

# ORDINANCE STAFF REPORT

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## Subdivision Ordinance Amendments

PC Date: 3/5/2019

Reviewer: Shelli Kerr, AICP, Planning Services Mngr

<http://www.bentonvillear.com/198/Code-Amendments>

### *History*

*July 17, 2018 - The Planning Commission approved amendments to the Subdivision Ordinance on July 17, 2018. However, in preparing the agenda item for City Council, the city staff attorney identified a couple amendments that warranted additional review. Therefore, the amendment did not advance to city council.*

*November 6, 2018 - The item was on the November 6, 2018 Planning Commission agenda. Planning Commission held the public hearing, but agreed to table for further review.*

*The following staff report was prepared for the July 17 meeting and is updated with italicized text indicating changes from the original draft approved by Planning Commission.*

From time to time, staff reviews the Subdivision Code for clarification, corrections, or updates to meet current conditions. The staff report summarize the most significant issues and proposed changes to the code. Staff requests approval of the proposed ordinance to amend Chapter 15 Subdivision Code.

Generally:

- Replaced “permitted” with allowed when there is no actual permit involved.
- Change the full title of “Community Development Director” to “director.”
- Change AHTD to ArDOT.
- Reorganized the design standards into alphabetical order, with specific design regulations (i.e. commercial, downtown, airport, etc.) moved to the end of the article.
- Reorganized the landscaping chapter to combine some regulations that were the same but listed several times throughout.
- The code currently requires applications to be submitted 22 days prior to the Planning Commission meeting. This timing was established when development activity slowed down during the recession. Since then, the planning review process has been adjusted to 36 days. To avoid amending the code when development levels change, the code should reference “currently adopted policies.”
- Chapter 15 is currently titled the Subdivision Code. Since the chapter regulates large scale developments and other non-subdivision related items, a more comprehensive title is needed and recommended to be titled “Land Development Code.”

**Issue**

**Solution**

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## Ord. Sec. 3 Applicability

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| 1. The applicability section is vague and needs clarification. | 100.06 Add language requiring all new construction and additions to meet the requirements unless specifically exempted. |
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## Ord. Sec. 4 - Definitions

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| 2. Defined terms should be in the Definitions article instead of the regulatory articles. Where they are located in the regulatory articles they have been moved into the Definitions article. | Relocate definition of “caliper” and “dangerous traffic conditions” from the regulatory article to the definitions article and create a definition for “off-street parking space.” |
| 3. Definitions should not include any regulatory language. The regulations pertaining to conduits are already established in the BEUD specifications.  | Remove regulations pertaining to conduits from the Subdivision Code to avoid conflicts with BEUD specifications.   |
| 4. Definition of lot frontage is specific to abutting a street. The definition of street is broader and includes public –right-of-way.   | In the definition of lot frontage, remove the term “ street” and replace with “public right-of-way.”   |
| 5. Definition of lot split is inconsistent with regulations. Remove and let the regulations describe a lot split.  | Remove the definition of lot split.  |

## Att. A: Article 300 Administration and Enforcement

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| 6. The role of the planning commission as it relates to land development is unclear. Use language similar to that in the zoning chapter. | Pg. 1 – 300.01: Add language from the zoning code regarding planning commission’s role in development review.  |
| 7. Fees related to land development are not addressed in this chapter.   | Pg. 1 – 300.01: Add language from zoning pertaining to development fees.   |
| 8. <i>Language is unclear as to when platting is required in order to issue a building permit.</i>                                       | <i>Pg. 1 – 300.02: Exempt unplatted A-1 zoned properties from having to plat prior to issuing a building permit.</i>                                   |
| 9. Ownership and maintenance of detention ponds is an administrative function, not a regulatory function.                                | Pg. 2 – 300.02: Move the regulations for ownership and maintenance of detention ponds from the Design Standards article to the Administration article. |
| 10. <i>Ensure that waivers are being used appropriately.</i>   | <i>Pg. 3 – Sec. 300.04: Revise language to ensure that the regulation from which a waiver is being requested is applicable.</i>                        |

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11. *Engineering is currently reviewing vacations of street right-of-way, easements, and alleys; there is an application fee, the code does not address recording.* Pg. 4 – 300.06 Replace Planning with Engineering as the department accepting applications; add “payment of application fee” in the application checklist, and add process for City Clerk to record vacations.
12. Per state statutes, appeals to the board of adjustment are for zoning code regulations or for staff interpretations. Planning commission approves waivers for development codes. Pg. 5 – 300.07: Revise wording to reflect that appeals to the board of adjustment are for staff interpretations, and appeals to city council are for planning commission decisions.
13. Trail construction is currently addressed in the Administration chapter. This is best located in the regulatory section. Pg. 5 – 300.08: Move trail construction language from the Administration article to the applicability section for Large Scale Development regulations.

## Att. B: Article 400 Preliminary Plat

14. The process for development review has changed and plans are required instead of voluntary submittal of sketch plans. Pg. 1 – 400.02: Add language that requires plans to be submitted for the pre-application process in accordance with current policies.
15. Utilities requires a specific size of paper and drawing scale for submittals. Pg. 2 – 400.03: Add language that requires utility drawings to be on a 24” x 36” paper at a scale of 1” = 30’ or larger.
16. Planning commission action is to be based on when all comments have been addressed instead of when they initially submit. Pg. 2 – 400.04: Change action deadline from the date of submittal to the date when staff accepts the submittal as complete and ready for review by Planning Commission.
17. City staff approves water and sewer, not the State Board of Health as the code states. Need to ensure that water and sewer supply is available to each lot. Pg. 3 – 400.05: Change water and sewer approvals from State Board of Health to water and sewer staff and require each lot to have access to an approved source of water and sewer.
18. A pre-construction meeting is required before an applicant can proceed with making improvements. Pg. 3 – 400.06: Clarify that Planning Commission approval means the applicant can proceed to the pre-construction conference, which is required prior to construction.

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19. Before a building permit can be issued for a model home, water and sewer must be available and the lift station complete. Pg. 4 – 400.08: Require water and sewer services to be available and a lift station to be completely finished before issuing a building permit for a model home.

## Att. C: Article 500 Final Plats

20. Require utility easement dedications to be part of the final plat for approval. Pg. 2 – 500.04: Add that utility easement dedications are also require on final plats.
21. The code lists development items that cannot be guaranteed and have to be complete prior to Planning Commission approving a final plat. It also provides a list of items that can be guaranteed. Pg. 4 – 500.08-09: Add water and sewer requirements for a project to be considered substantially complete.

## Att. D: Article 600 Incidental Subdivisions

22. *Need clarification to criteria for lot splits and property line adjustments and what requirements apply.* Pg. 1 – 600.01: *Make the review criteria the applicability standards for all incidental subdivisions. Add language regarding when new streets or alleys can be required. Exempt unplatted A-1 zoned property from platting when the remaining lots are five acres or more and no new streets are required or proposed. An informal plat is any platting that does not require any improvements, dedications, waivers, variances, etc.*
23. All lots need access to water and sewer. Pg. 1 – 600.01: Add language to required that all lots created by a split or readjustment must have direct access to public water or sewer *or an approved source of water and/or sewer.*
24. The regulations do not have a mechanism for platting easements or dedications only. Pg. 2 – 600.01: Establish an easement plat as an incidental subdivision.
25. Administrative approvals should only be allowed where no waivers from the planning commission are required. Pg. 2 – 600.03: Clarify that administrative approvals can only be approved if no waivers or variances are requested, *and revise so that all incidental subdivisions are eligible for administrative approval if they meet the requirements.*

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26. The process for recording incidental subdivision is different than that of other subdivisions. For consistency, the same process/language should be used for both.
- Pg. 3 – 600.04: Revise language to read the same as recording of final plats.

## Att. E: Large Scale Developments

27. All development related departments should review trail construction and parking lots.
- Pg. 1 – 700.01: Under applicability of large scale developments, require trails and parking lots to go through the process.
28. The pre-application conference is mandatory to ensure that submittals for planning commission review are complete and accurate.
- Pg. 1 – 700.02: Remove the “optional” section from Pre-Application conference and require plans to be submitted.
29. The requirement to submit plans to other departments is no longer necessary now that eTrakIt is online.
- Pg. 2 – 700.03: Remove the requirement to submit plans to other departments.
30. Trails and parking lots can be administratively approved by the director
- Pg. 2 – 700.04: Add trails and parking lots to the applicability section for administrative approval of large scale developments.
31. The review criteria is written in a negative tone. It should be worded in a manner describing what is desired instead of what is prohibited.
- Pg. 3 – 700.05: Revise wording to establish criteria that is desirable.
32. The current expiration of a large scale development of six months is resulting in additional work on staff to extend the LSD. Financing and development related issues are common and can delay a project beyond six months. Staff feels that one year is adequate time to get an approved LSD started.
- Pg. 4 – 700.07: Change the expiration on Large Scale developments from six months to one year.
33. The appeals section is redundant with the administration article.
- Pg. 4 – 700.08: Remove the appeals sections.
34. Terminology in the code conflicts with terms used in the inspection process.
- Pg. 5 – 700.10: Replace “development final” with “site final” and replace “certificate of occupancy” with “building final.”

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35. Additional items need to be complete before passing a site final. Pg. 6 – 700.11-12: Add items that must be complete prior to passing a site final and what is acceptable to proceed with scheduling a building final.

## Att. F: Planned Developments

36. The Zoning Code categorized Planned Unit Developments (PUD) and Planned Residential Developments (PRD) as Planned Developments. They are to be developed under the same regulations. Pg. 1 – 800.00: Change Article 800 Planned Unit Developments to regulate both PUDs and PRDs.
37. Water and sewer availability and capacity should be reviewed when approving a planned development. Pg. 3 – 800.05: Add a review criteria that water and sewer availability/capacity must be adequate for the proposed use and density.

## Att. G: Plat & Plan Requirements

38. Establish requirements for scale and size of plans. Pg. 1 – 900.01: Add a statement that the plan scale must be a minimum of 1" to 100' and minimum page size is 18" x 24".
39. Needs a statement that the items in the table are to be shown on plats and plans. Pg. 1 – 900.02: Add a statement that the item on the table are to be shown on corresponding application types.
40. To assist with documentation, all plans and plats should have the assigned project number. Pg. 2 – 900.02: Add requirement to indicate the project number on all submittals.
41. It is important that any utilities locations have been field verified. Pg. 3 – 900.02: Add a requirement for a statement on the plan that all utility locations have been field verified on all plats and plans except final plats.
42. Need consistency on how detention and retention ponds should be shown on plans. Pg. 5 – 900.02: Add standards for how detention and retention ponds should be shown on plans and plats.
43. *Need to know if applicant proposed any fences in new developments.* Pg. 6 – 900.02 Add that proposed, not just required, fences be shown on plats, LSD's and PD's.

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44. *Street frontage landscaping is required on large-scale developments and should apply to preliminary plats.* Pg. 6 – 900.02 *Require landscape plan for preliminary plats.*
45. Certificates of accuracy and approval are only needed on the final plats. The county has a stamp of recording, therefore a separate certificate is not necessary. Pg. 7 – 900.03: Remove certificate requirements for preliminary survey accuracy, preliminary engineering accuracy, preliminary plat approval, and certificate of recording.

## Att. H: Art. 1100 Design Standards

46. As written, a lot must have access. This term is vague and the intent is to have direct access. Pg. 1 – 1100.01: Add “direct” in front of “access” to require “direct access.”
47. Engineering has established a right-of-way permit. Pg. 2 – 1100.02: Revise city approval of curb cuts from a letter of approval from Community Development to a Right of way permit from Engineering.
48. The regulations requiring specific distances between curb cuts does not establish how they are to be measured. Pg. 3 – 1100.02: Add that the curb cuts are to be measured from centerline-to-centerline.
49. Ownership of detention ponds is located in the design standards. This is more of an administration / enforcement issue and has been moved to Art. 300 Administration and Enforcement. Pg. 7 – 1100.04: Delete ownership and maintenance of detention ponds, which is now in the administration chapter.
50. Driveway standards apply to commercial, industrial and multifamily. They should also be applied in mixed-use developments. Pg. 8 – 1100.05: Add “mixed-use” to the list of driveways that must meet the width standards.
51. The driveway design standards conflict with adopted fire code standards for access to properties. Pg. 9 - 1100.05: Revise driveway design standards for compliance with the fire code, requiring paving for any driveway longer than 150 ft.
52. Fence regulations are currently in the landscaping article. Since fences pertain to any development, not just as a screening requirement, it is better served in the design standards article. Pg. 10 - 1100.06: Relocate the fence regulations to the design standards article.
53. Currently fence fees are to be paid after the application has been approved. This has resulted in the applicant being notified of approval and not picking up the permit or paying the fee. Pg. 10 - 1100.06: Require fence fees to be paid at time of application. *Require a cut sheet with a fence application.*

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54. As development has increased in the downtown area, several variances for taller fences have been granted by the Board of Adjustments. Since this appears to be a trend that is supported by the board, the code should be changed to allow a taller fence downtown. *Also, the existing 3' maximum height in front yards is difficult because the standards size for materials is 4'.*
55. Floodplain regulations are in a separate chapter, but staff feels it important that it be referenced in the design standards since floodplain regulations can affect site design.
56. Landscaping and screening are in a separate chapter of the development code, but staff feels it important that it be referenced in the design standards since landscape regulations can affect design.
57. Parking regulations are in the zoning code, but staff feels it important that such regulations be referenced in the design standards since parking regulations can affect site design.
58. Engineering is reviewing retaining wall permits but the code states it is the Community Development Director.
59. ADU's create an additional unit, which is essentially new residential construction and should be required to install sidewalks as other new residential construction.
60. *Many sidewalk waivers are going to Planning Commission. In some instances, these can be administratively approved.*
61. *The right-of-way dedication is missing a section regarding applicability.*
62. In case the requirements of the master street plan change, the table should be removed and referenced to avoid inconsistency with future adopted plans.
63. The same street light standards apply in several sections. Staff recommends compiling them into one location for easier reference.
- Pg. 12 - 1100.06: Change the fence height in the DN zoning districts from 6' to 8'. *Change the front and exterior side yard fences to be four feet in height instead of three feet.*
- Pg. 13 – 1100.07: Reference compliance with floodplain regulations.
- Pg. 15 – 1100.09: Reference compliance with landscaping and screening regulations.
- Pg. 18 – 1100.13: Reference compliance with parking regulations.
- Pg. 19 – 1100.14: Replace the community development director with engineering as the reviewer of retaining wall permits.
- Pg. 21 – 1100.15: Add ADU's to the list of new residential construction required to build sidewalks.
- Pg. 21 – 1100.15: Add exemptions for A-1 zoned lots of 150 linear street frontage or more used for low density residential. Add that low-density residential sidewalk waivers can be approved administratively, and establish review criteria for granting a sidewalk waiver.*
- Pg. 22 – 1100.16: Create an applicability section with review criteria and exempt A-1 property of five acres or more from dedicating right-of-way.*
- Pg. 22 - 1100.16: Remove table of master street plan requirements and require compliance with the master street plan.
- Pg. 25 – 1100.17: Combine regulations that apply in all conditions instead of listing them out under each individual condition.



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64. To assist in implementation of the Master Bicycle and Pedestrian Plan, as is done with the Master Street Plan, compliance with the plan should be required. Pg. 27 – 1100.18: Add language that requires compliance with the Master Bicycle and Pedestrian Plan.
65. *Requirements for screening of trash receptacles is vague.* Pg. 27 – 1100.19 *Require trash receptacle screening to be consistent with the utility and mechanical equipment screening in the LSD design standards.*
66. Existing electric overhead can be placed underground at the expense of the developer if approved. Pg. 27 – 1100.20: Specify that developers can place overhead electric underground at their own expense, if approved.
67. The DN districts have their own design standards and should be exempt from the large scale development design standards. Pg. 28 - 1100.21: For LSD design standards, exempt the DN district, which have their own design standards. *For industrial and agricultural zoned properties, add that the design standards apply to sides that are visible from a public right-of-way.*
68. The regulations do not specify how the design standards apply in the case of additions and is interpreted to apply only to the addition itself. Pg. 29 – 1100.21: Clarify that only the addition to the building must to meet the design standards.
69. To ensure screening of utility and mechanical equipment presents a consistent appearance with the rest of the building, such screening should use similar materials as the primary structure. Pg. 30 – 1100.21: Add that screening of mechanical and utility equipment must use materials similar to the primary building.
70. Bike racks should be an allowed site amenity to meet the site amenities requirement. Pg. 32 - 1100.21: Add bike racks as an allowed site amenity for LSD site amenity requirements.
71. The design standards for the downtown neighborhood zoning districts are currently in the zoning code and should be relocated to the development code so that all design standards are in the same code section. Pg. 32-44 – 1100.22: Insert the DN district designs standard that were previously in the zoning regulations.
72. *The phrase “where alleys exist” is vague.* Pg. 33 – 1100.22: *Replace “exist” with “are platted and paved.” Add language allowing property owners to pave alley consistent with adopted standards.*
73. To avoid conflicts, doors that access directly onto a sidewalk should be recessed to allow for safe pedestrian use of the sidewalk. Pg. 46 – 1100.23: Require doors onto sidewalks to be recessed the width of the door.

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74. Engineering staff recommends that the applicant for a project at the municipal airport must first meet with and receive approval from the airport manager instead of the Airport Advisory Board. Pg. 50 – 1100.24 Revise language to require a meeting with the airport manager prior to beginning the large-scale process and that the project must be approved by the airport manager before moving on to Planning Commission approval.
75. The landscaping regulations for the airport district are currently in the design article. All landscaping regulations should be in the landscaping article. Pg. 52 – 1100.24: Relocate landscape regulations to the landscape chapter and add that the development must comply with the specific landscape regulations for airports.

## Att. I: Art. 1400 Landscaping & Screening

79. Landscaping and screening applies to parking lots and residential preliminary plats. Pg. 1 – 1400.02: Add language that require the landscape requirements to apply to parking lots and residential preliminary plats.
80. The Tree and Landscape Advisory Committee has determined that the Street Tree Corridor Plan has not achieved the anticipated goals. Pg. 2 & 21 – 1400.04 & 1400.16: Delete the Street Tree Corridor Plan.
81. The items shown on the landscape plan must also be shown in compliance with the landscaping regulations. Pg. 3 – 1400.05: Require that the items shown on the plan are in compliance with the landscape regulations.
82. The list of items to be shown on the plan also include regulations, which are best suited in regulatory sections, not plan requirement sections. Pg. 3 – 1400.05: Combine regulations and relocate to the general provisions and tree size requirements.
83. *There are some cases where private utility easements do not allow for the placement of trees and those easements are in the same location as the required street frontage buffer.* Pg. 5 – 1400.06: *Add a requirement that when there are private utility conflicts in the street frontage buffer, trees are still required in an area parallel to the street and the location selected must be approved by the director.*
84. *Current perimeter landscaping requirements do not make accommodations for cross access between properties.* Pg. 5 – 1400.07: *Allow required perimeter landscaping requirements to be placed elsewhere on site when cross access is being provided.*
85. Large scale developments and homeowners are required to plant trees. Tree planting should also apply to preliminary plats. Pg. 5 & 9 – 1400.10: Add language requiring preliminary plats to plant one shade tree per 50 feet of street frontage along the perimeter streets of the subdivision.

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86. The same regulations are listed several times for different conditions. Pg. 10 – 1400.12: Combined similar regulations into one area.
87. The Tree and Landscape Advisory Committee has reviewed and established a new approved tree list and a new prohibited tree list. Pg. 12 to 19 – 1400.13 & 1400.14 Revise both the approved and prohibited tree lists, as recommended by the Tree and Landscape Advisory Committee.