

## ARTICLE 300 ADMINISTRATION AND ENFORCEMENT

### Sec. 300.01 Administration.

(a) These rules and regulations shall be administered by the Planning Department staff. The Commission may, from time to time, recommend instructions and operating procedures to be followed in the administration of these regulations to the end that the public may be better informed and that approval of plats be expedited.

(b) In addition to the requirements established herein, all subdivision plats shall comply with all other applicable rules, regulations and laws including but not limited to the General Plan, the Bentonville Zoning Ordinance, building and housing codes, and any other regulations adopted by the City Council and any regulations or special requirements of the State Health Department, State Highway & Transportation Department, or other appropriate State agencies.

(c) Planning Commission. The Planning Commission is responsible for review and approval or denial of all plats and plans as required in this chapter, unless otherwise specifically exempted. The organization and role of the planning commission is established in the zoning regulations.

#### (d) Fees.

(1) Establishment of fee schedule. The City Council of the City of Bentonville, Arkansas shall establish a schedule of fees, charges and expenses and a collection procedure for final plat, preliminary plat, large scale development, incidental subdivision, planned development and all other matters pertaining to this Chapter by resolution. The schedule of fees shall be available in the Community Development office and may be altered or amended only by the City Council.

(2) Fee to be paid in full. Until all applicable fees, charges and expenses have been paid in full, no action shall be taken on any application, waiver or appeal.

### Sec. 300.02 Enforcement.

It shall be the duty of the Building Inspector, City Engineer and the Community Development Director to enforce these regulations and to bring to the attention of the Mayor and the City Attorney any violation or lack of compliance herewith. In order to carry out the purposes of the regulations and to assure the orderly development of land after the effective date of these regulations, the following shall apply:

(a) *Building permits.* The Building Inspector shall not issue building permits for any structure on any lot in a subdivision for which the plat or plan has not been approved and recorded in the manner prescribed herein. Unplatted A-1 zoned properties shall be exempt from this requirement.

(b) *Plat approval.* No plat of any tract of land within the planning area jurisdiction shall be accepted by the Circuit Clerk/Recorder for filing of record unless the plat has been approved by the Planning Commission.

(c) *Compliance.* No conveyance by metes and bounds of tracts or lots coming under the definition of subdivision of land without compliance with the applicable provisions of this code or amendments thereto shall be permitted. No dedication of streets shall by itself be accepted by the City unless the usage of the adjoining affected land is shown. If the purpose of the opening of the street is to make the affected land available for sale as a redevelopment or subdivision, the street may not be accepted until accompanied by the required plat.

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(d) *Utilities.* No public utility whether publicly or privately owned shall provide, extend or authorize the extension of service to any lot, building, structure, or location within the area under the jurisdiction of the City of Bentonville unless:

- (1) *Prior establishment.* A lot, building or structure was established before the adoption of this Subdivision Regulation; or
- (2) *Approval.* A plat of the location has been approved by the Planning Commission and filed and recorded in the office of the Circuit Clerk/Recorder.
- (3) Notwithstanding the above provisions, nothing herein shall prevent a citizen of Bentonville, other than a sub-divider in violation of this ordinance, from obtaining a building permit, final inspection, utility service or any other administrative service or remedy, upon the following conditions:
  - a. Where the lot for which the administrative permit or service sought lies within a subdivision which fails to conform with the requirements of this ordinance and such nonconformity was known to the Planning Commission Staff and no action to enforce the requirements of this ordinance was initiated by requesting an injunction in a court of competent jurisdiction within six (6) months of acquiring knowledge of the alleged violations or nonconformity; or,
  - b. Where the lot for which the administrative permit or services sought lies within a subdivision which was located in the planning area boundary, but outside the city limits at the time of filing.
- (4) The issuance of any building permit does not constitute acceptance of or intent by the city to accept any streets providing access to the lot on which the permit is issued.

*(e) Detention and retention ponds - ownership and maintenance.*

- (1) *Residential subdivisions. Stormwater detention and retention ponds deeded to the city by September 10, 2005 shall be owned and maintained by the City. After September 10, 2005, stormwater detention and retention ponds in new residential subdivisions shall remain under the ownership and maintenance of the property owner during development. Stormwater detention and retention ponds shall be deeded to the property owner's association upon filing of the final plat. Maintenance of the facilities shall be the responsibility of the property owner's association.*
- (2) *Non-residential development. Ownership of stormwater detention and retention ponds in new non-residential development shall be vested in the property owner. Maintenance of the facilities shall be the responsibility of the property owner.*

(Code 1994; Ord. No. 2003-100, § 1, 06-10-2003)

**State law reference** – Land development regulations, A.C.A. § 14-56-417.

**Sec. 300.03 Violation and penalty.**

(a) When, in the opinion of the Planning Department staff, a violation of the subdivision ordinance exists, and a subdivider who has not complied with the requirements and procedures set forth herein attempts to proceed with construction work, or attempts to convey title to any lot or lots before obtaining Final Plat Approval, or otherwise is in substantial violation of the ordinance, the Planning Department shall, within thirty (30) days of becoming aware of a possible violation, issue a written order to the alleged violator. Said written order shall be

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by certified mail, restricted delivery, and shall set out the specific violations alleged. Notification to the Mayor and City Attorney of the issuance of the written order shall be given. If the alleged violator, within fifteen (15) days of receipt of said order, does not cease and desist from activities not in conformance with this ordinance, the Planning Department shall, within sixty (60) days, transmit to the City Attorney an affidavit setting out the nature of the violation. The City Attorney shall take appropriate measures to enforce the ordinance, including but not limited to, seeking injunctive relief from a court of competent jurisdiction.

(b) Any person, firm or corporation that violates any provision of these regulations or amendments thereto shall be guilty of a misdemeanor and on conviction shall be fined not less than \$50.00 nor more than \$100.00 for each offense and each day that any violation of these rules and regulations are in effect shall constitute a separate offense and be subject to additional fines of between \$50.00 and \$100.00 per day. Appropriate actions and proceedings may be taken by law or in equity to prevent any violation of these regulations, to prevent unlawful construction, to recover damages, to restrain, correct, or abate a violation, to prevent illegal occupancy of a building, structure, or premise, and these remedies shall be in addition to the penalties described above.

**Sec. 300.04      Waivers.**

(a) When, by the strict interpretation of these regulations, an applicant incurs undue restrictions on the physical property to be subdivided, or when application of these regulations is not required by and/or consistent with the purposes of the City in setting forth the regulations, a waiver for such requirements may be granted by the Planning Commission. ~~Under no circumstance should a waiver be granted because of a personal hardship or for personal or emotional reasons.~~ Waivers shall not be granted based strictly on financial hardship or for emotional reasons. A waiver is determined by the discreet application of the strict interpretation and enforcement of the rules and regulations upon a given piece of property to be subdivided and consideration of whether such application further the interests of the City.

(b) No waiver shall be granted except upon written petition by the applicant when the application is filed. Under exceptional circumstances, the Planning Commission may grant waivers at the time of final plat approval. The petition shall state fully the grounds for the waiver and all the facts upon which the petition is made. In granting the waiver, the Planning Commission shall prescribe any conditions that it deems necessary to or desirable in the public interest. In considering the petition for a waiver, the Planning Commission shall take into account the nature of the proposed use of land involved, existing uses of land in the area, proximity to public utilities, 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 and general welfare in the vicinity. No waiver shall be granted unless the Planning Commission finds all four of the following:

- (1) That there are special circumstances or conditions affecting the land involved such that the strict application of the provision of these regulations would ~~deprive the applicant of the reasonable use of this land~~ unreasonably affect the applicant.
- (2) That the waiver is ~~necessary for the preservation and enjoyment of a substantial property right of the applicant~~ not in conflict with the overall goals of the City in adopting these regulations.
- (3) That the granting of the waiver will not be detrimental to the public health, safety and welfare or injurious to other property in the area.
- (4) That the granting of the waiver will not have the effect of preventing the orderly subdivision of other land in the area in accord with the provision of these regulations.

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(c) The findings of the Planning Commission together with the specific facts upon which findings are based shall be incorporated into the official minutes of the Planning Commission meetings at which such waiver is granted. Waivers may be granted only when in harmony with the general purpose and intent of this code.

(Code 1994; Ord. No. 2003-100, § 1, 06-10-2003)

**Sec. 300.05 Vacation of plats.**

(a) *Vacation prior to lots being sold.* Any plat or any part of a plat may be vacated by the owner of the premises at any time before the sale of any lot therein by written instrument to which a copy of such plat shall be attached declaring the same to be vacated. Vacation of a plat shall be subject to the approval of the City Council if the plat is located within the corporate limits. It will be subject to Quorum Court approval if located outside the corporate limits, but within the planning area of the Bentonville Planning Commission.

(b) *Approval by planning commission.* Such an instrument shall be approved by the Planning Commission with the same plat submission requirements, review processes and fees as are required for plats of subdivisions. Between the preliminary plat and the final plat, the City Council will be afforded the opportunity for review and may reject any such plat that destroys public rights in any of its public uses, improvements, streets or alleys.

(c) *Filing and recording.* Such an instrument shall be executed, acknowledged or approved and recorded or filed in like manner as plats of subdivisions. Being duly recorded or filed shall operate to destroy the force and effect of the recording of the plat so vacated and to divest all public rights in the streets, alleys, and public grounds and all dedications laid out or described in such plat.

(d) *Vacation, after lots are sold.* When lots have been sold, the plat may be vacated in a manner herein provided by all the owners of lots in such plat joining in the execution of such writings.

(Ord. No. 2003-100, § 1, 06-10-2003)

**Sec. 300.06 Vacation of street right-of-way, easements or alleys.**

(a) *Application for easement/alley vacation.* The application shall be submitted to the ~~Planning~~ Engineering Department ~~not fewer than twenty two (22) days prior to the regular Planning Commission meeting at which it is to be considered~~ in accordance with current department policies and shall consist of the following:

- (1) *Application.* Completed and signed application form as provided by the ~~Planning~~ Engineering Department.
- (2) *Fee.* ~~There shall be no fee for an easement or alley vacation~~ Payment of fee.
- (3) *Petition.* A petition to vacate street right-of-way, alley or easement.
- (4) *Consent of property owners.* Consent of all property owners abutting the street right-of-way, alley or easement to be vacated.
- (5) *Ownership.* Proof of ownership of all property owners abutting the street right-of-way, alley or easement to be vacated.
- (6) *Consent from utilities.* Written consent from all utilities affected by street right-of-way, alley or easement to be vacated.

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(b) Review and approval. City staff will review the request and approve, approve with comments or deny the request for a vacation. The City Council shall make the final determination on approval of vacations by adopting an ordinance stating that the legal description as provided by the applicant and verified by the City is vacated.

(c) Recording. The City Clerk shall file the ordinance vacating the easement, alley or right-of-way with the County Recorder's office.

(Ord. No. 2003-100, § 1, 06-10-2003)

**Sec. 300.07 Appeals.**

(a) Appeal of staff interpretation. Appeals of staff interpretations of the ~~Subdivision Regulations~~ Land Development Code may be made to the board of adjustment in accordance with the procedures set forth in the Zoning Ordinance.

(b) Appeal of planning commission decision. Any decision of the planning commission may be appealed to the Bentonville City Council provided the developer does so within thirty (30) days of the decision of the planning commission, in accordance with the procedures set forth in Sec. 301.09 Appeals to City Council in the Zoning Ordinance.

(Code 1994; Ord. No. 2003-100, § 1, 06-10-2003)

**Sec. 300.08 ~~TRAIL CONSTRUCTION~~ Reserved.**

~~Any person wishing to construct a trail shall submit an application for an In-House Large Scale Development and follow the procedures for administrative approval of a large scale development as identified in Article 700.4 Review and Approval. Trails constructed as part of an approved large scale development or preliminary plat shall not be required to meet this regulation.~~

~~(Ord. No. 2007-40, 4-10-07)~~

**Sec. 300.09 Maintenance letter of credit.**

A maintenance letter of credit shall meet the following conditions:

(a) *Amount.* The maintenance letter of credit shall reflect 25% of the donated assets value estimate prepared by the engineer-of-record.

Phased Projects. For a development project of 40 acres or more which has been approved for phasing by the Planning Commission, a maintenance letter of credit shall reflect 25% of the donated assets value for the first phase, which must be a minimum of 20 acres, plus 10% of the donated assets for additional phases, each of which must be a minimum of 20 acres. In the event the letter of credit issued for the first phase has expired, the maintenance letter of credit shall reflect 25% of the donated assets value for the second phase and all subsequent phases.

(b) *Beneficiary.* The maintenance letter of credit shall be irrevocable and shall list the City of Bentonville as the beneficiary.

(c) *Format.* The maintenance letter of credit shall be in a format as provided by the City or as approved by the Staff Attorney or his or her designee.

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(d) *Term.* The maintenance letter of credit shall run for no less than one (1) year from the date of approval by City Council.

(e) *Entitlement of payment.* At the end of that year, if the improvements have not been adequately maintained, as determined by the Community Development Director or his or her designee(s), the City shall be entitled to payment under the terms of the maintenance letter of credit. Further, the City shall be entitled to use all of the money secured by the maintenance letter of credit to assure the proper maintenance of the improvement.

(f) *Excess monies.* The owner/developer shall not be entitled to any excess monies until the maintenance of the improvements in the development has been completed.

(Ord. No. 98-73; § 1, 08-25-1998; Ord. 2003-100, §1; Ord. No. 2006-24, § 18; Ord. No. 2007-41, §1-2, 4-10-07)

**Sec. 300.10 Guarantees.**

Prior to final plat approval, the owner/developer shall enter into an agreement with the City to guarantee installation or ensure the completion of improvements. The City will accept the subdivision and issue a Certificate of Final Plat approval subject to the following guarantee requirements:

(a) *Amount.* The owner/developer shall provide a cashier's check to the City of Bentonville for an amount 150% of the total estimated cost for improvements as approved by the Community Development Director or his or her designee(s).

(b) *Term.* The cashier's check shall be deposited immediately. The owner/ developer shall have a maximum of 60 days to complete the improvements, unless an extension is granted by the Community Development Director or his or her designee(s).

(c) *City action.* If the improvements have not been completed within the terms provided for in B. Term above, the City may take one of the following actions:

- (1) Construct the remaining improvements using the amount of the cashier's check. Any balance remaining after the improvements have been constructed shall be returned to the owner/developer. The owner/ developer shall be liable for any cost exceeding the amount of the cashier's check; or,
- (2) Continue to hold the funds until the owner/developer completes the required improvements.

(d) *Release of guarantee.*

- (1) *Certificate of completion.* To request a release of a guarantee, the owner/developer's engineer of record shall submit a certification of completion to the City Engineer or his or her designee(s) that the development is complete and functional.
- (2) *Final inspection.* The City Engineer shall conduct a Final Inspection of remaining guaranteed items. The Final Inspection must be approved prior to releasing the guarantee.
- (3) *Guarantee released.* Guarantee released and the City shall reimburse the owner/developer for the amount of the cashier's check.

(Ord. No. 98-57, § 1, 06-22-1998; Ord. No. 2000-72, § 1, 06-09-2000; Ord. No. 2003-100, § 1, 06-10-2003; Ord. No. 2006-24, § 17; Ord. No. 2007-41, §2, 4-10-07)

**Sec. 300.11 Off-site performance guarantee.**

At or prior to the preconstruction conference with the City, the owner/developer shall provide to the Community Development Director, or his or her designee(s), a performance guarantee for off-site improvements meeting the following criteria:

(a) *Amount.* The owner / developer shall provide a letter of credit or a cashier's check to the City of Bentonville for an amount 100% of the total estimated cost for improvements within the public right-of-way and any off-site improvements. The cost estimate shall be prepared by the owner / developer's engineer-of-record and approved by the Community Development Director or his or her designee(s).

(b) *Term.* The term of the performance guarantee shall be agreed to in writing by the owner/ developer's engineer-of-record and by the Community Development Director or his or her designee(s).

(c) *Letter of credit standards.* Performance guarantee letter of credits shall be irrevocable and shall list the City of Bentonville as the beneficiary. The letter of credit shall be in a format as provided by the City or as approved by the Staff Attorney or his or her designee.

(d) *Cashier's check.* The cashier's check will be deposited immediately.

(e) *City action.* Prior to expiration of the term agreed to in subsection B above, the City shall inspect the improvements. If the improvements are not complete to the City's satisfaction, the owner / developer or engineer of record may request in writing an extension. If the City does not agree to the extension, the City may construct the remaining improvements using the amount of the cashier's check or letter of credit. If the improvements are complete, the City shall release the performance guarantee in accordance with Subsection H.

(f) *Excess monies.* The owner / developer shall not be entitled to any excess monies until the off-site improvement has been completed and the performance guarantee is released in accordance with Subsection H.

(g) *Excess costs.* The owner / developer shall be liable for any cost exceeding the amount of the cashier's check or letter of credit.

(h) *Release of performance guarantee.*

(1) *Certificate of completion.* To request a release of a performance guarantee, the owner / developer's engineer-of-record shall submit a certification of completion to the City Engineer or his or her designee(s) that the development is complete and functional.

(2) *Final inspection.* The City Engineer or his or her designee(s) shall conduct a Final Inspection of the off-site improvement. The Final Inspection must be approved prior to releasing the performance guarantee.

(3) *Guarantee released.* The performance guarantee is released and the City shall reimburse the owner / developer for the amount of the cashier's check or return the letter of credit to the owner/developer.

(Ord. No. 2007-130, § 1, 11-13-07)