

6.6 SUBDIVISION AGREEMENTS

6.6.1 PROPERTY OWNERS ASSOCIATIONS

(A) PURPOSE

The City's interest in the establishment of a Homeowners' Association (HOA) or Property Owners' Association (POA) (also referred to as "Association") for property development is to create an organization that owns and is responsible for maintaining, among other things, commonly owned properties, amenities, rights-of-way and riparian areas for the communal good of the development's property owners and residents.

(B) APPLICABILITY

An HOA shall be established for any development that contains any of the following: an amenity, private street(s), a Major Creek or tributary (as defined in Article VII), or thoroughfare screening. For purposes of this section, the terms "Homeowners' Association" and "Association" are interchangeable with the term "Property Owners' Association" for multi-family and non-residential developments.

(C) DESCRIPTIONS OF ELEMENTS REQUIRING A POA

Any one (1) or more of the following elements created as part of a development shall require formation and continued operation of a mandatory POA:

- (1) Amenity – Where proposed in conjunction with a development, the word "amenity" shall include, but not be limited to, the following:
 - a. Amenity center (i.e., private swimming pool, club house, tennis courts, etc.);
 - b. Private recreational facility;
 - c. Entry features;
 - d. Open space - voluntary or as required by zoning or Development Agreement;
 - e. Ponds;
 - f. Water fountains;
 - g. Water features;
 - h. Hike-and-bike trails; and
 - i. Other commonly owned facilities.
- (2) Major Creek – As generally regulated by **Article V** of this Ordinance.
- (3) Private Street – As generally regulated by **Article V** of this Ordinance; this shall include all infrastructure including streets, alleys, sidewalks and other appurtenances within designated access easements, as well as associated structures as follows:
 - a. Paving;
 - b. Security station structures and equipment (including gates, access card readers, perimeter security fencing, etc.);
 - c. Greenbelts and shared use paths; and
 - d. Other infrastructure necessary for vehicular circulation and neighborhood security.

(4) Thoroughfare Screening. – As generally regulated by **Article V** of this Ordinance.

(D) PROCEDURE

The establishment of a required POA shall occur in conjunction with the recordation of the subdivision Final Plat, and shall generally be established as follows:

- (1) Documents Submitted for Review – The Declaration, covenants and other necessary documents establishing the POA shall be submitted to the City for review by the City Attorney for conformance with this and other applicable ordinances prior to submission of the Final Plat. POA documents shall include descriptions of any amenities, private streets, stub streets, thoroughfare screening, Major Creek(s) or tributary(ies), and other areas for which the Association is responsible for maintenance, and shall outline the organization of the Association.
- (2) Review By City Attorney – All POA documents shall contain the items set forth in Section 6.6.1(F) and (G) and shall be reviewed by the City Attorney prior to recordation of the Final Plat. The applicant shall reimburse the City for all related legal costs for review of the POA documents. This reimbursement shall be paid in full prior to recordation of the Final Plat.
- (3) Recordation – All POA documents shall be recorded at the County prior to the recordation of the Final Plat. Two (2) copies of the recorded documents shall be submitted to Planning and Development Services Director prior to release of the Final Plat for recording.
- (4) Additional Phases – An additional phase to an existing subdivision is not required to establish a separate and distinct POA, provided that:
 - a. The existing, recorded Association documents are amended to incorporate the area of the new subdivision phase and to adopt the responsibility of its amenities, private streets, Major Creeks and tributaries, thoroughfare screening, and other areas for which the Association is responsible for maintenance;
 - b. The applicant shall provide a draft of the amended covenants to the City Attorney for review prior to recording the amendment; and
 - c. The applicant shall provide two (2) copies of the recorded amendment prior to release of the Final Plat for recording.

(E) NOTICE TO PURCHASERS

A residential developer shall be required to post notice in a prominent place at all model homes and sales offices stating the following:

- (1) That an HOA has been established for the subdivision;
- (2) That membership in the HOA is mandatory for all lot owners; and
- (3) That the developer is required to provide to any person, upon their request, a complete copy of the Association documents and a five (5)-year projection (at a minimum), of Association dues, income and expenses.

(F) GENERAL REQUIREMENTS

The following shall be set forth in a single Article in the POA documents:

- (1) A statement that membership in the Association is mandatory for all owners of property within the subdivision;

- (2) A listing of all required maintenance responsibilities, and where possible, the lot number(s), legal descriptions, street name(s), etc. as shown on the approved plat for areas to be the responsibility of the Association;
- (3) Covenants for maintenance assessments, which shall run with the land;
- (4) Responsibility for liability insurance and local taxes;
- (5) Statement that the authority for enforcement of Association rules and regulations is solely the responsibility of the Association and is not, in any way, the responsibility of the City;
- (6) Authority for the Association to secure funds from its members sufficient to meet its responsibilities. This authority shall include the ability to collect dues, to increase dues, to charge special assessments, and to place liens against property for failing to pay dues and assessments.
 - a. Dues shall be calculated based on a cost projection for the maintenance of all amenities and based on eventual build-out of the subdivision;
 - b. Dues shall not be based on calculations which include monies from the developer which will not be provided following the transfer of the Association from the developer to the lot owners.
 - c. Dues shall be required to be disclosed to all lot owners at the time of property purchase by the lot owners.
- (7) Provision that no amendment of the Association documents relating to maintenance of amenities, private streets, Major Creeks and tributaries, thoroughfare screening, any other Association-maintained area or facility, or related reserve funds (as applicable) shall occur without prior City approval;
- (8) Written release of liability for maintenance to benefit the City; written indemnification of the City outlining that under no circumstances shall the City be liable to the Association or any property owner or their respective heirs, executors, administrators, devisees, personal representatives, successors or assigns for any damages, injuries (including death), and/or liability resulting from any amenity, on the private streets, within or adjacent to any Major Creek or tributary, associated with any thoroughfare screening or common landscaping, or from any other Association-owned and maintained area or facility;
- (9) Written assurance of funds based on an accredited cost projection analysis within a specific reserve account of the Association for the maintenance and removal of amenities as determined by the City; and
- (10) Written consent giving the City the authority to take the actions for violations, including:
 - a. The City's ability to enter the property without liability to abate the violation, including the violation of City Ordinances;
 - b. The Association's indemnification to the City for any City action to abate such violations; and
 - c. The requirement that the Association shall reimburse the City for all costs associated with such actions; and
 - d. Authorization for the City to place a lien on the Association's property in the event the Association fails to reimburse the City for its costs; and
 - e. Authorization for the City to assess and place a lien for a pro rata share of the City's reimbursement on individual properties within the Association.; and
- (11) Other City requirements as applicable.

(G) SUPPLEMENTARY REQUIREMENTS

The HOA shall also comply with the following regulations, where applicable:

- (1) Association documents shall not overrule the landscaping or other provisions of Article V of this Ordinance by penalizing or restricting water conserving landscapes, or by requiring landscape materials that do not comply with this Ordinance's landscape requirements;
- (2) Amenities – When amenities are proposed in conjunction with a development, the applicant shall comply with the regulations of this Ordinance.
- (3) Private Streets – Whenever a public street becomes private following recordation, a POA is required to be established, if not already in existence, that would be responsible for owning and maintaining the converted streets and rights-of-way. The following regulations shall apply to any subdivision that includes private streets, except those that exist as of the effective date of this Ordinance.
 - a. The Association shall own and be responsible for the maintenance of private streets and appurtenances (such as alleys, storm sewers, sidewalks, barrier-free ramps, street lights and signs, etc.) and shall provide for the payment of dues and assessments required to maintain the private streets and appurtenances.
 - b. The Association documents shall state that if the specific approval or the Specific Use Permit for the Private Street Development is revoked or the private streets are otherwise converted to public streets, the reserve fund shall become the property of the City (see Article VII of this Ordinance for conversion process).
 - c. In addition to any other requirements set forth in this Section, the POA's documents shall specify the following:
 - i. That the streets within the development are private, that they are owned and maintained by the Association, and that the City has no obligation to maintain, repair or reconstruct the private streets.
 - ii. A statement that the City may, but is not obligated to, inspect private streets and require repairs necessary to ensure that the same are maintained to City standards.
 - iii. A statement that the Association may not be dissolved without the prior written consent of the City Council, which consent shall not be withheld by the City if it determines that an adequate reserve fund exists, and the streets and alleys are in satisfactory condition as determined by the Director of Public Works.
 - iv. That failure to bring the subdivision into compliance with the regulations may cause the City to revoke the specific approval or the Specific Use Permit for the Private Street Development and take appropriate action.
 - d. The POA's documents shall note that certain City services may not be provided in Private Street Developments. The services that may not be provided include, but are not limited to: police enforcement of traffic and parking ordinances and preparation of accident reports. Depending on the characteristics of the proposed development other services may not be provided.
 - e. The POA's documents shall contain a provision that requires the Association to provide unrestricted access to emergency vehicles, utility personnel, the

U.S. Postal Service, and governmental employees, agents or representatives in the performance of their official duties. All access gates shall be designed and constructed in accordance with emergency access policies in Article V of this Ordinance.

- (4) Major Creeks, Tributaries, Ponds and Water Features (100-Year Floodplain) – For single-family and two-family residential developments, the 100-year floodplain may be owned and maintained by an Association subject to City approval. The Final Plat shall reflect, and the Association’s documents shall provide:
 - a. City access for emergency vehicles, equipment and personnel and for the improvement and maintenance of the 100-year floodplain in the event they are not being properly maintained, as determined by the Director of Public Works; and
 - b. That the Association shall reimburse the City for all costs incurred by the City for maintenance.
- (5) Thoroughfare Screening – All subdivisions that are required to provide thoroughfare screening shall comply with the following:
 - a. The Association shall own and be responsible for the maintenance of all required screening walls and fences, landscaping, landscape edges, and landscape irrigation systems, and shall provide for the payment of dues and assessments required to maintain such improvements.
 - b. The Association documents shall state that the City has no obligation to maintain or reconstruct the screening walls and fences, landscaping, landscape edges, and landscape irrigation systems in the event of damage to such improvements.
 - c. The Association documents shall state that the City may, but is not obligated to, inspect screening walls and fences, landscaping, landscape edges, and landscape irrigation systems, and that the City may require maintenance and repairs necessary to ensure that such improvements are maintained to City standards.

(H) VIOLATIONS, REVOCATIONS & LIENS

- (1) The City will notify the Association of violations of any of the regulations specified within this Article.
- (2) Failure to bring the subdivision into compliance with these regulations may cause the City to revoke the specific approval of the Association.
- (3) The City shall have all lien, assessment and enforcement rights granted therein to the Association, and the City shall have the ability to enforce the liens and assessments, and avail itself of any other enforcement actions available to the City pursuant to State law and/or City regulations.

6.6.2 DEVELOPMENT AGREEMENT

- (1) The developer shall be required to enter into an agreement with the City which will govern his subdivision if there are pro rata payments, city participation and cost, escrow deposits or other future considerations, variances granted to this section or other nonstandard development regulation. This agreement shall be based upon the requirements of this Ordinance and shall provide the City with specific authority to complete the improvements required in the agreement in the event of failure by the developer and to recover the full legal cost of such measures. The City may

subordinate the developer's agreement to the prime lender if provided for in said agreement.

- (2) The development agreement shall be a legally binding agreement between the City and the developer specifying the individual and joint responsibilities of both the City and the developer. Unusual circumstances relating to the subdivision shall be considered in the developer's agreement such that the purpose of this section is best served for each particular subdivision. Such agreement may stipulate pro rata payments, City participation in unusual facilities, escrow deposits or other payments for future facilities, variances granted to this section and other particular aspects of the development. The agreement shall include a hold harmless indemnity clause agreeing to hold the City harmless against any claim arising out of the subdivision or development, or any actions taken therein.
- (3) The developer shall have a continuing responsibility under the developer agreement after the filing of the final plat and until all facilities and improvements required under the facilities agreement have been completed. When the construction of required improvements has proceeded to the point that certain parts of the subdivision are adequately served, the City Manager may release specified portions of the subdivision prior to the completion of all improvements. This shall not be done if the release of such improvements would jeopardize or hinder the continued construction of required improvements, and the agreement shall remain in force for all portions of the subdivision for which a release has not been executed.

6.6.3 ASSURANCE FOR COMPLETION AND MAINTENANCE

(A) ASSURANCE FOR COMPLETION

(1) Improvement Agreement and Security for Completion

When any of the required public improvements will be postponed and constructed after Final Plat approval and recordation, the Final Plat shall not be accepted for filing, nor shall it be approved, unless and until the applicant enters into an Improvement Agreement by which the applicant:

- a. Will complete the improvements;
- b. Warrants the improvements for a period of two (2) years following final acceptance by the City;
- c. Will provide a maintenance bond in the amount of one hundred and ten percent (110%) of the costs of the improvements for such period consistent with the requirements contained in subsection (5) below;
- d. Provides provisions for securing the obligations of the agreement consistent with this Section; and
- e. Outlines other terms and conditions as are agreed to by the applicant and the City, or as may be required by this Ordinance.

(2) Agreement to Run with the Land

The Improvement Agreement shall provide that the covenants and other items of agreement contained therein shall run with the land and shall bind all successors, heirs and assignees of the applicant. All existing owners shall be required to execute the agreement or provide written consent to the covenants and other items contained in the agreement.

(3) Approval by City Council

The City Council shall review the Improvement Agreement, and shall approve it, approve it with conditions, or deny it. The agreement shall also be subject to review by the City Attorney, and the applicant shall reimburse the City for all related legal costs for review. This reimbursement shall be paid in full prior to filing of the Final Plat.

(4) Security for Completion of Improvements.

- a. Type of Security – When any of the required public improvements will be constructed after approval and recordation of the Final Plat, the applicant shall guarantee proper construction of such postponed improvements, in accordance with the City's *Design Criteria and Construction Standards* and with this Ordinance, by a bond executed by a surety company holding a license to do business in the State of Texas, and acceptable to the City, on the form provided by the City. The performance bond shall be approved as to form by the City Attorney;
- b. Estimated Cost & Security Approval – Security shall be issued in the amount of one hundred and ten percent (110%) of the cost to construct and complete all required public improvements to the City's standards as estimated by the applicant's professional engineer, and as approved by the Administrator. Security shall be subject to the review and approval of the City Attorney. The applicant shall reimburse the City for all related legal costs for review (this reimbursement shall be paid in full prior to filing of the Final Plat).
- c. Security for Construction in Extraterritorial Jurisdiction (ETJ) – Where all or some portion of the proposed development is located in the City's ETJ, the security shall be in a form and shall contain such terms as are consistent with the City's interlocal agreements Rockwall County (as applicable) under Texas Local Government Code, Chapter 242. In cases where the requirements governing the form and terms of the security are defined in such an agreement, they will supersede any conflicting provisions within this Ordinance.