

ORDINANCE NO. 45-2006

AN ORDINANCE AMENDING CHAPTER 23, "PLANNING AND COMMUNITY DEVELOPMENT," SUBPART D, "SUBDIVISION REGULATIONS," OF THE ABILENE MUNICIPAL CODE, BY AMENDING CERTAIN SECTIONS AS SET OUT BELOW; PROVIDING A SEVERABILITY CLAUSE; DECLARING A PENALTY; AND CALLING A PUBLIC HEARING.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS:

PART 1: That Chapter 23, Subpart D, "Subdivision Regulations," of the Abilene Municipal Code be amended as set out in Exhibit "A," attached hereto and made a part of this ordinance for all purposes.


PART 2: That if any provision or any section of this ordinance shall be held to be void or unconstitutional, such holding shall in no way affect the validity of the remaining provisions or sections of this ordinance, which shall remain in full force and effect.

PART 3: That any person, firm or corporation violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not more than Five Hundred Dollars (\$500.00). Each day such violation shall continue or be permitted to continue shall be deemed a separate offense. Said ordinance, being a penal ordinance, becomes effective ten (10) days after its publication in the newspaper, as provided by Section 19 of the Charter of the City of Abilene.

PASSED ON FIRST READING this 24<sup>th</sup> day of August, 2006.


PASSED ON SECOND AND FINAL READING THIS 14<sup>th</sup> day of September, 2006.

ATTEST:

  
\_\_\_\_\_  
CITY SECRETARY

  
\_\_\_\_\_  
MAYOR

APPROVED:

  
\_\_\_\_\_  
CITY ATTORNEY

**Section 23-260**

**DELETE:**

1. General Policy. The subdivider shall pay all design, engineering, labor, and construction costs for facilities required by this chapter, except to the extent that this section specifically provides for full or partial payment by the City of Abilene. The provisions of this section shall apply to resubdivisions as well as to subdivisions.

**ADD:**

1. General Policy. The subdivider shall pay all design, engineering, labor, and construction costs for facilities required by this chapter, except to the extent that this section specifically provides for full or partial payment by the City of Abilene. The provisions of this section shall apply to resubdivisions as well as to subdivisions.

(A) Adequate Public Facilities Policy

(1) Adequate Service for Areas Proposed for Development.

- (a) Land proposed for development in the City and the City's Extraterritorial Jurisdiction must be served adequately by essential public facilities and services, including water, wastewater, roadway, and drainage facilities.
- (b) Land shall not be approved for platting or development unless and until adequate public facilities necessary to serve the development exist or provision has been made for the facilities, whether the facilities are to be located within the property being developed or off-site.

(2) Responsibilities of the Developer to Provide Adequate Facilities. The developer shall be responsible for the following to ensure the facilities provided are adequate:

- (a) Phasing of development or improvements in order to ensure the provision of adequate public facilities;
- (b) Extensions of public facilities and roadways (including any necessary on-site and off-site facilities) to connect to existing public facilities or roadways;
- (c) Providing and/or procuring all necessary property interests, including rights-of-way and easements, for the facilities (whether on-site or off-site);
- (d) Providing proof to the City of adequate public facilities;
- (e) Making provisions for future expansion of the public facilities as needed to serve future developments, subject to the City's oversize participation regulations (i.e., when the City will provide for the cost of oversizing facilities), if applicable;
- (f) Providing for all operations and maintenance of the public facilities, or if the City is not the provider, providing proof that a separate entity will be responsible for the operations and maintenance of the facilities;
- (g) Providing all fiscal security required for the construction of the public facilities;
- (h) Obtaining approvals from any applicable utility providers other than the City; and
- (i) Complying with all requirements of utility providers, including the City or other applicable providers.

(3) Responsibilities of the Developer to Conform to Adopted Plans. The developer shall ensure that facilities provided are in conformance with the City's adopted plans.

- (a) Proposed facilities serving new development shall conform to and be properly related to the public facility elements of the City's adopted Comprehensive

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.

- (b) The design and construction of all water and wastewater facilities to serve the subdivision shall be in conformance with the City's master plans for water and wastewater facilities and with the City's technical specifications.

(B) Proportionality Appeal.

(1) Purpose, Applicability, and Effect

- (a) Purpose. The purpose of a petition for relief from a dedication or construction requirement is to assure that the application of uniform dedication and construction standards to a proposed plat 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 public facilities systems.
- (b) Applicability. A petition for relief under this section may be filed by a property owner to contest any requirement, except those addressed by Section 23-264.11(A), to dedicate land or to construct public improvements for dedication to the public that is imposed under the City's public facilities standards in any ordinance or regulation to a plat application or to any related development application authorized by the City, whether the requirement is under uniform standards, or attached as a condition to approval of the petition or permit. A petition under this section shall not be used to waive standards on grounds applicable to any petition for a waiver as found in other sections of these Regulations. A petition for relief concerning requirements addressed by Section 23-264.11(A) shall be filed only after a decision has been issued by the Technical Review Committee.
- (c) Effect. If the relief requested under the petition is granted in whole or in part by the City Council, the dedication or construction requirement initially imposed shall be modified accordingly, and the standards applied or the conditions attached to initial approval of the development application shall be thereafter applied in accordance with the relief granted. In the event the original application was denied by the decision-maker based upon the property owner's failure to incorporate the dedication or construction requirement in the proposed permit, the application shall be remanded to the original decision-maker for a decision consistent with the relief granted by the Council.

(2) Petition Requirements.

- (a) Who May Apply. A property owner or plat applicant may petition for relief from a dedication or construction requirement when a dedication or construction requirement has been applied to a plat, or is the basis for denying the plat application.
- (b) 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, or roadway system, as the case may be, or does not reasonably benefit the proposed development.

- (c) Study Required. The petitioner shall provide a study in support of the petition for relief that includes the following information:
- i. Total capacity of the City's water, wastewater, 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.
  - ii. Total capacity to be supplied to the City's water, wastewater, or roadway system by the proposed dedication of an interest in land or construction of capital improvements. If the development application is part of a phased development, the information shall include any capacity supplied by prior dedications or construction of capital improvements.
  - iii. 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 capital improvements. In making this comparison, the impacts on the City's public facilities system(s) from the entire development shall be considered.
  - iv. The effect of any City participation in the costs of oversizing the capital improvement to be constructed in accordance with the City's requirements.
  - v. 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.
- (d) Time for Filing Petition and Study. A petition for relief from a dedication or construction requirement shall be filed with the responsible official within ten (10) days of the Planning and Zoning Commission's decision to approve or deny an application for approval of a Preliminary Plat, or where no Preliminary Plat has been submitted, an application for approval of a Final Plat. The study in support of the petition shall be filed within sixty (60) days of the initial decision, unless the petitioner seeks an extension in writing. The responsible official may extend the time for submitting the study for a period not to exceed an additional thirty (30) days for good cause shown.

(3) Land in Extra-Territorial Jurisdiction. Where land or facilities to be dedicated are located in the extraterritorial jurisdiction of the City and are to be dedicated to a county under an interlocal agreement under Tex. Loc. Gov't Code Chapter 242, a petition for relief or study in support of the petition shall not be accepted as complete for filing by the responsible official unless the petition or study is accompanied by verification that a copy has been delivered to the county in which the facilities are to be located.

(4) Processing of Petitions and Decision.

- (a) Responsible Official. The City Engineer is 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 for or construction of a facility in the City's extraterritorial jurisdiction that is to be dedicated to a county under an

- (c) Study Required. The petitioner shall provide a study in support of the petition for relief that includes the following information:
- i. Total capacity of the City's water, wastewater, 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.
  - ii. Total capacity to be supplied to the City's water, wastewater, or roadway system by the proposed dedication of an interest in land or construction of capital improvements. If the development application is part of a phased development, the information shall include any capacity supplied by prior dedications or construction of capital improvements.
  - iii. 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 capital improvements. In making this comparison, the impacts on the City's public facilities system(s) from the entire development shall be considered.
  - iv. The effect of any City participation in the costs of oversizing the capital improvement to be constructed in accordance with the City's requirements.
  - v. 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.

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(4) Processing of Petitions and Decision.

(a) Responsible Official. The City Engineer is 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 for or construction of a facility in the City's extraterritorial jurisdiction that is to be dedicated to a county under an

interlocal agreement under Texas Local Government Code, Chapter 242, the City Engineer shall coordinate a recommendation with the county official responsible for reviewing plats in the county.

- (b) Evaluation, Recommendation. The City Engineer shall evaluate the petition and supporting study and shall make a recommendation to the City Council based upon the information contained in the study, any comments received from the county, and the City Engineer's analysis.
  - (d) Decision-Maker. The City Council shall decide the petition for relief from a dedication or construction requirement.
  - (e) Public Hearing. The City Council shall conduct a public hearing within sixty (60) days after the study supporting the petition is filed with the City Engineer.
  - (f) Burden of Proof. The petitioner 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 petitioner.
  - (g) Criteria for Decision. The City Council shall consider the petition for relief from a dedication or construction requirement based upon the following criteria:
    - i. The City Council shall determine whether the application of the standard or condition requiring dedication of an interest in land for public improvements or construction of capital improvements is roughly proportional to the nature and extent of the impacts created by the proposed development on such water, wastewater, or roadway system, and reasonably benefits the development.
    - ii. In making such determination, the Council shall consider the evidence submitted by the petitioner, the City Engineer's report and recommendation and, where the property is located within the City's extraterritorial jurisdiction, any recommendations from the county.
  - (h) Action. Based on the criteria in (g) above, the City Council shall take one of the following actions:
    - i. Deny the petition for relief, and impose the standard or condition in accordance with the initial decision; or
    - ii. Deny the petition for relief, upon finding that the proposed dedication or construction requirements are inadequate to offset the impacts of the development on community water, wastewater, roadway or drainage facilities, and either deny the development application or require that additional dedications of rights-of-way for or improvements to such systems be made as a condition of approval of the application; or
    - iii. Grant the petition for relief, and waive any dedication or construction requirement to the extent necessary to achieve proportionality; or
    - iv. Grant the petition for relief, and direct that the City participate in the costs of acquiring land for or constructing the capital improvement under standard participation policies.
  - (i) Notification of Decision on Petition. The petitioner shall be notified in writing of the Council's decision on the petition for relief by the City Engineer or his designee within 10 days of the decision.
- (5) Expiration or Failure to File Application. Where a plat application or related application was denied based upon the imposition of the standard requiring dedication of land or construction of a capital improvement, the petitioner shall

resubmit the application within ninety (90) days of the date the petition for relief is granted, in whole or in part, showing conformity with the City Council's decision on the petition.

- (a) If such re-submittal of the application is not made within the ninety-day (90-day) period, the relief granted by the City Council on the petition shall expire.
- (b) If the development application is modified to increase the number of residential units or the intensity of non-residential uses, the responsible official may require a new study to validate the relief granted by the City Council.
- (c) If the development application for which relief was granted is denied on other grounds, a new petition for relief may be required.
- (d) The relief granted on the petition shall remain in effect for the period the plat or related approved development application is in effect, and shall expire upon expiration of the plat or related application.