

ORDINANCE NO. 1103 97A

AN ORDINANCE REPLACING ORDINANCE NO. 070191-A, AS AMENDED,
AND SETTING FORTH REQUIREMENTS AND OBLIGATIONS
FOR SUBDIVISIONS IN THE CITY OF NIEDERWALD, TEXAS

CITY OF NIEDERWALD, TEXAS, SUBDIVISION ORDINANCE,
ORDINANCE NO. _____, REPLACING ORDINANCE NO. _____

REQUIREMENTS AND OBLIGATIONS FOR SUBDIVISIONS IN THE CITY OF NIEDERWALD, TEXAS
DECLARING CERTAIN FINDINGS OF FACT; CREATING NEW SECTIONS AND PROVIDING NEW STANDARDS
FOR THE DEVELOPMENT OF LAND WITHIN THE INCORPORATED LIMITS AND EXTRATERRITORIAL
JURISDICTION OF THE CITY OF NIEDERWALD, TEXAS; SPECIFYING THE APPLICABILITY OF THIS
ORDINANCE TO PROPOSED SUBDIVISIONS AT CERTAIN STATES OF APPROVAL; AND PROVIDING AN
EFFECTIVE DATE.

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

AN ORDINANCE SETTING FORTH REQUIREMENTS AND OBLIGATIONS FOR SUBDIVISIONS IN
THE CITY OF NIEDERWALD, TEXAS.

PART I: AUTHORITY, APPLICATION OF ORDINANCE, BURDEN OF PROOF, AND
PURPOSE AND FINDINGS (Sections 1-4)

Section 1. Authority

This ordinance is adopted under the authority of the Constitution and laws of the State of Texas, including particularly Chapters 212, Texas Local Government Code, As Amended through 1995 Regular Session Of The 74th. Legislature.

Section 2. Application of Ordinance

This ordinance sets out new standards and procedures for the subdivision of land located within the corporate limits and extraterritorial jurisdiction of the City of NIEDERWALD, Texas. A preliminary plat which was approved or conditionally approved under Ordinance No. 070191-A, as amended, shall be required to comply with the standards and procedures of this Ordinance for final plat approval; provided, however, that no such plat shall be required to be resubmitted for preliminary plat approval.

Section 3. Burden of Proof

An applicant for subdivision plat approval under this Ordinance must establish that his or her plat complies with the requirements of this Ordinance.

Section 4. Purpose and Findings

The purpose of this Ordinance is to promote the health, safety and general welfare and provide for the orderly, safe and healthful development of the area within the Incorporated limits and the extra-territorial jurisdiction of the city.

The City Council of the City of NIEDERWALD finds that the previous Subdivision Ordinance requires certain revisions to correspond with the adopted Master Plan, the Zoning Ordinance, and the current procedures for reviewing proposed subdivisions. This ordinance reaffirms that the citizens of NIEDERWALD prefer a set of development standards and procedures which effectively manages the impacts of new development and ensures the compatibility of new and existing development in the region.

PART II: DEFINITIONS, SPECIAL PROVISIONS AND VARIANCES (Sections 5-7)

Section 5. Definitions

For the purpose of this Ordinance, the following terms, phrases, words, and their derivations shall have the meaning ascribed to them in this Section:

A. Alley: A minor public right-of-way, not intended to provide the primary means of access to abutting lots, which is used primarily for vehicular service access to the back or sides of properties otherwise abutting on a street.

B. Building Setback Line: The line within a property defining the minimum horizontal distance between a building and the adjacent street line or property boundary line.

C. City: The City of NIEDERWALD, Texas.

D. Council: The City Council or person designated by the Council.

E. Crosswalk Way: Public right-of-way, ten (10) feet or more in width between property lines, which provides pedestrian circulation.

F. Cul-de-sac: A street having one outlet to another street, and terminated on the opposite end by a vehicular turn around.

G. Dead-end Street: A street, other than a cul-de-sac, with only one outlet.

H. Edwards Aquifer Recharge Zone: Any area identified as such by the Edwards Aquifer Rules. In the event an Applicant cannot determine with specificity the location of the boundary of the Edwards Aquifer Recharge Zone, the Applicant may submit appropriate maps and other evidence as may be requested by the Department for assistance in such determination from the department. Any determination by the Department will affect only these Regulations and will not in any manner be binding upon the Texas Natural Resource Conservation Commission. The Department may require the applicant to obtain a determination from the TNRCC and any determination by the TNRCC.

regarding the location of the Recharge Zone will control for purposes of these Regulations. The intent of these Regulations is to coordinate applicable state and local regulations such as that the definition of the Edwards Aquifer Recharge Zone under these Regulations shall be identical with the definition found within the Edwards Aquifer Rules 2.10 - The Regulations promulgated by the TNRCC relating to the Edwards Aquifer, currently set forth in Title 30 Texas Administrative Code Chapter 213 , as amended from time to time.

I. Engineer : A person duly authorized under the provisions of the Texas Engineering Registration Act, as heretofore or hereafter amended, to practice the profession of engineering.

J. Lot: An undivided tract or parcel of land having frontage on a public street and which is, or in the future may be sold, conveyed, transferred or improved; which is designated by a tract or lot number or symbol, or by metes and bounds, consisting of not less than one acre.

K. Pavement Width: The portion of a street available for vehicular traffic. Where curbs are laid, they are not included in the pavement width.

L. Person: An individual, association, firm, corporation, governmental agency, or political subdivision.

M. Shall, May: The word "shall" is always mandatory. The word "may" is merely directory.

N. Street: A public right-of-way, however designated, which provides vehicular access to adjacent land.

1. A "major arterial street" is a divided, limited-access roadway designed to provide vehicular circulation between major traffic generator such as large high-density residential neighborhoods, commercial centers, industrial areas, and other municipalities.

2. A "minor arterial street" is a divided or undivided, limited-access roadway designed to provide vehicular circulation between secondary traffic generators, such as neighborhood/community shopping centers, office complexes, high schools, and municipal or regional parks/recreation areas, and between major arterial streets and streets of lower classification.

3. A "collector street" is an undivided roadway generally providing access to minor arterials from local streets but generally without direct access from adjacent properties except for elementary schools, small apartment complexes, and neighborhood commercial centers.

4. A "local street" provides access to individual adjacent properties.

O. Subdivider: Any person or any agent thereof, dividing or proposing to divide land so as to constitute a subdivision as that term is defined herein. In any event, the term "subdivider" shall be restricted to include only the owner, equitable owner or authorized agent of such owner or equitable owner, of land sought to be subdivided.

P. Subdivision of any tract, lot, piece, or parcel of land, or any portion or fraction thereof (whether by block or lot numbers, or by metes and bounds descriptions), situated within the corporate limits, or within the City's extraterritorial jurisdiction, in two or more parts for the purpose of transfer of ownership, or

suburban lots or building lots, or any lots, whether all or any portion thereof be intended for public use, or only for the use of purchasers, short- or long-term lessees, guests and/or agents. Subdivision also includes resubdivision of any tract, lot, piece, or parcel of land. Division of land into parcels of five (5) or more

acres each shall not be included in this definition of subdivision, unless any such division of five (5) or more acres includes the planning or development of a new street or access easement.

Q. Surveyor: A licensed State Land surveyor or a Registered Public Surveyor, as authorized by the State statutes to practice the profession of surveying.

R. Utility Easement: An interest in land granted to the City, to the public generally, and/or to 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 said utilities.

S. Any office referred to in this Ordinance by title means the persons employed or appointed by the City in that position, or his duly authorized representative.

T. Definitions not expressly prescribed herein are to be construed in accordance with customary usage in municipal planning and engineering practices.

Section 7. Variances

A. Considerations by the City Council

1. The Council may authorize a variance from these regulations when, in its opinion, undue hardship will result from requiring strict compliance.

2. In granting a variance, the Council shall prescribe only conditions that it deems necessary to or desirable in the public interest.

3. In making the findings hereinbelow required, the 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 variance upon traffic conditions and upon the public health, safety, convenience and welfare in the vicinity.

4. Variances may be granted only when in harmony with purpose and intent of this Ordinance so that the public health, welfare may be secured and substantial justice be done. Pecuniary hardship to the subdivider, standing alone, shall not be deemed to constitute undue hardship.

B. Criteria for Granting a Variance.

No variance shall be granted unless the council finds that:

1. There are special circumstances or conditions affecting the land involved, such that the strict application of the provisions of this Ordinance would deprive the applicant of the reasonable use of his land.

2. The variance is necessary for the preservation and enjoyment of a substantial property right of the applicant.

3. The granting of the variance will not be detrimental to the public health, safety or welfare, or injurious to other property in the area.

4. The granting of the variance will not have the effect of preventing the orderly subdivision of other land in the area in accordance with the provisions of this Ordinance.

5. The variance is necessary to allow for the division of land as a result of death, bequest or divorce decree.

Such findings of the Council, together with the specific facts upon which such findings are based, shall be incorporated into the official Minutes of the Council meeting at which such variance is granted.

C. Application Procedure. All requests for variances shall be made in writing and should be submitted at the earliest possible date at which the subdivider identifies the need for a variance. In any case, a request for variances shall be submitted to the City Secretary no later than eight (8) working days prior to the Council meeting at which approval is being sought.

D. Fees.

1. Each request for variances shall be accompanied by a fee of \$50.00 per variance requested, with the minimum fee being \$200.00.

2. Each request for a variance due to the division of land as the result of death, bequest or divorce decree shall be accompanied by a fee of Twenty-five (\$25.00).

PART III: PRELIMINARY CONFERENCE, PRELIMINARY PLAT AND ACCOMPANYING DATA, FINAL PLAT, AND VACATION OF PLAT OR RESUBDIVISION (SECTIONS 8-10)

Section 8. Preliminary Conference

A. Procedure and Fee. Prior to the official filing of a preliminary plat the subdivider and his engineer(s) and/or planner(s) shall pay a non-refundable fee of \$300.00 to the City Secretary, for which the subdivider will receive a receipt and shall consult with and present a proposed conceptual plan of development to the City's Planning Commission in a regularly scheduled meeting of the Niederwald Planning Commission.

B. Information Required. The proposed plan shall include, at a minimum, a large scale map showing the tract boundaries and conceptual plans for land use, roadways, drainage, and utility service.

C. Subdividing Part of a Larger Tract. Where the proposed subdivision constitutes a unit of a larger tract owned by the subdivider, which is intended to be subsequently subdivided as additional units of the same subdivision, the conceptual plan shall be accompanied by a layout of the entire area, showing the tentative improvements for such areas.

D. Conference Report. The City's Planning Commission shall make a report to the Council which includes a review of the plans, relationship to the City's Master Plan and recommendations for areawide improvements affecting said tract. If the City's Planning Commission has any interest or concerns of an areawide nature which may directly affect the review of the proposed preliminary plat, the subdivider shall be so informed in writing.

Section 9. Preliminary Plat and Accompanying Data

A. General. The subdivider shall cause to be prepared a preliminary plat by a surveyor or engineer in accordance with this Ordinance.

B. Time for Filing and Copies Required. After the preliminary conference has been held, formal application for preliminary plat approval shall be made by the subdivider in writing to the City Secretary at least fifteen (15) working days prior to the official meeting of the Planning Commission for consideration. At that time, the subdivider shall also submit fifteen (15) copies of the preliminary plat, along with all accompanying data and exhibits.

C. Filing Fee. Such plat application shall be accompanied by a filing fee of \$10.00 per acre, or any fraction thereof, with a minimum fee of \$200.00 per plat. No action by the Planning Commission shall be valid until the filing fee has been paid. This fee shall not be refunded should the subdivider fail to perfect his formal application for preliminary plat approval or should the plat be disapproved.

D. Form and Content.

1. The preliminary plat shall be drawn and reproduced on a durable medium (24" x 36" with a 1" margin on the left-hand edge and a 1/2" margin on others) for file copy. The plat shall be drawn to a scale no smaller than 100 feet to one inch (1" = 100'). When more than one sheet is necessary to accommodate the entire area, an index sheet showing the entire subdivision at an appropriate scale shall be attached to the plat.

2. The plat shall show the following:

- a. Names and addresses of the subdivider, record owner, engineer and/or surveyor, duly notarized..
- b. Proposed name of the subdivision, which shall not have the same spelling as or be pronounced similar to the name of any other subdivision located within the City or within the City's extra-territorial jurisdiction.
- c. Names of contiguous subdivisions and the owners of contiguous parcels of un subdivided land, and an indication of whether contiguous properties are platted.
- d. Date of preparation, scale of plat, north arrow, and a general location map.
- e. Brief legal description referencing the volume and page of the appropriate County Deed Records and lot and block, if a resubdivision; the metes and bounds of the subdivision, including location of primary control points and ties to such control points to which all dimensions, angles, bearings, block numbers, and similar data shall be referred; and, either on the plat or by a separate instrument, a written metes and bounds description of the property to be subdivided.
- f. Subdivision boundary lines, indicated by heavy lines, and the computed acreage of the subdivision.
- g. Location of the city limit line, the outer border of the City's extraterritorial jurisdiction, and zoning district boundaries, if they traverse the subdivision, form part of the boundary of the subdivision, or are contiguous to such boundary.

h. Location of flood plain per Federal Emergency Management Agency criteria.

i. Existing sites as follows:

- 1) The location, scaled dimensions, name and description of all existing or recorded streets, alleys, reservations, easements or other public rights-of-way

within the subdivision, intersecting or contiguous with its boundaries or forming such boundaries.

- 2) The location, scaled dimensions, description and name of all existing and recorded residential lots, parks, public areas, permanent structures, trees with a circumference of thirty (30) inches or larger measured at the height of four (4) feet above the ground, and other sites within or contiguous with the subdivision.
 - 3) The locations, scaled dimensions, description, and flow line of existing water courses and drainage structures within the subdivision of contiguous tracts.
 - 4) Other topographical information within or adjacent to the site, which shall include contour lines at two (2) foot intervals and sufficient to permit the planning of water lines, sanitary sewer lines, storm drainage facilities, streets, and other proposed improvements.
 - 5) Flood plain data.
-
- j. The locations, scaled dimensions, descriptions and names of all proposed streets, alleys, drainage structures, parks, other public areas, reservations, easements or other rights-of-way, blocks, lots and other sites within the subdivision.
 - k. A number or letter to separately identify each lot and each block.
 - l. Front building setback lines on all lots and sites. building setback lines at street intersections and crosswalk ways.
 - m. Vicinity sketch or map at an appropriate scale showing the subdivision in relation to major roadways and landmarks.
 - n. Possible storm sewer, water, gas, electric, and sanitary sewer connection points.
 - o. The certification of a registered professional engineer surveyor that the preliminary plat is complete and accurate.
 - p. Fire hydrants in compliance with existing local, county and state regulations.

3. The preliminary plat shall be accompanied by a general, preliminary drainage plan at an appropriate scale, including the ultimate destination of storm water.

E. Processing of Preliminary Plat.

1. Review by City's Planning Commission. The City's Planning Commission shall check the preliminary plat as to its conformity with the prevailing master plan, major street plan, land use plan, zoning

conference pertaining to said plat and shall submit a written report on that review to the Council at the next regularly scheduled meeting.

2. Corrections to the Preliminary Plat. In response to oral or written comments from the City's Planning Commission to the subdivider, the subdivider shall forward fifteen (15) copies of the revised preliminary plat to the City Secretary no less than eight (8) working days prior to the official meeting at which preliminary plat approval is sought.

3. Action by the City Council. Within thirty (30) days after the preliminary plat is formally filed, the Council shall approve or disapprove such plat. If the Council disapproves a proposed preliminary plat, it shall reference, in writing, any and all deficiencies of the proposed preliminary plat which were cause for disapproval. The subdivider shall be allowed to submit a revised preliminary plat which resolves the deficiencies and the Council shall approve or disapprove the revised plat within thirty (30) days after the revised plat is formally filed.

4. Approval of the Preliminary Plat. Approval of a preliminary plat by the Council shall be deemed an expression of approval of the layout submitted on the preliminary plat as a guide to the installation of streets, water, sewer and other required improvements and utilities and to the preparation of the final or record plat. Approval of a preliminary plat shall not constitute automatic approval of the final plat.

5. Effective Life of an Approved Preliminary Plat. Approval of a preliminary plat by the Council shall be effective for six (6) months, provided that the requirements are met for submitting a final plat within sixty (60) days after approval of the preliminary plat, as required by Section 10.B.2. Any portion or all of the preliminary plat may be subject to modification or revision in light of information previously not brought to the attention of the Council. If in the light of new or significant information, the Council should require revisions to a previously approved preliminary plat, it shall so inform the subdivider in writing.

6. Complete Submittal Required for Formal Filing. The City Secretary or the entity responsible for checking the proposed preliminary plat shall determine whether the proposed plat and all required supporting materials are complete and fees paid. The thirty (30) day period specified in Section 9.E.3. of this Ordinance shall not commence unless the proposed plat and supporting materials are complete, and no action by the Council shall be valid until the filing fees are paid.

Section 10. Final Plat

A. Requirements.

1. Conformance with the Preliminary Plat. The final plat and accompanying data shall conform to the preliminary plat as approved by the Council, incorporating any and all changes, modifications, alternatives, corrections and conditions imposed by the Council.

2. Appearance and Composition. The final plat shall be drawn in India ink on a durable, reproducible and permanent medium acceptable to the Council. It shall be 24 inches wide and 18 inches long with a margin of at least two (2) inches on the left side of the sheet and margins of not less than one-half (1/2) on the other three sides. The plat shall be drawn at a scale no smaller than 100 feet to one (1) inch. When more than one sheet is necessary to accommodate the entire area, an index sheet showing the entire subdivision at an appropriate scale shall be attached to the plat.

3. Number of Copies, Inclusion of Construction Plans and Supporting Data, and Timing of Submittal. Fifteen (15) copies of the final plat along with complete construction plans, construction cost estimates, and other supporting data and information as required by this Ordinance shall be submitted to the City Secretary at least fifteen (15) working days prior to the Council meeting at which final plat approval is sought.

4. Contents of the Final Plat. The final plat shall include, either on the plat or in the construction plans, all the features required for preliminary plats in Section 9 above. The final plat shall also include the following information on the plat or as an attachment to the plat:

- a. A brief legal description by volume and page of the appropriate County Deed Records, a complete written legal description by metes and bounds, and the actual metes and bounds of the subdivision, including location of all monuments and primary control points and ties to such control points to which all dimensions, angles, bearings, and similar data in the description are referenced.
- b. The locations, scaled dimensions, names, and description of all existing or recorded streets, alleys, reservations, easements, or other public rights-of-way whether within the subdivision or intersecting or contiguous with its boundary or forming such boundary, and showing accurate dimensions, bearing or deflecting angles and radii, area, and central angle, degree of curvature, tangent distance and length of all curves where appropriate.
- c. The exact locations, dimensions, descriptions, and names of all proposed streets, alleys, parks, other public areas, reservations, easements or other rights-of-way, blocks, lots, and other sites within the subdivision with radii, area, and central angles, degree of curvature, tangent distance and length of all curves where appropriate. These proposed improvements shall comply with the standards and specifications in, or referenced in, Section 12 of this Ordinance.
- d. The final plat shall also be accompanied by a complete list of deed restrictions and restrictive covenants which shall be recorded along with the plat.

5. Requirements for Construction Plans. The detailed construction plans that shall accompany the submittal of the final plat shall include cost estimates for all proposed site improvements. All plans and engineering calculations shall bear the seal and signature of an engineer, certifying their completeness and accuracy. These site improvements shall include, but not be limited to, the following:

- a. Streets, alleys, and walks;
- b. Sanitary sewer systems, including, where appropriate, treatment and disposal systems;
- c. Water supply, including, pipes and hydrants and, where appropriate, wells and reservoirs, and pumping stations;
- d. Storm drainage system, including calculations; and
- e. Erosion and sedimentation controls, where appropriate.

6. Statements and Certifications. The final plat shall also include the following statements and certifications, appropriately executed:

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a. Owner's Acknowledgment.

STATE OF TEXAS

*

*

COUNTY OF _____

*

I (We), the undersigned, owners(s) of land shown on this plat, and designated herein as the _____, subdivision to the City of NIEDERWALD, Texas, and whose name is subscribed hereto, hereby dedicate to the use of the public

forever all streets, alleys, parks, water courses, drains, easements and public places thereon shown for the purpose and consideration therein expressed.

Owner

STATE OF TEXAS

*

*

COUNTY OF _____

*

BEFORE ME, the undersigned authority, on this day personally appeared _____, known to me to be the persons whose name is subscribed to the foregoing instrument, and acknowledged to me that (s)he executed the same for the purposes and considerations therein stated.

Given under my hand and seal of office this _____ day of _____, 19____.

Notary Public

County, Texas

- b. Owner(s)' note incorporating by reference the terms and requirements of this Ordinance and warranting that the owner(s)' rights and obligations run with the land.

STATE OF TEXAS

*

*

COUNTY OF _____

*

I, (We), the undersigned, owner(s) of the land shown on this plat, warrant that any right, privilege, obligation, or remedy granted to me by the subdivision ordinance and other relevant laws of the City of NIEDERWALD, Texas, shall also run in favor of my successors in interest, assigns, agents, employees, or any person acting pursuant to the directions of any of the foregoing, or under color of the same.

Owner

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STATE OF TEXAS

*

*

COUNTY OF _____

*

BEFORE ME, the undersigned authority, this day personally appeared _____, known to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that (s)he executed the same for the purposes and consideration therein stated.

Given under my hand and seal of office this _____ day of _____, 19____.

Notary Public

County, Texas.

c. Approval of the City Council of City.

This plat, _____, has been submitted to and considered by the City Council of the City of NIEDERWALD, Texas, and is hereby approved by such Council.

Dated this _____ day of _____, 19__.

ATTEST:

BY _____

Secretary

Mayor

d. Certification of the surveyor responsible for surveying the subdivision area, attesting to its accuracy.

STATE OF TEXAS

*

*

COUNTY OF _____

*

I, the undersigned, a public surveyor in the State of Texas, hereby certify this plat is true and correct to the best of my knowledge and ability and that it was prepared from an actual survey of the property made on the ground my direct supervision.

Registered Public Surveyor

No. _____

State of Texas

[Surveyor's Seal]

e. Certification by engineer responsible for the preparation of the final plat and supporting data and construction plans and cost estimates, attesting to their accuracy.

STATE OF TEXAS

*

*

COUNTY OF _____

*

I, the undersigned, a registered professional engineer in the State of Texas, hereby certify that the plat and all plans and specifications which are included with the plat are, to the best of my professional capacity,

complete and accurate and in compliance with all relevant City ordinances, codes, plans, and relevant state standards.

[Engineer's Seal]

Registered Professional Engineer
No. _____
State of Texas

STATE OF TEXAS

*
*
*

COUNTY OF _____

Goforth Water Supply Corporation, an approved public water supply system has adequate quantity to supply the subdivision and provisions have been made to provide service to each lot in accordance with the policies of the water supply system.

General Manager,
Goforth Water Supply Corporation

f. Owner's Dedication of Common Areas to Homeowners' Association (as appropriate).

A statement signed by the owner and acknowledged by a notary public that, with the approval of the City Council, the owner has provided perpetual maintenance of common areas within the subdivision through a homeowners' association established in the declaration of private covenants, deed restrictions, and regulations.

7. Disclaimer of Offered Dedications. Disapproval shall indicate refusal to accept any offered dedications. Approval of the plat shall not be deemed acceptance of such dedications until such time as the Council has approved same by entry, use, or maintenance.

B. Processing of Final Plat.

1. General. A final plat shall not be filed for recordation with the County Clerk until the Council has approved the final plat and the accompanying construction plans. Processing for final plat approval shall parallel that described in Section 9.E.1., 2., and 3. of this Ordinance for processing preliminary plats. Within thirty (30) days after the application for final plat approval is formally filed, the Council shall approve or disapprove such plat.

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2. Relation to Preliminary Plat. A final plat of an approved preliminary plat or a portion thereof shall be submitted to the Council within (60) days of the date of approval of the preliminary plat. Otherwise, the approval of the preliminary plat by the Council shall become null and void. No final plat shall be considered unless a preliminary plat has previously been submitted and approved.

3. Submittal of the Final Plat Application. A complete, formal application for final plat approval shall be made by the subdivider in writing to the City Secretary at least fifteen (15) working days prior to the official meeting of the Council at which approval is sought. Fifteen (15) copies of the final plat, together with all the accompanying plans and exhibits, shall be filed. The City Secretary or the entity responsible for checking the proposed final plat shall determine whether the proposed plat and all required plans and exhibits are complete and fees paid. The fifteen (15) working day period specified in this Paragraph and the thirty (30) day period specified in Section 10.B.1. of this Ordinance shall not commence until the proposed plat and plans and exhibits are complete.

4. Fees and Taxes. When the final plat application is filed with the City Secretary, it shall be accompanied by the following fees:

a. Filing Fee: \$15.00 per acre or any fractional part thereof, with a minimum fee of \$200.00 per plat.

b. Construction Inspection Fee: \$50.00 per lot within the city limits. \$100.00 per lot within the ETJ.

5. Council Approval or Disapproval of Final Plat. The Council shall disapprove the proposed final plat unless:

a. The plat complies with the provisions of this Ordinance; and

b. The uses proposed for the property being subdivided are consistent with its zoning.

Disapproval of the final plat shall indicate refusal to accept any offered dedications. Approval of the plat shall not be deemed acceptance of such dedications until such time as the City has appropriated same by entry, use, or maintenance, and by the approval of the constructed improvements therein. Approval of the final plat, plans and specifications required herein shall not prevent the Council or the entity responsible for checking such documents from thereafter requiring the correction of errors in said plans and specifications and in the construction of the associated improvements.

6. Recordation.

a. Approval by the Council. A final plat shall not be filed for recordation with the County Clerk until the Council has approved the final plat and the accompanying construction plans and security and maintenance guarantees as hereinafter required, and certificates have been received from the county tax collectors stating that all taxes on the land being subdivided have been paid to the current year.

b. Final Plat Approval. After the final plat the following conditions and requirements. has been finally approved and the subdivider has constructed all the required improvements and such improvements have been approved and accepted by the City and a maintenance guarantee filed as hereinafter provided; or after the final plat has been finally approved and the subdivider has filed the security and maintenance guarantees as hereinafter provided, the developer/owner shall cause the final plat to be recorded with the County Clerk within thirty (30) days.

D. Vacation of Plat or Resubdivision

1. General. Any plat or replat may be vacated or resubdivided or by the owner of the land, provided that the Council approves the action and owner complies with the applicable state law. No plat shall be resubdivided until the original plat has been vacated.

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2. Plat Vacation. If no lots in the subdivision have been sold or conveyed by any other means to another owner, the owner of the subdivision shall be allowed to vacate said plat by submitting a written instrument to and approved by the City Attorney and the County Clerk, and recording the same with the County Clerk. In cases where lots in the subdivision have been sold or otherwise conveyed to the owner, the plat shall only be allowed to be vacated upon the application of all the owners of lots in said subdivision and with the approval, as provided above, of the City Attorney and County Clerk.

3. Plat Correction. Plat corrections may be allowed without complying with the procedure for vacation and resubdivisions as provided above. However, the correcting documents must be approved by the Council and City Attorney and recorded by the County Clerk.

4. Fees. Any application for plat vacation or resubdivision or correction shall be accompanied by the following fees:

- a. Plat Vacation: \$500.00.
- b. Resubdivision Filing Fee: Same as for final plats.
- c. Plat Correction: \$500.00.

PART IV: GUARANTEE OF PERFORMANCE, STANDARDS AND SPECIFICATIONS, AND SUMMARY OF FEES (Sections 11-13)

Section 11. Guarantee of Performance

A. Construction Inspection and Certification. All plans and actual construction of required improvements shall be inspected by a certified building inspector designated by the City. No plans or completed construction will be considered for approval or acceptance by the Council without certification from said inspector that such plans and calculations and such construction is complete and that they are in accordance with specifications and standards contained or referenced herein, and/or with plans previously approved for the subject subdivision. The inspector shall make frequent field inspections during the construction period and arrange for testing in accordance with accepted civil engineering practice. The inspector shall submit periodic progress reports to the Council during the construction period. The final responsibility for the adequacy and acceptability of all construction shall rest with the subdivider.

B. Maintenance Guarantee. The subdivider shall provide documentation of compliance with the county requirements.

C. Construction Guarantee. The subdivider shall provide documentation of compliance with the county requirements.

D. Acceptance of Construction. The City's building inspector shall inspect such improvements upon completion of construction and shall notify the subdivider and the Planning Commission in writing as to his acceptance or rejection of the construction. He shall reject such construction if it fails to comply with the standards and specifications contained or referred to herein. If he rejects such construction, the Planning Commission shall, on direction of the Council, proceed to enforce the guarantees provided in this Ordinance.

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E. Extension of Time to Complete Construction. Extension of time to complete construction is subject to County approval.

Section 12. Standards and Specifications

No preliminary or final plat shall be approved by the Council, and no completed improvements shall be accepted by the Council unless they conform to the following standards and specifications:

A. General.

1. Conformity with a Master Plan. The subdivision shall conform to any Master plans, codes and Ordinance of the City.

2. Conformity with the City of NIEDERWALD Zoning Ordinance. For subdivisions or portions of subdivisions inside the corporate limits of the City of NIEDERWALD, the development standards

and specifications of the respective zoning districts covering that subdivision or portion thereof shall supersede the analogous standards in this Subdivision Ordinance.

3. Provision for Future Subdivisions. If a tract is subdivided into parcels larger than ordinary building lots, such parcels shall be arranged to allow the opening of future streets.

4. Reserve Strips Prohibited. There shall be no reserve strips controlling access to land dedicated or intended to be dedicated to public use.

B. Streets.

1. Street Layout. Adequate streets shall be provided by the subdivider; and the arrangement character, extent, width, grade, and location of each shall conform to the master plan of the City. Proposed streets shall be considered in their relation to existing and other planned streets, to topographical conditions, to public safety and convenience, and in their appropriate relationship to the proposed uses of land to be served by such streets. The street layout shall be devised for the most advantageous development of the entire neighborhood. Trees which are required to be shown on the preliminary plat shall be avoided whenever possible in the construction of streets.

2. Relation to Adjoining Street System. Where necessary to the neighboring pattern, existing streets in adjoining areas shall be continued, and shall be at least as wide as such existing streets and in alignment therewith.

3. Projection of Streets. Where adjoining areas are not subdivided the arrangement of streets in the subdivision shall make provisions for the proper projection of streets into such unsubdivided areas.

4. Street Jogs. Whenever possible, street jogs with center line offsets of less than 125 feet shall be avoided.

5. Half-Streets of Adjacent Streets. In the case of local, or collector, streets, no new half-streets shall be platted.

6. Street Intersections. Street intersections shall be at right angles wherever practicable, giving due regard to terrain and topography. In no case will intersections at angles more acute than seventy (70) degrees be permitted.

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7. Dead-End Streets. Dead-end streets shall be prohibited except as short stubs to permit future expansion.

8. Cul-de-sacs. In general, cul-de-sacs shall not exceed 600 feet in length, and shall have a turn-around of not less than 100 feet in diameter in residential areas, and not less than 200 feet in diameter in commercial and industrial areas.

9. Discouragement of Through Traffic on Local Streets. Local streets shall be laid out so as to discourage their use by through traffic.

10. Design and Construction Standards.

a. General. Street Design proposals shall comply with county regulations as to maintainability, operation, safety and traffic design with due regard to subgrade conditions, base and pavement specifications, grades, curves, speed limits and adequacy of drainage. The subdivider shall excavate, fill, grade and pave all streets, including sidewalk areas. No street shall be surfaced until the underground utilities which are to be installed in the portions of the streets intended for vehicular traffic have been so installed and inspected. Texas Highway Department Standard Specifications shall be an accepted guide.

b. Base Types. Base shall be at least eight (8) inches of compacted crushed limestone or an equivalent acceptable to the County's Road director..

c. Surface or Pavement Types. Surfacing shall be at least one and one-half (1-1/2) inches of hot mix asphalt concrete or an equivalent acceptable to the County's Road Director.

d. Shoulders. Where shoulders are required, they shall have a base and be sealed or paved with side slopes no steeper than 12:1.

11. Streets on Master Plan. Where a subdivision embraces a street as shown on the master plan of the City, such street shall be platted in the location and of the width indicated by the master plan. Areawide roadway needs shall be considered by the subdivider to the degree that such needs may relate to the subject subdivision. Areawide needs shall be addressed through the procedures specified in Section 8 of this Ordinance.

12. Pavement Widths and Rights-of-Way.

a. Minimum Requirements (See Table 1). Pavement widths and rights-of-way and shoulder widths (where required) shall comply with the minimum requirements specified in Table 1.

b. Right-of-Way Coverage. As a general requirement, the right-of-way shall include the entire traveled way, including shoulders and vehicle recovery area, walkways, and the parallel and contiguous drainageways. Extra widths may be required where these facilities cannot reasonably be placed in the minimum widths specified above. The extra width, however, may be in the form of a right-of-way easement, rather than dedication, and may be vacated should final plans demonstrate a lesser width is sufficient.

c. Streets Abutting the Subdivision. Where the proposed subdivision abuts upon an existing street that does not conform to Paragraph B.12. of this Section, the subdivider shall dedicate right-of-way sufficient to make the full right-of-way width conform to such Paragraph, and there shall be paved so much of such right-of-way as to make the full pavement width comply with such Paragraph. Before any pavement is laid to widen existing pavement, the existing pavement shall be cut back to assure an adequate sub-base and pavement joint.

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13. Drainage.

a. General. Street drainage shall be collected and conveyed in roadside channels and off-roadway locations shall be used as the primary drainage network whenever practicable.

b. Standards for Roadside Channels. Roadside channels shall comply with County regulations.

c. Fordable Driveways Preferred. Roadways shall comply with County regulations.

d. Culvert Design and Location. Driveway culverts shall comply with County regulations.

MINIMUM REQUIREMENTS FOR STREETS AND RIGHTS-OF-WAY (IN FEET)

| <u>Road Classification</u> | <u>Minimum Direct Lot Frontage</u> | <u>Minimum Driveway Spacing</u> |
|----------------------------|------------------------------------|---------------------------------|
| Local Street | 50' | None |
| Minor Collector | 100' | 75' |

| | | |
|-----------------|------|------|
| Major Collector | 150' | 120' |
| Minor Arterial | 150' | 120' |
| Major Arterial | 150' | 120' |

14. Street Names. Names of new streets shall not duplicate or cause confusion with the names of existing streets, unless the new streets are a continuation of or in alignment with existing streets, in which case names of existing streets shall be used.

15. Street Signs. Street name signs shall be installed by the subdivider at all intersections within or abutting the subdivision. Such signs shall be of a type approved and shall be installed in accordance with the standards of the County. Traffic regulatory signs and safety signs shall be installed by the subdivider in accordance with County and State regulations.

C. Alleys. No alleys will be permitted.

D. Utility Easements. Each block shall have utility easements reserved for the use of all public utility lines, conduits and equipment. All utilities must be underground.

E. Water Installations.

1. Availability of Service. If the subdivision is not to be served immediately by a water utility, a restriction prohibiting occupancy of any lot until water satisfactory for human consumption is

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available.

2. Water Supply and Distribution. All items pertaining to water supply and distribution shall be in accordance with the local water supplier regulations.

3. Fire Hydrants. All items pertaining to fire hydrants shall be in accordance with the local water supplier regulations.

4. Storage and Pumping for Fire Flow. All items pertaining to storage and pumping for fire flow shall be in accordance with the local water supplier regulations.

F. Sewers.

1. General. All subdivisions shall be provided with an approved sewage treatment and disposal system. Where septic tanks are to be installed, the subdivider shall conduct percolation tests under the supervision of the County Health Department or another duly authorized official in order to determine the adequacy of proposed lot sizes. If a sanitary sewer disposal system is to be installed, the plans for such system must be approved by the Texas State Department of Health, prior to approval of the final plat by the Council.

2. Availability of Service. Occupancy of any lot shall be prohibited until a septic tank system is installed in accordance with the rules and regulations of the County Health Department and has been inspected and approved by the County,

4. Design Criteria. Shall be in compliance with the county regulations.

G. Utility Lines All utility lines that pass under a street shall be installed before the street is paved. When it is necessary that utility lines pass under the street pavement, they shall be installed to a point at least two (2) feet beyond the edge of the pavement.

H. Monuments. Shall be in compliance with the county regulations.

I. Drainage

1. General. The interpretation of the requirements set forth in this section shall be made by the County's engineer, unless specified otherwise by the Council. The subdivider shall be responsible for the conveyance of all storm drainage flowing through or abutting the subject property, including drainage directed to the property by prior development as well as that naturally flowing by reason of topography.

Where new drainage improvements are required along the boundary of a subdivision, the owner proposing development shall be responsible for designing and constructing all the required improvements at or before the time of development, including the dedication of all necessary rights-of-way or easements necessary to accommodate the improvements. Where the subdivider proposes to subdivide only a portion of the property, only the drainage improvements for the portion being subdivided shall be required to be installed, except as drainage improvements outside the portion being subdivided are deemed necessary by the County for proper drainage of the portion being subdivided.

2. Drainage Facilities. The responsibility of the subdivider shall extend to the provision of adequate off-site drainage facilities and improvements to accommodate the full effects of the development of his property. The subdivider will stand the full cost of acquiring said property rights and constructing the off-site improvements and facilities.

3. Design Criteria. Shall be in compliance with county regulations.

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4. Easements. All drainage easements across private property shall contain the necessary language to permit the required water flow, required maintenance of vegetation by the property owner(s), and permit the necessary access by City Building Inspector for inspection.

J. Erosion and Sedimentation Control.

1. Purpose. The purpose of controlling erosion and sedimentation during the construction stages in a subdivision are to minimize nuisances on adjacent properties, avoid siltation and water quality degradation of streams, and preserve the natural and traditional character of watercourses running through the area.

2. Required Program. The subdivider shall be required to submit plans for and execute a program of erosion and sedimentation control during the construction period for the following areas of land: all lands within one hundred (100) feet of a watercourse or drainageway; all lands, including embankments and temporary fill or borrow areas, of a slope greater than twelve (12) percent gradient; and other sites where the City's building inspector designates within the subdivision.

3. Required Plans. When a control program is required, the subdivider shall submit as a part of the overall construction plans a complete erosion and sedimentation control plan specifying the type and location of controls to be used, the timing in relation to each stage of the construction sequence, maintenance of controls and plans and techniques to be used for revegetation and slope stabilization. The accepted guides for preparing control plans is the U. S. Department of Agriculture Erosion and Sediment Control Guidelines for Developing Areas in Texas.

4. Drainage Channel Stabilization. All new drainage channels on the site shall be designed to minimize potential erosion. All constructed and altered drainage channels shall be stabilized and vegetated immediately after final grading. All culverts shall be constructed with concrete rip rap around each opening.

K. Blocks. Block lengths shall not exceed 1,500 feet, nor be less than 300 feet.

L. Lots.

1. Minimum Lot Size. All lots shall consist of a minimum area of one (1) acre. In the case of irregularly shaped lots, the minimum width shall be measured at the front of the building setback line.

2. Unsewered Lots.

a. All lots in a subdivision shall be laid out in such a manner as to facilitate connection to a sanitary sewer system in the future in a logical and orderly fashion.

b. Planning Commission review and approval of site suitability occur prior to or concurrently with preliminary plat review and approval.

c. Approval of a subdivision plat under these criteria does not mean that every lot is suitable for a conventional septic tank-soil absorption system. The City Council may require, on the basis of recommendations by the Planning Commission, that a plat note or restrictive covenant be attached to the plat and recorded with the County Clerk specifying that lots within the subdivision may not be suitable for conventional septic tank-soil absorption systems.

d. No property in the Niederwald area lies within the Edwards Aquifer Recharge Zone.

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3. Flag Lots. Flag-shaped lots shall be prohibited except in unique circumstances where prior ownership boundaries require such a configuration.

4. Frontage. Each lot shall front upon a public street. Lots of irregular shape shall not be allowed unless they have a street frontage of at least one hundred fifty (150) feet. Lots on a cul-de-sac street shall have a minimum street frontage of sixty (60) feet. Lots of irregular shape shall be discouraged.

5. Side Lot Lines. Side lot lines shall be substantially at right angles to straight street lines and radial to curved street lines.

6. Minimum Setback Lines. Minimum front building setback lines shall be required of at least forty (40) feet. Corner lots shall have at least the minimum forty (40) feet.

7. Rear Yards. Minimum rear yard depths forty (40) feet shall be required.

8. Side Yards. Minimum side yard width of twenty (20) feet shall be required on each side of interior lots and on the interior side of corner lots.

9. Extra Depth and Width in Certain Cases. Where a lot in a residential area backs up to a railroad right-of-way, a high pressure gasoline, oil or gas line, an arterial street, and industrial area, or other land use which has a depreciating effect on the residential use of the property, and where no street is provided at the rear of such lot, additional depth shall be required by the Council. In no case shall a depth in excess of fifty (50) feet be required. Where a lot sides to any of the above, additional width shall be required by the Council, but in no event shall a width in excess of fifty (50) feet be required.

10. Flood Plain Setback Lines. Where a lot is adjacent to a natural watercourse or drainageway, a minimum building setback line shall be established along the one hundred (100) year flood plain boundary on each such lot. Within the flood plain area, construction of residential structures and other structures intended for human occupancy shall be prohibited. Other construction related to subdivision development, including streets, utilities, and fill material, shall be minimized within the flood plain setback area. Clearing or removal of natural ground cover and trees within the flood plain setback area of a natural watercourse shall be minimized.

11. Setbacks Shown on Plat. The minimum setback lines, minimum yard depths, side yard widths, and other such features as required by the Council and by this Ordinance shall be clearly indicated on the final plat, either by delineation or by statement, and in deed restrictions and private covenants that must accompany the plat.

M. Easements. When the Council finds that easements in areas adjoining a proposed subdivision are necessary to provide drainage thereof, or to serve such subdivision with utilities, the subdivider shall obtain such easements.

N. Parks. A space adequate to five percent (5%) of the total property to be subdivided shall be dedicated in fee simple to the City for recreational or conservational use. The developer shall show on the preliminary plat the land that is suggested for such public dedication. The land must be suitable for development of a public park. If it is recommended by the Planning Commission to the City Council, that the proposed site is not suitable, the developer will be given prompt notice of such determination and may offer cash in lieu of the dedication of land, such amount to be determined as set forth below, or the developer may offer a revision to the preliminary plat and dedicate land that is acceptable to the City Council. Alternatively, the developer may appeal the recommendation of the Planning Commission to the City Council, who shall exercise final jurisdiction over all such appeals.

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In lieu of dedication of land within the subdivision for parks and conservation purposes the developer may, subject to the approval and acceptance by the City Council, pay cash in lieu of dedication of park land. the cash contribution shall be determined in accordance with the following schedule:

(a) Classification Residential: One hundred twenty-five and no/100 dollars (\$125.00) for each single family lot in the subdivision.

(b) Classification Commercial: Five percent (5%) of the raw land value of the area. Raw land value shall be established by a State of Texas registered appraiser at the expense of the developer/owner.

(c) Classification Public: Churches, schools and public buildings are exempt and shall not be required to pay cash or dedicate land for parks and conservation as a condition to plat approval.

In the event a developer elects to pay cash in lieu of dedication of land for parks and conservation, the cash shall be paid at the time the subdivision plat is approved.

All cash paid in lieu of park land dedication shall be deposited by the City into a special park fund account and shall be spent by the City on the acquisition of park lands or the improvements of park land/or facilities within the City or ETJ within five (5) years after receipt of such funds by the City. The funds shall not be spent for any other purposes. If the funds are not spent within five (5) years the funds shall be paid to the owners of lots in the subdivision on an equitable basis.

O. Safety Hazards. Any topographical features on land adjoining a subdivision that may be deemed to be hazardous to the public, such as permanent bodies of water exceeding a depth of twelve (12) inches, shall be permanently fenced in such a manner and of a material no less than six feet in height that

would prevent any possible access by the public. These areas shall be shown on the plat with fencing indicated.

P. Responsibility for Payment of Installation Costs.

1. Any subdivision requiring services to be provided by the City shall obtain advance approval of such extension of services from the Council.

2. In no event shall the City undergo expenses within any subdivision.

Section 13. Summary of Fees

A. Variances: \$50 per variance requested with a \$200 minimum.

B. Preliminary Conference: \$300 per conference.

C. Preliminary Plat Filing Fee: \$10 per acre or any fractional part thereof, with a minimum fee of \$200 per plat.

D. Final Plat Filing Fee: \$15 per acre or any fractional part thereof, with a minimum fee of \$200 per plat.

E. Construction Inspection Fee:

1. Inside ETJ: \$100 per lot.
2. Inside City Limits: \$50 per lot.

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F. Park Land Dedication: 5% of total property to be subdivided or, at the City's option, \$125 per Residential lot or a 5% raw land value for Commercial lot.

G. Plat Vacation: \$500 per plat.

H. Plat Resubdivision Filing Fee: Same as for final plat.

I. Plat Correction Fee: \$500 per plat.

J. Fine for Violations: Up to \$200 per offense per day for as long as the violation continues.

PART V: AUTHORITY OF THE COUNCIL AND INSPECTOR, RELATION TO OTHER ORDINANCES, SEVERABILITY ENFORCEMENT PROVISIONS, WAIVERS, AND EFFECTIVE DATE

Section 14. Authority of the Council and Inspector

The City Council or its designated officer is hereby authorized and directed to promulgate rules, regulation, standards and specification for the construction, installation, design, location and arrangement of streets, curbs, street lights, street signs, alleys, utility layouts, utility easements, gates for utility easements, sidewalks, water supply and water distribution systems, fire hydrants, sewage disposal systems, septic tanks, water works, monuments, criteria for drainage easement requirements, drainage facilities, and crosswalks ways. He shall file same with the City Secretary at least thirty (30) days before they become effective. He may amend the

same from time to time, provided that an amendment must be filed with the City secretary at least thirty (30) days before it becomes effective. No such rules, regulations, standards and specifications shall conflict with this or any other ordinances of the City. All such improvements shall be constructed, installed, designed, located, and arranged by the subdivider in accordance with such rules, regulations, standards and specifications.

Section 15. Relation to Other Ordinances

Wherever the requirements of this Ordinance are at variance with the requirement of any other applicable law, the most restrictive, or that imposing the higher standard, shall apply.

Section 16. Severability

Should any of the various clauses, sentences, paragraphs, sections or parts of this Ordinance be held for any reason invalid, unconstitutional, or unenforceable as applied to a subdivision or a particular property, building, or structure therein, the same shall not be construed to affect any other valid portion of this Ordinance; but all valid portions hereof shall remain in full force and effect.

Section 17. Enforcement Provisions

A. Any person violating any provision of this Ordinance within the corporate limits of the City shall be guilty of a misdemeanor and, upon conviction, shall be fined an amount not exceeding two hundred dollars (\$200.00) per offense. Each day that such violation continues shall be a separate offense. Prosecution of conviction under this provision shall never be a bar to any other remedy or relief for violations of this Ordinance.

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B. In the event any provision of this Ordinance is violated within the corporate limits of the City, or outside such corporate limits but within the area of extraterritorial jurisdiction of the City, the City may institute any appropriate action or proceedings in District Court or another Court of Competent jurisdiction to restrain and enjoin the violation of such Ordinance.

Section 18. Waivers

A. **Authority to Grant Waivers.** Waivers for any requirements of this Ordinance may be granted only by the City Council unless otherwise specified or prohibited by law.

B. **Procedure.** Fifteen (15) copies of the request for waiver shall be submitted in writing to the City Secretary no less than eight (8) working days prior to the meeting at which the Planning Commission is to consider the waiver request.

C. **Reasons for Request.** The request shall specifically and clearly state the section or sections of the Ordinance for which the waiver is being requested and reasons for the request, including any supporting documentation.

D. **Fees.** Any fees incurred by such request shall be paid by the applicant in full at the time of filing.

Section 19. Effective Date

This Ordinance shall become effective on the ____ day of _____, 1997.

PASSED AND APPROVED THIS ____ day of _____ 1997.

Fern B. Howze, Mayor
City of Niederwald, Texas

ATTEST:

APPROVED:

City Secretary

Shirley R. Whisenant, Mayor Pro-Tem

Rickie Adkins, Council Member

Glenda Buehring, Council Member

Angie Schulze, Council Member

Legislative History

This Ordinance was passed in order to replace Ordinance 070191-A, as amended, and to update and consolidate all existing ordinances pertaining to subdivisions.

