

PART I
SUBDIVISION AND DEVELOPMENT

Section I – General Provisions

A. Purpose and Intent

It is the purpose of *Part I Subdivision and Development Ordinance* of the City of Lake Worth to:

1. Provide for the orderly, safe, and healthful development of the area within the City in accordance with the City of Lake Worth Comprehensive Land Use Plan;
2. Promote and protect the health, safety, morals, and general welfare of the community by requiring that adequate streets, drainage facilities, and other public improvements are provided in all subdivisions;
3. Provide for adequate light, air, and privacy, to secure from fire, flood, and other danger, and to prevent overcrowding of the land and undue congestion of population;
4. Protect the character and the social and economic stability of all parts of the City and to encourage the orderly and beneficial development of all parts of the city;
5. Protect and conserve the value of land throughout the city and the value of buildings and improvements upon the land, and to minimize the conflicts among the uses of land and buildings;
6. Guide public and private policy and action in order to provide adequate and efficient transportation, water, sewer, drainage, schools, parks, and other public requirements and facilities;
7. Ensure that public facilities for water supply, drainage, disposal of sanitary and industrial waste, and parks are available for every building site and with adequate capacity to serve the proposed subdivision before issuance of a certificate of occupancy or release of utility connections or final inspection within the boundaries of the plat;
8. Prevent the pollution of air, streams, and ponds, to assure the adequacy of drainage facilities, to safeguard the water table, and to encourage the wise use and management of natural resources throughout the city in order to preserve the integrity, stability, and beauty of the community and the value of the land;
9. Preserve the natural beauty and topography of the city and to insure appropriate development with regard to these natural features;
10. Provide for open spaces through the most efficient design and layout of the land, including the use of average density in providing for minimum width and area of lots,

while preserving the density of land as established in the Zoning Ordinance of the City of Lake Worth;

11. Provide facilities which can be maintained without imposing a burden to the taxpayers; and
12. Provide accurate and complete plat records for the property within the city, all in accordance with a comprehensive plan; and
13. Assure that new development adequately and fairly participates in the dedication and construction of public infrastructure improvements that are necessitated by or attributable to the development or that provide value or benefit that makes the development feasible.

B. Short Title

This ordinance shall be known and may be cited as "The City of Lake Worth Subdivision Regulations Ordinance."

C. Authority

This ordinance is adopted under the authority of the constitution and laws of the State of Texas, including, particularly, Chapters 43 and 212 of the Texas Local Government Code, and the City Charter of the City of Lake Worth.

D. Jurisdiction

A plat for land within the city is required for approval before a person may:

1. Divide the land into two or more parts for the purpose of sale of one or more lots or for the development of lots and streets, alleys, squares, parks, or other parts intended to be dedicated to public use or for the use of the purchasers of lots; or
2. Obtain a permit for construction of a building upon a tract that has not been platted. Single family residences that are being remodeled, reconstructed, or otherwise improved by a value less than fifty percent of the appraised value of the residence are exempt from this requirement. In the event that the remodel, reconstruction, or other improvement equals or exceeds fifty percent of the appraised value of the residence, a plat shall be required.

E. Definitions

The following words and phrases, as used in this ordinance, shall have the meanings respectively ascribed to them herein. Definitions not expressly prescribed herein are to be construed in accordance with customary usage in municipal planning and engineering practices:

City. The City of Lake Worth, Texas, including all its governing and operating bodies.

City Council. The governing and legislative body of the City of Lake Worth.

City engineer. That person or group of persons appointed as city engineer.

City manager. That person appointed as city manager by the City Council, under the authority of the city charter, or his or her designated representative.

City planner. That person or group of persons appointed as city planner.

City secretary. That person appointed by the City Council under the authority of the city charter, including any deputies appointed by the City Council.

Commission. The City of Lake Worth Planning and Zoning Commission.

Comprehensive plan. The Comprehensive Land Use Plan of the city recommended by the Planning and Zoning Commission and adopted by the City Council, including all revisions.

Concept plan. A sketch or rough layout of the proposed development plans for use in the pre-application conference to be submitted by the developer and/or subdivider at a size and at a scale not less than 1" = 400'.

Developer. The legal or beneficial owner of a lot or of any land included in a proposed development, including the holder of an option or contract to purchase, or other person having enforceable proprietary interests in such land.

Development. The construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any structure; any mining, excavation, landfill, or land disturbance; and any use or extension of the use of land.

Development review committee. A committee of key staff members that provides a centralized, technical review of development plans.

Director of public works. The person under the supervision of the city administrator, who is appointed as the director of public works.

Dwelling unit. That area of a structure set aside for single-family living; a single family residence is one dwelling unit, a duplex is two dwelling units and each apartment of an apartment complex is a separate dwelling unit.

Engineer. A person authorized under the provisions of the Texas Engineering Registration Act to practice the profession of engineering.

Exaction requirement: a requirement imposed as a condition for approval of any type of plat, building permit, planned development district or other development permit

application to:

1. dedicate an interest in land for a public infrastructure improvement;
2. construct a public infrastructure improvement; or
3. pay a fee in lieu of constructing a public infrastructure improvement.

Floodway. The channel of a watercourse and the adjacent floodplain that must be reserved for the passage of the 100-year flood without cumulatively increasing the water surface more than one foot.

Floodplain easement. An easement provided along all natural or man-made drainage ways of a width that will contain the 100-year flood.

Floodplain. The land adjacent to a river, stream, or watercourse that would be inundated by a 100-year (one percent chance) flood.

Floodplain restrictions. Restrictions that apply only to developments within floodplain areas, including, but not limited to, the requirement of a floodplain development permit and a finished floor elevation of at least one foot above the 100-year flood elevation.

Lot. A parcel of land which is designated as a separate lot; identified by a lot number or symbol in an approved subdivision plat which has been properly filed of record in Tarrant County.

Plan for development: A plan outlining the proposed use(s) of a tract or tracts of land, which provides fair notice of the project and the nature of the permit sought. It includes, but is not limited to the following: an application for approval of a plat, an application for approval of zoning or a graphic depiction, or sketch, of the tract which reflects the proposed uses of land and their location within the tract(s) and the general layout of streets and parks or other open spaces.

Planning administrator. That employee or representative of the city in charge of the planning function for the city and charged with the implementation and enforcement of the subdivision, zoning, and other growth-related ordinances.

Plat: A preliminary plat, final plat, replat, short form plat, amending plat, filing plat, record plat, or other plat established and provided for in this Ordinance.

Plat, final. The final approved plat of any lot or lots to be recorded in the records of Tarrant County.

Plat, preliminary. The plat of any lot or lots of record that is not to be recorded of record but is only a proposed division of land for review and study by the city.

Plat, short-form. A subdivision of not more than three lots, which does not require the dedication or improvement of any street or the provision of easements for drainage or utilities or the extension or installation of new utilities which allows a short form process that eliminates the need for a preliminary plat.

Public facilities system: With respect to water, wastewater, roadway, drainage or parks, the facilities owned or operated by or on behalf of the city to provide services to the public, including existing and new developments and subdivisions. The public facilities system includes improvements to roads owned by the County or the State to the extent such improvements are necessitated by and attributable to a proposed development or subdivision.

Public infrastructure improvement: a water, wastewater, roadway, drainage or park facility that is a part of one or more of the city's public facilities systems.

Regulatory (100-year) flood. A flood having a one percent chance of occurrence in any given year. It is based on statistical analyses of streamflow records available for the watershed and analyses of rainfall and runoff characteristics in the general region of the watershed.

Replatting. The rearrangement of any part or all of any lot or lots, of a previously platted subdivision.

Shall, may. The word "shall," wherever used in this ordinance, will be interpreted in its mandatory sense; the word "may" shall be interpreted as permissive.

Street. A public way for vehicular traffic, whether designated as a street, highway, thoroughfare, parkway, throughway, road, avenue, boulevard, lane, private place, or however otherwise designated.

Types of Streets:

1. *Access or frontage road.* A street or road that provides access to adjacent properties along a freeway or expressway.
2. *Approach street.* A new or existing street not adjacent to a subdivision being developed but which provides access or improved access to such subdivision.
3. *Collector street.* A street that may be continuous through several neighborhoods, distributing traffic from the arterial street system. A collector street provides both land access and local traffic movements within neighborhoods.
4. *Cul-de-sac.* A short street terminating in a turnaround.
5. *Freeway or expressway.* A highway intended to move large volumes of traffic around and across the city without direct access to adjacent land.

6. *Local or residential street.* A street that provides direct access to abutting properties and connects to the collector street system. Residential streets should be short and discontinuous to discourage through traffic.
7. *Minor arterial.* A street that interconnects and augments the principal arterial system with more land access at a lower level of traffic mobility.
8. *Principal arterial.* A street that serves the major center of metropolitan activity, among the highest traffic volume corridors of trips into and out of the city. Due to the high traffic volume, direct access is controlled.
9. *Thoroughfare (major street).* Designates principal traffic thoroughfares more or less continuous across the city, which are intended to connect remote parts of the city or areas adjacent thereto and act as principal connecting streets with state and federal highways. Major streets are designated on the Comprehensive Land Use Plan of the City of Lake Worth.
10. *Industrial or commercial street.* A street intended to serve traffic within an area of industrial or commercial development.
11. *Private street.* A street providing direct access to abutting properties that connect to the city's street system and which is not owned, improved, or maintained by a governmental entity.
12. *Private place.* A cul-de-sac providing direct access to abutting properties that connect to the city's street system and which is not owned, improved, or maintained by a governmental entity.

Subdivider. A person, firm, association, corporation, syndicate, trust, or any other legal entity who subdivides or seeks to subdivide land into two or more lots, or who otherwise seeks to develop land in a manner that requires the submission of a plat. The term subdivider includes an owner or developer of land.

Subdivision. The development of a lot, tract, or parcel of land, or a division of a lot, tract, or parcel of land into two or more parts, lots, or sites for the purpose, whether immediate or future, of sale, division of ownership, building, or other development. Subdivision includes re-subdivision of land or lots that are part of a previously recorded subdivision.

Surveyor. A registered public surveyor licensed by the State of Texas to practice the profession of surveying.

Tract. An unplatted parcel of land described by metes and bounds and typically recorded in the county deed records.

Utility easement. An interest in land granted to the city, to the public in general, and/or to a private utility corporation for installing or maintaining utilities across, over, or

under private land, together with the right to enter thereon with machinery and vehicles necessary for the maintenance of the utilities.

F. Conformance Required

Proposed plats or subdivisions which do not conform to the policies and regulations shall be denied, or, in lieu of denial, disapproved conditioned on conformance with required conditions.

G. Nexus

There shall be an essential nexus between the requirement to dedicate rights-of-way and easements and/or to construct public works improvements in connection with a new subdivision and the need to offset the impacts on the city's public facilities systems created by such new development.

H. Adequate Public Facilities

1. Land proposed to be subdivided must be served adequately by essential public facilities and services, including water and wastewater facilities, roadway and pedestrian facilities, drainage facilities and park facilities. An application for a plat or development may be denied unless adequate public facilities necessary to support and serve the development exist or provision has been made for the facilities, whether the facilities are to be located within the property being platted or off-site.
2. It is necessary and desirable to provide for dedication of rights-of-way and easements for public works improvements to support new development at the earliest stage of the development process.
3. The city desires to assure both that impacts of new development are mitigated through contributions of rights-of-way, easements and construction of capital improvements, and that a new development be required to contribute not more than its proportionate share of such costs.
4. Proposed public works improvements serving new development shall conform to and be properly related to the public facilities elements of the city's adopted Master Plan, other adopted master plans for public facilities and services, and applicable capital improvements plans, and shall meet the service levels specified in such plans.

I. Timing of Dedication and Construction

1. The city shall require an initial demonstration that a proposed subdivision shall be adequately served by public facilities and services at the time for approval of the first development application that portrays a specific plan of development, including but not limited to a petition for establishing a planned development zoning district, or other overlay zoning district; or a developer's agreement; or an application for a preliminary or final plat.
2. The obligation to dedicate rights-of-way for or to construct one or more public works improvements to serve a new subdivision may be deferred until approval of a subsequent phase of the subdivision, at the sole discretion of the city engineer, upon written request of the property owner, or at the city's own initiative. As a condition of deferring the obligation, the city may require that the subdivider include provisions in the developers agreement, specifying the time for dedication of rights-of-way for or construction of public works improvements serving the subdivision.

Section II - Procedures

A. Development Review Committee

A development review committee is established to be composed of the planning administrator, city engineer, city administrator, public works director, building official, parks and recreation director, fire marshal, and other department directors as required. The planning administrator shall chair the development review committee and be responsible for coordinating and establishing committee procedures. The committee's general purpose is to assist developers and applicants through the development process in the most efficient manner possible. The committee's more specific purposes are to: (1) provide technical review; and (2) ensure compliance with development codes and ordinances. The committee's review comments will be consolidated by the planning administrator who will forward the comments in writing to the applicants. The planning administrator will then report to the Planning and Zoning Commission and City Council of the status of the application or case at the time of the Commission meetings or Council sessions.

B. Platting Procedures; Concept Plan

1. Prior to the submission of a preliminary plat, the subdivider may submit a concept plan for purposes of general review and comment by the development review committee. The general character of the development will be addressed, and items may be examined concerning zoning, utility service, street requirements, and other pertinent factors related to the proposed subdivision.

2. If a subdivider or person submits a concept plan or plan for development, the request shall be made in writing on a form prepared by the planning administrator and shall state that any proposed development concept discussed at the development review committee or other pre-platting conference is not intended as a plan for development or application for plat approval. If the request for the meeting is to submit a plan for development or application presenting a plan for development or plat, the planning administrator shall process the plan or application in accordance with subsections C and D hereof.

C. Completeness Determination

1. Every application for approval of any type of plat or plan for development approval shall be subject to a determination of completeness by the planning administrator.
2. No application shall be deemed complete and accepted for processing unless it is accompanied by all documents required by and prepared in accordance with the requirements of this Ordinance or other applicable ordinances. For a determination of completeness to be issued, an application must include the following:
 - a. A completed application form signed by the owner or the owner's authorized agent;
 - b. Every item, study and document required by this Ordinance or other applicable ordinances for the type of plat being submitted, or required for the plan for development;
 - c. A description of the project and proposed uses for the land; and
 - d. A non-refundable application submittal fee, as specified in the fee schedule.
3. The city manager is authorized to identify additional requirements for a complete application that are not contained within but are consistent with the application contents and standards set forth in this Ordinance and may establish a different number of copies of applications required to be submitted than established in this Ordinance.
4. A determination of completeness shall not constitute a determination of compliance with the substantive requirements of this Ordinance.

D. Determination of Completeness; Expiration

1. Not later than the tenth business day after the date an application is submitted, the planning administrator shall make a written determination whether the application constitutes a complete application. This shall include a determination that all information and documents required by this Ordinance for the type of plat being submitted or other requirements for a plan for development have been submitted. A determination that the application is incomplete shall be mailed to the applicant within such time period by United States Certified Mail at the address listed on the application. The determination shall specify the documents or other information needed to complete the application and shall state that the application will expire if the documents or other information is not submitted within 45 days after the date the application was submitted.
2. An application for approval of a plat or plan for development filed on or after the effective date of this ordinance shall be deemed complete on the 11th business day after the application has been received, if the applicant has not otherwise been notified that the application is incomplete. For purposes of this Section, the applicant shall be deemed to have been notified if the city has mailed a copy of the determination as provided in subsection 1.
3. The processing of an application by any city employee prior to the time the application is determined to be complete shall not be binding on the city as the official date of filing of the application. The official date of filing shall be the date described in subsection F.4. The incompleteness of an application shall be grounds for denial of the application regardless of whether a determination of incompleteness was mailed to the applicant.
4. An application for any type of plat or development plan approval shall be deemed to expire on the 45th day after the application is submitted to the planning administrator for processing if the applicant fails to provide documents or other information necessary to meet the requirements of this Ordinance or other applicable ordinances as specified in the determination provided to the applicant. Upon expiration, the application will be returned to the applicant together with any accompanying documents. Thereafter, a new application for approval of the preliminary plat or final plat must be submitted.
5. If the planning administrator issues two determinations of incompleteness regarding an application, the applicant shall pay a re-submittal fee before any additional application is approved by the City Council. The fee shall be in the amount of the

professional fees, including engineering and legal fees, if required, for the review of the application and supporting documents and issuance of comments plus an administrative fee of 20 percent of the total professional fees.

6. No vested rights accrue solely from the filing of an application that has expired pursuant to this section, or from the filing of a complete application that is subsequently denied.

E. Procedures for Short Form Plat Approval

1. In instances where the highly formalized final plat approval procedure is obviously not necessary, the short form platting procedure may be used. The short-form platting procedure waives the requirement for preliminary plat approval. The short-form platting process may be used when the planning administrator determines that an understanding of the development process and its effect on surrounding development may be gauged without the formal platting procedure, and that the protection and guidance of community development as a whole may be maintained without the use of the formal platting procedure.
2. All short-form plat submittals shall show the existing property being subdivided or re-subdivided in relation to the original tract or subdivision. In order to use the short-form plat approval procedure in lieu of the final plat approval procedure, the following conditions must be met:
 - a. Any parcel of land which may be determined to meet the following criteria may be submitted as a short-form plat and may be approved following the abbreviated procedures described below:
 - i) The subdivision does not exceed five acres in size nor include more than three lots.
 - ii) The subdivision or use of the land subdivided does not require any alteration of utility installations, streets, alleys, or building setback lines.
 - iii) The area to be subdivided conforms in size and shape to lots in the vicinity.
 - b. The short-form plat and supporting instruments are respectively drawn and compiled in compliance with the final plat specifications.
 - c. Each lot fronts upon dedicated public right-of-way or public access easement of appropriate width, or an additional width of right-of-way is indicated on the plat

in order to meet city standards.

F. Procedure for Preliminary Plat Approval

1. The subdivider shall prepare a preliminary plat of the proposed subdivision for submission to the city.
2. Copies of the preliminary plat (in the amount stipulated by the development review checklist provided with the application for a preliminary plat). Preliminary drainage plans shall be submitted to the city engineer at this time for review. The preliminary plat prints shall be folded in such a manner that the title block is easily read from the outside and have folded dimensions of 8 ½" x 14" or 9" x 12", unless otherwise approved by the development review committee prior to submittal.
3. A filing fee is required to be paid to the city at the time of the submittal, as stipulated in the City of Lake Worth Fee Schedule and as required by this Ordinance.
4. The preliminary plat shall be considered officially filed with the city after it is found to be in compliance with the provisions of these regulations by the development review committee, except for any requested waivers; and the date of such findings shall be considered the official filing date with the city.
5. At the time of filing with the city, the following notice shall be stamped on the face of each preliminary plat: "Preliminary Plat-For review purposes only."
6. After the planning administrator has issued a determination that the application is complete, the preliminary plats shall be distributed immediately upon receipt in accordance with the development review checklist provided with the application for a preliminary plat. The development review committee shall gather review comments and make a specific recommendation with regard to the technical aspects of the submittal. Such comments will be written and made available to the applicant. The city engineer shall make a rough proportionality determination in accordance with Section IV.D.
7. The planning administrator shall present a report to the Planning and Zoning Commission at the next regular meeting containing the results of the subdivision review. The report should include documents relative to the proposed subdivision's compliance with these regulations, the Comprehensive Land Use Plan, the zoning ordinance, and other plans, such as utility plans. The report may include comments from municipal departments or other agencies concerned with urban development.

8. Following review of the preliminary plat and other materials submitted in accordance with these regulations, and review with the subdivider on changes deemed advisable and the kind and extent of improvements to be made, the Planning and Zoning Commission shall, within 30 days of the official filing date with the city, approve, approve with modifications, or deny approval of the proposed preliminary plat; and if approved with modifications, the Planning and Zoning Commission shall express its approval as approval with modifications and state the conditions of such approval, if any, or if denied, shall express its denial and its reasons therefor.
9. The Planning and Zoning Commission shall, at the next regularly scheduled City Council meeting, submit the preliminary plat, with any conditions as established by the Planning and Zoning Commission, to the City Council for their consideration.
10. The City Council shall approve, approve with modification, or deny approval of the preliminary plat within 30 days after the plat is considered by the Planning and Zoning Commission.
11. Approval of a preliminary plat shall not constitute approval of the final plat. Rather it shall be deemed an expression of approval to the layout submitted on the preliminary plat as a guide to the preparation of the final plat.
12. The Planning and Zoning Commission shall, in its action on the preliminary plat, consider the physical arrangement of the subdivision and determine the adequacy of street and thoroughfare rights-of-way and alignment and the compliance of the streets and thoroughfares with the Comprehensive Land Use Plan, the existing street pattern in the area, and with any other applicable provisions of the Comprehensive Land Use Plan. The Planning and Zoning Commission shall also ascertain that adequate easements for proposed or future utility service and surface drainage are provided, and that the plat complies with the provisions of the zoning ordinance.
13. A notation of the action taken shall be entered into the records of the Planning and Zoning Commission.
14. Approval of the preliminary plat shall be valid for a period of 12 months from the date of approval, and the general terms and conditions under which the approval was granted will not be changed. The preliminary plat shall expire, unless a final plat is submitted within the 12 month period. The validity of the preliminary plat is extended for 12 months from the approval date of a partial final plat of any portion of the preliminary plat, and/or the acceptance of any community facilities installed by

the subdivider in the subdivision. The 12 month period may be extended by the city, based upon the written request of the subdivider and his explanation of mitigating circumstances.

15. The subdivider may choose to final plat portions of the preliminary plat in phases. If the subdivider chooses to final plat phases of the preliminary plat, the subdivider must provide a phase schedule at the time of preliminary plat submission indicating the schedule of final platting of each phase. Phases may be revised by submitting a revised preliminary plat to the Planning and Zoning Commission and City Council for approval.

G. Data Requirement for Preliminary Plat Submission

The subdivider shall submit copies of the preliminary plat as set forth in the development review checklist (provided with the application for a preliminary plat), and such plat shall be accompanied by or show the following information:

1. An accurate boundary survey, including a metes and bounds description prepared by a registered public surveyor, of the property with bearings and distances referenced to survey lines and established subdivisions, at a scale of one inch to 100 feet, unless prior approval for a variation in scale is obtained from the planning administrator.
2. The name and location of a portion of adjoining subdivisions shall be drawn to the same scale and shown in dotted lines adjacent to the tract proposed for subdivision in sufficient detail to show the actual existing streets and alleys and other features that may influence the layout and development of the proposed subdivision. Where adjacent land is not subdivided, the owner's name of the adjacent tract shall be shown.
3. The angle of intersection of the centerlines of all intersecting streets which are intended to be less than 90 degrees.
4. The location and widths of all streets, alleys, and easements proposed for the subdivision, and all known rights-of-way and/or easements within or affecting the area to be subdivided.
5. All proposed streets, alleys, easements, blocks, lots, building lines, parks, etc., with principal dimensions.
6. Proposed names of subdivisions and streets shall not have the same spelling or be similarly pronounced to that of any other subdivision or street located within the city.
7. Contours at five-foot intervals and except on terrain with less than a two percent grade, in which event, contours at two-foot intervals are required. The source of contour information will be placed on the plat. Contours are to be based on the National Geodetic Vertical Datum of 1929 (NGVD 1929). All easements or rights-

of-way necessary for drainage within or without the boundaries of the subdivision shall be reflected upon the preliminary drainage plan.

8. The title under which the proposed subdivision is to be recorded, and the name of the individual who prepared the plat.
9. A vicinity map, showing the location of the tract by reference to existing streets or highways.
10. Sites proposed to be reserved or dedicated for parks, schools, playgrounds, or other public uses.
11. The scale, north arrow, and date of preparation.
12. Each lot or block should be identified by number or letter.
13. The property owner's name, address, and telephone number.
14. A designation of the existing zoning of land within the subdivision and any zoning conflicts with proposed uses noted.
15. The location of the city limits line and zoning district boundaries if they traverse the subdivision, form part of the boundary of the subdivision, or are contiguous to such boundary.
16. If the proposed subdivision is a portion of a tract which is later to be subdivided in its entirety, then a preliminary plat of the entire tract shall be submitted.
17. Tax certificates indicating that all taxes on the land being subdivided by the applicant have been paid to the current year.
18. Preliminary drainage study with water and sewer layouts on a separate sheet for city engineer to review.

H. Procedure for Final Plat Approval

1. Within 12 months of the date of approval of the preliminary plat by the Commission and the City Council, unless extended by action of the city, the subdivider may submit a final plat for approval. Copies of the final plat, as noted in the development review checklist provided with the application for a final plat, together with two reproducible transparent drawings, shall be submitted to the Planning and Zoning Commission at least 30 days prior to the meeting at which consideration is desired. Plans for streets, water, and sewer service shall accompany the final plat in accordance with engineering requirements of *Part II, Design Criteria and Construction Standards*.

2. No final plat shall be accepted for processing until three copies of the corrected revised preliminary plat have been submitted to the city that reflect the City Council's approval, modifications, or stipulations.
3. The final plat shall conform substantially to the preliminary plat as approved, and it may constitute only that portion of the approved preliminary plat which is to be developed at the time; provided, however, that such portion conforms to all requirements of these regulations.
4. The official filing date with the City of the final plat shall be the date upon which the plat is found to be in compliance with the provisions of this ordinance by the planning administrator. The planning administrator shall make this determination within a reasonable period of time after receipt of the plat.
5. The Planning and Zoning Commission shall act on the final plat within 30 days after the official filing date with the City. If it is not disapproved within 30 days after filing with the City, the final plat shall be deemed approved by the Planning and Zoning Commission. A certificate showing the filing date with the City and failure to disapprove the plat within 30 days of that filing date shall be issued by the planning administrator on demand, and this certificate shall be sufficient in lieu of a written endorsement or other evidence of approval.
6. After review of the final plat and other material submitted therewith, the Commission shall determine whether: a) the plat is in proper form, b) the arrangement of the development proposed for the property being subdivided is in general conformance with the Comprehensive Land Use Plan, c) the development is consistent with zoning regulations, d) the subdivision complies with all the provisions of this ordinance, and the final plans for streets, drainage, water, and sewer have been approved by the city engineer, and e) an executed Developers Agreement has been submitted to the City. The Commission shall then approve or deny the plat, subject to final action by the City Council, as specified in paragraph 7. An example of an appropriate Developers Agreement may be found in *Appendix A of Section 1 of the City of Lake Worth Design Criteria and Construction Standards*.
7. The final plat shall then be submitted to the City Council for their consideration. The City Council shall approve or deny the final plat within 30 days after the plat is approved by the Planning and Zoning Commission or is considered approved by the inaction of the Commission. The plat shall be considered approved by the City Council unless it is disapproved within that period. A certificate showing the date on which the Planning and Zoning Commission acted on the plat, or the date on which the plat was considered approved by the inaction of the Commission, and failure of the Council to disapprove the plat within 30 days of that date shall be issued by the planning administrator on demand, and this certificate shall be sufficient in lieu of a written endorsement or other evidence of approval.
8. The City Council's approval of the final plat shall authorize the mayor and city secretary to execute the certificate of approval on the reproducible transparency of the

final plat.

9. The final plat shall then be filed of record by the city in the plat records of Tarrant County, but only after the mayor has officially signed the community facility agreements with reference to public improvements, dedications, and utilities. Approval and filing of the final plat does not constitute acceptance of the public improvements of the subdivision.
10. A subdivider, at his option, may obtain approval of a portion a subdivision, provided that it meets the requirements of *Section 8, Procedure for Preliminary Plat Approval, item 15*, and all the requirements of this ordinance with reference to such portion in the same manner as is required for a complete subdivision. If a subdivision and the final plat thereof are approved by the city in portions, each final plat of each portion is to carry the name of the entire subdivision and shall also bear a distinguishing letter, number, or subtitle. Block numbers shall run consecutively throughout the entire subdivision.

I. Data Requirement for Final Plat Submission

The subdivider of land on which approval has been obtained on a preliminary plat shall prepare and submit a final plat to the city. The final plat submission shall consist of two reproducible transparent drawings at a scale of one inch to 100 feet, unless prior approval for a variation in scale is obtained from the planning administrator. Copies of the reproducible transparency are not to exceed 24" by 36". The reproducible copies shall be prepared on mylar or equal stable base clear transparency material and be suitable for reproduction and for recording purposes. When necessary, the final plat may be on several sheets accompanied by an index sheet, showing the entire subdivision. For large subdivisions, the final plat may be submitted for approval progressively in sections satisfactory to the city. The final plat shall show the following:

1. A written legal description of the entire property by metes and bounds on the face of the plat, with bearings and distances referenced to survey lines and established subdivisions. The primary control points or monuments with descriptions and "ties" to such controls to which all dimensions, angles, bearings, and similar data on the plat shall be referred.
2. Tract boundary lines sufficient to locate the exact area proposed for subdivision, right-of-way lines of streets, easements, and other rights-of-way and property lines of all lots and other sites, with accurate dimensions, bearings or deflection angles and radii, arcs and central angles of all curves. The location of the city limits line shall also be indicated, if applicable.
3. The name and right-of-way width of each street or other right-of-way.
4. The location and dimensions of all easements.
5. Where building sites are located in the floodplain, the minimum finished floor

elevation of one foot above the 100-year flood elevation shall be written on the face of the plat for every lot or building site. Also, this note shall be affixed to the face of the plat:

"The City of Lake Worth reserves the right to require additional minimum finished floor elevations on any lot contained within this subdivision. The minimum elevations shown are based on the most current information available at the time the plat is filed and may be subject to change."

6. A number to identify each lot or site and each block.
7. Purposes for which sites, other than residential lots, are dedicated or reserved.
8. Minimum building setback lines.
9. Reference to recorded subdivision plats or adjoining land by record name, i.e., tract number, volume, and page.
10. The original survey title and abstract number.
11. The subdivision title, graphic scale, and north arrow.
12. The location of the point of intersection and points of tangency of street intersections, other than right-angle intersections.
13. A positive reference and identification of the plat, and general location sketch map and date of plat.
14. Owner's certificate or deed of dedication. The owner's certificate or deed of dedication shall be executed by all persons, firms, or corporations owning an interest in the property subdivided or platted and shall be acknowledged in the manner prescribed by the laws for the State of Texas for conveyances or real property. The owner's certificate or deed of dedication shall, in addition to the above requirements, contain the following:
 - a. An accurate description of the tract of land subdivided;
 - b. A statement and express representation that the parties joining in such dedication are the sole owners of such tract of land; and
 - c. An express dedication without reservation to the public for public use; the streets, alleys, rights-of-way, parks, school sites, and any other public areas shown on the plat.
15. Tax certificates, indicating that all taxes on the land being subdivided have been paid to the current year.

16. Final plans for required improvements specified in *Part II, Design Criteria and Construction Standards*.
17. Final plats circulated for review purposes shall bear the surveyor's name, registration number, and the registered surveyor designation.
18. The surveyor's certificate and seal with signature shall be placed on the mylar copies of the final plat, similar to the one shown below:

I, _____, do hereby certify that I prepared this plat from an actual and accurate survey of the land, and that the corner monuments shown thereon were properly placed under my supervision.

Signature

Date

19. A certificate of approval by the City Council including the date of approval, similar to the one shown below:

APPROVED BY THE CITY COUNCIL OF LAKE WORTH, TEXAS, on this ____ day of _____, _____.

ATTEST:

Mayor

City Secretary

J. Replats

1. A replat of a subdivision or part of a subdivision may be recorded and is controlling over the preceding plat without vacation of that plat if the replat:
 - a. Is signed and acknowledged by only the owners of the property being replatted;
 - b. Is approved by the City Council after a public hearing on the matter at which parties in interest and citizens have an opportunity to be heard;
 - c. Does not attempt to amend or remove any covenants or restrictions; and
 - d. Is in compliance, when applicable, with subsections 2, 3, and 4 below.
2. In addition to compliance with the above, a replat without vacating the preceding plat must conform to the requirements of this section if any of the proposed area to be re-subdivided or replatted was, within the immediate preceding five years, limited by an interim or permanent zoning classification to residential use for not more than two residential units per lot, or if any lot in the preceding plat was limited by deed restriction to residential use for not more than two residential units per lot:

- a. Notice of the public hearing shall be given no less than 15 days prior to the day of the hearing in the following manner:
 - i) Publication of the hearing notice in the official newspaper or a newspaper of general circulation; and
 - ii) Written notice, with a copy of subsection (b) attached thereto, of the public hearing forwarded to the owners (as the ownerships appear on the last approved municipal tax roll) of all lots in the original subdivision and that are within 200 feet of the lots to be replatted. The notice may be served by depositing it properly addressed and postage paid in a post office or postal depository within the city.
 - b. If the proposed replat requires a variance and is protested in accordance with this subsection, the proposed replat must receive the affirmative vote of at least three-fourths of the members present of the Planning and Zoning Commission and City Council in order to be approved. For a legal protest, written instruments signed by the owners of at least 20 percent of the area of the lots or land immediately adjoining the area covered by the proposed replat and extending 200 feet from that area, but within the original subdivision, must be filed with the Planning and Zoning Commission and City Council prior to the closing of the public hearing. In computing the percentage of land area under this section, the area of streets and alleys shall be included.
3. Compliance with subsection 2(b) is not required for approval of a replatting of a portion of a prior plat if the area to be replatted was designated or reserved for other than single or duplex-family residential use by notation on the last legally recorded plat or in the legally recorded restrictions applicable to the plat.
 4. Replats shall be subject to a filing fee as approved on the City of Lake Worth Fee Schedule and shall be accompanied by certified copies of the entire subdivision plat and the deed restrictions and covenants.
 5. A preliminary plat shall be required in cases where a replat involves the reconfiguration of more than three lots.

K. Amending / Correction Plats

1. Notwithstanding any other provision of the above section H, the city is authorized to approve and issue an amending plat which is signed by the applicants only, and which is for one or more of the purposes set forth in the following subparagraphs (a) through (k), and such approval and issuance shall not require notice, hearing or approval of other lot owners. Amending/correction plats in accordance with the provisions of this section may be approved by the planning administrator if the sole purpose of the amending plat is to:
 - a. Correct an error in any course or distance shown on the prior plat;

- b. Add any course or distance that was omitted on the prior plat;
- c. Correct an error in the description of the real property shown on the prior plat;
- d. Indicate monuments set after death, disability, or retirement from practice of the surveyor charged with the responsibilities for setting monuments;
- e. Show proper location or character of any monument which has been changed in location or character or which originally was shown at the wrong location or incorrectly as to its character on the prior plat;
- f. Correct any other type of scrivener or clerical error or omission as previously approved by the city; such errors and omissions may include, but are not limited to, lot numbers, acreage, street names, and identification of adjacent recorded plats;
- g. Correct an error in courses and distances of lot lines between two adjacent lots where both lot owners join in the application for plat amendment, and neither lot is abolished; provided that such amendment does not attempt to remove recorded covenants or restrictions and does not have a material adverse effect on the property rights of the other owners in the plat;
- h. Relocate a lot line in order to cure an inadvertent encroachment of a building or improvement on a lot line or on an easement;
- i. Relocate one or more lot lines between one or more adjacent lots where the owner or owners of all such lots join in the application for the plat amendment, provided that such amendment does not:
 - i) Attempt to remove recorded covenants or restrictions; or
 - ii) Increase the number of lots; or
 - iii) Remove or otherwise abandon any easement or right-of-way.
- j. To make necessary changes to the preceding plat to create six or fewer lots in the subdivision or part of the subdivision covered by the preceding plat if:
 - i) The changes do not affect applicable zoning and other regulations of the municipality;
 - ii) The changes do not attempt to amend or remove any covenants or restrictions; and
 - iii) The area covered any the changes is located in an area that the Planning and Zoning Commission or other appropriate governing body of the

municipality has approved, after a public hearing, as a residential improvement area; or

- k. To replat one or more lots fronting on an existing street if:
 - i) The owners of those lots join in the application for amending the plat;
 - ii) The amendment does not remove recorded covenants or restrictions;
 - iii) The amendment does not increase the number of lots; and
 - iv) The amendment does not create or require creation of a new street or make necessary the extension of municipal facilities.
2. Plats submitted under this section shall be subject to a filing fee as approved on the City of Lake Worth Fee Schedule and shall be accompanied by certified copies of the entire subdivision plat and the deed restrictions and covenants.

L. Vacation of Plats

1. A plat may be vacated by the owners of the land covered by the plat at any time before a lot in the plat is sold. If lots have been sold, the plat, or any part of the plat, may be vacated upon the application of all the owners of lots in the plat and obtained in the manner prescribed for the original plat.
2. Plats submitted under this section shall be subject to a filing fee as approved on the City of Lake Worth Fee Schedule and shall be accompanied by certified copies of the entire subdivision plat and the deed restrictions and covenants.

M. Plat Filing Fees

1. *Preliminary plat.* A filing fee, as approved on the City of Lake Worth Fee Schedule, shall be paid at the time of submission of the preliminary plat for review by the Planning and Zoning Commission and the City Council.
2. *Final plat.* A filing fee, as approved on the City of Lake Worth Fee Schedule, shall be paid at the time of submission of the final plat for checking and approval by the Planning and Zoning Commission and City Council.
3. *Short-form, amending / correction plat.* A filing fee, as approved on the City of Lake Worth Fee Schedule, shall be paid at the time of submission of the short-form or amending/correction plat for review and approval by the Planning and Zoning Commission, City Council, or the development review committee, as applicable.

Section III – Subdivision Design Standards

A. Minimum Subdivision Design Standards

1. The standards established in this Ordinance and the Design Criteria for dedication and construction of public works improvements and infrastructure are based upon engineering studies and historical usages and demands by different categories of development. These regulations identify certain minimum requirements and sizes for utilities, roadways, parks and other facilities that the City Council has determined to be necessary in order to provide the minimum level of service necessary to protect or promote the public health, safety, and welfare and to assure the quality of life currently enjoyed by the citizens of Lake Worth. It is the intent of these regulations that no development occurs until and unless these minimum levels of service are met. Therefore, each subdivision in the city shall be required to dedicate, construct and/or upgrade required facilities and infrastructure to a capacity that meets these minimum levels.
2. For each category of public infrastructure, a minimum standard of infrastructure, and in some cases, service level, has been developed based upon historic studies and construction projects of the city and other cities. These minimum standards take into consideration the soil conditions and topographic configuration of the city, the use and impact analyses of the North Central Texas Council of Governments in developing standard specifications for public works installation, and other historical use and performance experiences of the city that reflect the minimum level of facilities and services that must be built to meet the health, safety and welfare of the citizens of Lake Worth.
3. In order to maintain prescribed levels of public facilities and services for the health, safety and general welfare of its citizens, the city may require the dedication of easements and rights-of-way for or construction of on-site or off-site public works improvements for water, wastewater, road, drainage or park facilities to serve a proposed subdivision, or require the payment of fees in lieu thereof. If adequate levels of public facilities and services cannot be provided concurrent with the schedule of development proposed, the city may deny the subdivision until the public facilities and services can be provided, or require that the development be phased so that the availability and delivery of facilities and services coincides with the demands for the facilities created by the development.
4. Whenever the City Council determines that levels of service in excess of these minimum standards are necessary in order to promote the orderly development of the

city, the owner shall qualify for reimbursement for any costs in excess of the minimum levels of service through city participation, to the extent funds are available by a pro rata reimbursement policy or other means adopted by the city.

B. Adequacy of Specific Facilities

1. All lots to be platted shall be connected to a public water system which has capacity to provide water for domestic use and emergency purposes, including adequate fire protection. Additional requirements are identified in Section XI, *Part II Design Criteria and Construction Standards, Water*.
2. All lots to be platted shall be served by an approved means of wastewater collection and treatment. The city engineer shall be responsible for determining the approved means of wastewater collection and treatment. The city may require the phasing of development and/or improvements in order to maintain adequate wastewater capacity. Additional requirements are identified in Section XII, *Part II Design Criteria and Construction Standards, Wastewater*.
3. Proposed roads shall provide a safe, convenient and functional system for vehicular, bicycle and pedestrian circulation and shall be properly related to the applicable thoroughfare plan and any amendments thereto, and shall be appropriate for the particular traffic characteristics of each proposed subdivision or development. New subdivisions shall be supported by a thoroughfare network having adequate capacity, and safe and efficient traffic circulation. Each development shall have adequate access to the thoroughfare network. Additional requirements are set forth in Section X, *Part II Design Criteria and Construction Standards, Street Improvements*.
4. Drainage improvements serving new development shall be designed to prevent overloading the capacity of the downstream drainage system. The city may require the phasing of development, the use of control methods such as retention or detention, the construction of off-site drainage improvements, or drainage impact fees in order to mitigate the impacts of the proposed subdivision. Additional requirements are identified in Section XII, *Part II Design Criteria and Construction Standards, Drainage and Storm Sewer*.
5. Alley standards are contained in *Part II Design Criteria and Construction Standards, Section V Alleys*.
6. Block standards are contained in *Part II Design Criteria and Construction Standards*,

Section III Blocks.

7. Sidewalk standards are contained in *Part II Design Criteria and Construction Standards, Section VII Sidewalks.*
8. Lot standards are contained in *Part II Design Criteria and Construction Standards, Section IV Lots.*
9. Easement standards are contained in *Part II Design Criteria and Construction Standards, Section V Easements*".

C. Building Setback Lines

Building setback lines which vary from the requirements of the zoning ordinance shall be shown on all lots intended for residential, institutional, commercial, or industrial use. Plats where the building setback line conforms to the zoning ordinance of the City of Lake Worth shall state such conformance on the face of the plat.

D. Developers Agreement

1. Before construction starts on any private or public improvements in a subdivision, the subdivider shall execute a contract with the City providing for the installation of public improvements required by the development regulations of the City. This agreement, entitled "Developers Agreement," shall constitute a covenant which will run with the land and will be binding upon any assignee or owner in the chain of title. The Developers Agreement shall be in the form provided in *Appendix A of Section 1 of the City of Lake Worth Design Criteria and Construction Standards.*
2. After execution of the Developers Agreement by the subdivider and the City, any changes in the contract or the plans or specifications that alter the scope of the project must be recommended by the City engineer and approved by the city attorney and the City Council. Upon approval, an addendum to the Developers Agreement shall be executed by the subdivider and the City.

Section IV – Administration and Amendments

A. Building Permits

1. The city shall withhold all city improvements and services, including the furnishing of sewerage facilities and water service, and all franchise service under control of the city, from subdivisions which have not been approved in accordance with these regulations and *Part II Design Criteria and Construction Standards.*
2. A building permit may be issued after completion of water and sewer improvements, and installation of curb and gutter, when the developer elects to provide cash or an

irrevocable letter of credit to cover the remaining cost of the community facilities not completed at the time building permits are issued. Should a developer not provide this security, he will be issued building permits only upon final completion and acceptance of all community facilities by the city.

3. In the C, I, P-C, P-I, and M-PD zoning districts, a building permit may be issued after the engineering plans have been approved by the city engineer, and the Developers Agreement has been executed and upon the posting of security, as specified in *Appendix A of Section 1 of the City of Lake Worth Design Criteria and Construction Standards*. This provision applies only when there is to be no street construction or street improvements. (Street construction or street improvements fall under the provisions of paragraph 2 above).
4. No occupancy permits shall be issued for any structure or building on any lot, tract or parcel, and no structure or building shall be occupied, unless and until the required public improvements are installed, connected, and are functioning properly and have been accepted by the city.

B. Waivers from Subdivision Regulations and Design Standards

Waivers from *Part I Subdivision and Development* and *Part II Design Criteria and Construction Standards* may be approved as follows:

The City Council of the City of Lake Worth, after recommendation by the Planning and Zoning Commission, shall have the ultimate power to grant or reject waivers to the Subdivision and Development Regulations and Design Criteria and Construction Standards. The City Council may authorize a waiver from these regulations when, in its opinion, undue hardship will result from requiring strict compliance. In granting a waiver, the City Council shall prescribe only conditions that it deems necessary or desirable to protect the public interest. In making the findings hereinbelow required, the City Council shall take into account the nature of the proposed use of the land involved, existing uses of land in the vicinity, the number of persons who will reside or work in the proposed subdivision, and the probable effect of such waiver upon traffic conditions and upon the public health, safety, convenience, and welfare in the vicinity. No waiver shall be granted unless the City Council finds:

1. That there are special circumstances or conditions affecting the land involved such that the strict application of the provisions of these regulations would deprive the applicant of the reasonable use of the land; and
2. That the waiver is necessary for the preservation and enjoyment of a substantial property right of the applicant; and
3. That the granting of the waiver will not be detrimental to the public health, safety, or welfare, or injurious to other property in the area; and
4. That the granting of the waiver will not have the effect of preventing the orderly

subdivision of other land in the area in accordance with the adopted Comprehensive Land Use Plan and the provisions of these regulations; or

5. That the waiver is necessary as a result of the city engineer's determination regarding the rough proportionality of an exaction requirement.

Such findings, together with the specific facts upon which such findings are based, shall be incorporated into the official minutes of the City Council meeting at which such waiver is granted. Waivers may be granted only when in harmony with the general purpose and intent of the adopted Comprehensive Land Use Plan and these regulations so that the public health, safety and welfare may be secured and substantial justice done. Waivers of regulations contained in *Part II, Design Criteria and Construction Standards* may only be granted based on the showing by the developer's engineer that the alternative standards provide the same degree of protection that the original standards would provide. Pecuniary hardship standing alone shall not be deemed to constitute undue hardship.

C. Amendments

1. Amendments to *Part I Subdivision and Development* shall be adopted by official action of the City Council after recommendation from the Planning and Zoning Commission.
2. Amendments to *Part II Design Criteria and Construction Standards* shall be adopted by official action of the City Council after recommendation from the Planning and Zoning Commission except that if amendment of a design standard is required due to a change in federal or state law, or a finding by the director of public works, in consultation with the city engineer, or other affected city department director, that the amendment is necessary due to changes in generally accepted engineering principles or Best Management practices, the director of public works may recommend, and the city manager may approve, such amendments that satisfy one or more of these criteria. A person aggrieved by such an amendment may appeal the adoption of the amendment to the City Council within 30 days of its adoption.

D. Determination of Rough Proportionality

Prior to a decision for a plat, plan for development or other permit for which an exaction requirement is imposed as a condition of approval, the city engineer shall prepare a written statement affirming that each exaction requirement to be imposed as a condition of approval is roughly proportionate to the demand created by the subdivision or development on the applicable public facilities system of the city, taking into consideration the nature and extent of the development proposed. In making this determination, the city engineer may consider:

1. categorical findings and recommendations of the North Central Texas Council of Governments in developing standard specifications for public infrastructure

- improvements and storm water management;
2. the proposed and potential use of the land;
 3. the timing and sequence of development in relation to availability of adequate levels of public facilities systems;
 4. impact fee studies, traffic impact studies (both geometric and capacity oriented), drainage studies, fire protection consumption and irrigation water needs, solid or liquid waste collection or disposal, or other studies that measure the demand for services created by developments and the impact on the city's public facilities system;
 5. level of service and functionality of both on-site and off-site public infrastructure improvements in serving the proposed subdivision or development;
 6. the degree to which public infrastructure improvements necessary to serve the proposed subdivision are supplied by other developments;
 7. the anticipated participation by the city in the costs of necessary public infrastructure improvements;
 8. the degree to which acceptable private infrastructure improvements to be constructed and maintained by the applicant will offset the need for public infrastructure improvements;
 9. any reimbursements for the costs of public infrastructure improvements for which the proposed subdivision is eligible; and/or
 10. any other information relating to the impacts created by the proposed subdivision or development on the city's public facilities systems.

E. Affirmation

Based upon the proportionality determination, the city engineer shall affirm that the exaction requirements of this Ordinance, or other applicable ordinance, as applied to the proposed subdivision or development, do not impose costs on the applicant for public infrastructure improvements that exceed those roughly proportionate to the impact of the proposed subdivision or development.

F. Information

The city engineer may require that the applicant, at its expense, submit any information or studies that may assist in making the proportionality determination.

G. Rough Proportionality Determination

1. The Planning and Zoning Commission and City Council shall consider the city engineer's report concerning the proportionality of the exaction requirements in making a decision on a plat application. The Planning and Zoning Commission and the City Council may consider the city engineer's report in granting a waiver to the requirements of this Ordinance or in making a decision to participate in the costs of improvements.
2. The city official responsible for issuing a permit for which an exaction requirement is imposed as a condition of approval shall consider the city engineer's report concerning the proportionality of the exaction requirements in making its decision as to whether to grant the permit or to modify or waive an exaction requirement.

H. Rough Proportionality Appeal

1. An applicant for approval of plat or permit which imposes an exaction requirement as a condition of approval may file an appeal to contest any exaction requirement, other than impact fees, imposed as a condition of approval or in which the failure to comply is grounds for denying the application pursuant to this Ordinance.
2. The purpose of a proportionality appeal is to assure that an exaction requirement imposed on a proposed plat or permit as a condition of approval does not result in a disproportionate cost burden on the applicant, taking into consideration the nature and extent of the demands created by the proposed subdivision or development on the city's public facilities systems.

I. Appeals Procedure

1. An applicant seeking approval of a plat, plan for development or any other permit or zoning for which an exaction requirement is imposed shall file a written appeal with the city secretary within 10 days of the date the Planning and Zoning Commission or the city official responsible for issuing the permit takes action applying the exaction requirement. This may include denial of the permit or plat. The applicant shall submit 15 copies of the appeal.

2. A separate appeal form shall be submitted for each exaction requirement for which relief is sought. The city secretary shall forward the appeal to the City Council for consideration.
3. The applicant may request postponement of consideration of the applicant's plat application by the City Council pending preparation of the study required by subsection 6., in which case the applicant shall also waive any the statutory period for acting upon the application for the time necessary for the City Council to decide the appeal.
4. No Developers Agreement may be executed by the city:
 - a. until the time for appeal has expired unless the applicant agrees in writing that the rough proportionality determination of the city engineer is reasonable and accurate and that no appeal will be filed; or,
 - b. if an appeal is filed, until the City Council has made a determination with respect to the appeal.
5. The appeal shall state the reasons that application of the exaction requirement is not roughly proportional to the nature and extent of the impact created by the proposed subdivision or development on the city's public facilities systems and does not reasonably benefit the proposed subdivision or development.
6. The appellant shall submit to the city engineer 15 copies of a study in support of the appeal that includes, with respect to each specific exaction requirement appealed, the following information within 30 days of the date of appeal, unless a longer time is requested:
 - a. total capacity of the city's water, wastewater, roadway, drainage, or park system, as applicable, to be utilized by the proposed subdivision or 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 subdivision. If the proposed subdivision is to be developed in phases, such information also shall be provided for the entire development, including any phases already developed;
 - b. total capacity to be supplied to the city's public facilities systems for water, wastewater, roadway, drainage or parks, as applicable, by the exaction

requirement. This information shall include any capacity supplied by prior exaction requirements imposed on the development;

- c. comparison of the capacity of the applicable city public facilities systems to be consumed by the proposed subdivision or development with the capacity to be supplied to such systems by the proposed exaction requirement. In making this comparison, the impacts on the city's public facilities systems from the entire subdivision or development shall be considered;
 - d. the amount of any city participation in the costs of oversizing the public infrastructure improvements to be constructed by the applicant in accordance with the city's requirements;
 - e. comparison of the minimum size and capacity required by city standards for the applicable public facilities systems to be utilized by the proposed subdivision or development with the size and capacity to be supplied by the proposed exaction requirement; and
 - f. any other information that shows the alleged disproportionality between the impacts created by the proposed development and the exaction requirement imposed by the city.
7. The city engineer shall evaluate the appeal and supporting study and shall make a recommendation to the City Council based upon the city engineer's analysis of the information contained in the study and utilizing the same factors considered by the engineer in making the original proportionality determination.

J. City Council Decision

1. The City Council shall decide the appeal within 30 days of the date of final submission of any evidence by the applicant. Upon receipt of the final submission of evidence from the applicant, the city secretary shall schedule a time and date for the City Council to consider the appeal and shall cause the applicant to be notified at the address specified in the appeal form of the time, date and location at which the City Council shall consider the appeal.
2. The applicant shall be allotted time, not to exceed 30 minutes, to present testimony at the City Council meeting. The Council shall base its decision on the criteria listed in Subsections D and I.6 and may:

- a. deny the appeal and impose the exaction requirement in accordance with the city engineer's recommendation or the Planning and Zoning Commission's decision on the plat or other development application; or
 - b. grant the appeal, and waive in whole or in part an exaction requirement to the extent necessary to achieve proportionality; or
 - c. grant the appeal, and direct that the city participate in the costs of acquiring land for or constructing the public infrastructure improvement.
3. In deciding an appeal, the City Council shall determine whether application of the exaction requirement is roughly proportional to the nature and extent of the impact created by the proposed subdivision on the city's public facilities systems for water, wastewater, roadway, drainage, or park facilities, as applicable, and reasonably benefits the subdivision. In making such determination, the Council shall consider:
 - a. the evidence submitted by the applicant;
 - b. the city engineer's report and recommendation, considering in particular the factors identified in Subsections D and I.6 and
 - c. if the property is located within the city's extraterritorial jurisdiction, or is adjacent to a state or county road, any recommendations from the county or state.
 4. The City Council may require the applicant or the city engineer to submit additional information that it deems relevant in making its decision.
 5. The applicant shall not be deemed to have prevailed in the event that the City Council modifies the exaction requirement.

K. Action Following Decision of City Council

1. If the City Council finds in favor of the applicant and waives the exaction requirement as a condition of plat approval, or modifies the exaction requirement to the extent necessary to achieve rough proportionality, the applicant shall resubmit the plat application to the Planning and Zoning Commission or city official responsible for issuing the permit within 30 days of the date the City Council takes action, with any modifications necessary to conform the plat with the City Council's decision. Failure to do so will result in the expiration of any relief granted by the City Council.

2. If the City Council finds in favor of an applicant for any other permit and waives the exaction requirement as a condition of permit approval, or modifies the exaction requirement to the extent necessary to achieve rough proportionality, the applicant shall resubmit the permit application to the responsible official within 30 days of the date the City Council takes action, with any modifications necessary to conform the application with the City Council's decision. Failure to do so will result in the expiration of any relief granted by the City Council.
3. If the City Council denies the appeal and the applicant has executed a waiver of the statutory period for acting upon a plat, the city shall place the plat application on the agenda of the Planning and Zoning Commission within 30 days of the City Council's decision.
4. If the plat application is modified to increase the number of residential dwelling units or the intensity of non-residential uses, the plan administrator or city engineer may require a new study to validate the relief granted by the City Council.
5. If the plat application for which relief was granted is denied on other grounds, a new appeal shall be required on any subsequent application.

L. Appeal of City Council Decision

An applicant may appeal the decision of the City Council to the county or district court of the county in which the development is located within 30 days of the date that the Council issues its final decision. In the event that the applicant prevails in such action, the applicant will be entitled to attorneys' fees and costs, including expert witness fees.