

ORDINANCE NO. 012605-A

AN ORDINANCE AMENDING ORDINANCE NO. 122000-A, AS AMENDED, PROVIDING FOR VARIOUS AMENDMENTS TO THE SUBDIVISION REGULATIONS OF THE CITY OF NIEDERWALD; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR A REPEALER CLAUSE; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Niederwald desires to amend Ordinance No. 122000-A, as previously amended, in accordance with and as authorized by Chapter 212 of the Texas Local Government Code; Now Therefore,

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

I.

That Section 5 of Ordinance No. 122000-A is hereby amended to add a new definition of "Industrial Street" and "Subdivision," to reorganize the definitions to appear in alphabetical order, and to reorganize other provisions contained therein, to read as follows:

Section 5. Definitions

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. Definitions not expressly prescribed herein are to be construed in accordance with customary usage in municipal planning and engineering practices. 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. City 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, that is employed/contracted by the City of Niederwald to perform required engineering functions.

- E. Commission:** The Planning Commission or a person designated by the Commission.
- F. Council:** The City Council or person designated by the Council.
- G. Crosswalk Way:** Public right-of-way, ten (10) feet or more in width between property lines, which provides pedestrian circulation.
- H. Cul-de-sac:** A street having one outlet to another street, and terminated on the opposite end by a vehicular turn around.
- I. Dead-end Street:** A street, other than a cul-de-sac, with only one outlet.
- J. 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 Planning Commission for assistance in such determination from the Planning Commission. Any determination by the Planning Commission will affect only these Regulations and will not in any manner be binding upon the Texas Natural Resource Conservation Commission. The Planning Commission 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.
- K. 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.
- L. Impervious Cover:** All paving, walks, rooftops and other surfaces that shed runoff. Impervious cover includes gravel surfaces and other surfaces that support vehicular or pedestrian traffic.
- M. 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; and which is designated by a tract or lot number or symbol, or by metes and bounds, consisting of not less than one acre for an unsewered lot; not less than one-half acre for a sewerer lot. Proposed lots must have at least one acre out of the floodplain for an unsewered lot and at least one-half acre out of the floodplain for a sewerer lot.

a) **Regular lot:** A regular lot has four (4) sides of equal length as in a square, or two (2) pair of equal length sides as in a rectangle. Sides are considered equal in length if they vary by no more than 15%. Side A/Side B must be between 85% and 115%.

b) **Irregular lot:** An irregular lot has more than four (4) sides or has opposite sides of unequal length as described above.

c) **Flag lot:** A flag lot has a relatively narrow strip of land providing road frontage. The narrow strip does not provide adequate width to support a typical building site as on a regular lot. The flag lot has a wider area away from the R.O.W. that supports a building site. The minimum road frontage of a flag lot is 25'. The minimum width of the flag portion of the lot is 25'.

N. Manufactured Building: Either an independent, individual building, a combination of modules, or a module for combination with other elements to form a building, not a mobile, which has been mass-produced in a factory and designed and constructed for transportation to a site for installation and use on a permanent foundation when connected to required utilities at that site. All manufactured buildings must either meet the standards set by the City of Niederwald's codes as determined by an onsite inspection by inspectors or be certified as meeting the codes and standards established by the Texas Department of Labor and Standards or the United States Department of Housing and Urban Development (HUD), as appropriate.

O. May: The word "may" is merely directory.

P. Manufactured Home: A structure constructed on or after June 15, 1976 according to the rules of the United States Department of Housing and Urban Development, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or 40 body feet or more in length, or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems. This term shall not include a recreational vehicle. A manufactured building, or portion of a building designed for long-term residential use.

Q. Mobile Home: A structure that was constructed before June 15, 1976, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or 40 body feet or more in length, or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis designed to be used as a dwelling with or without a permanent foundation when connected to

the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems.

- R. **Pavement Width:** The portion of a street available for vehicular traffic. Where curbs are laid, they are not included in the pavement width.
- S. **Permanent Foundation:** A concrete slab or wooden, concrete, and/or steel pier and beam substructure upon which a building is permanently fastened and attached so as to preclude the transport of the building on its own chassis.
- T. **Person:** An individual, association, firm, corporation, government agency, political subdivision or other entity.
- U. **Shall:** The word “shall” is always mandatory.
- V. **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 park/recreation areas, and between major arterial streets and streets of lower classification.
 - 3. A “**collector street**” is an undivided roadway generally providing access to major 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.
 - 5. An “**industrial street**” provides access to areas zoned for (or used or intended to be used for) industrial, manufacturing, warehousing, distribution, recycling or resource extraction uses. The City reserves the right to determine if a particular use is industrial, and the right to require construction of an industrial street.
- W. **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.

- X. Subdivision:** The division of any tract, lot, piece, or parcel of land, or any portion or fraction thereof (whether by block or lot numbers, by metes and bounds description, or in any other manner), situated within the corporate limits, or within the City’s extraterritorial jurisdiction, in two or more parts for the purpose of transfer of ownership, suburban lots or sites, building lots or sites, or any lots or sites for development or improvement, whether all or any portion thereof be intended for public use, or only for the use of purchasers, short or long-term lessees, guest and/or agents. Subdivision also includes resubdivision of any tract, lot, piece, or parcel of land, or any portion or fraction thereof. Division of land into parcels of five (5) or more acres each shall not be included in this definition of subdivision where each parcel has access to a public street and no public improvement is being dedicated. “Access to a public street” means that each parcel abuts a public street.
- Y. Surveyor:** A licensed State Land Surveyor or a Registered Public Surveyor, as authorized by the State statutes to practice the profession of surveying.
- Z. Utility Easement:** An interest in land granted to the City, to the public generally, and/or to private utility corporations, 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.

II.

That Section 9.C. of Ordinance No. 122000-A is hereby amended to read as follows:

- C. Filing Fee; Preliminary Construction Plan Review Fee; Preliminary Construction Inspection Fee.** The preliminary plat application shall be accompanied by a filing fee of \$395.00 + \$30.00 per lot, the preliminary construction plan review fee, and the preliminary construction inspection fee. Such application shall be considered incomplete until said fees are paid. No action by the Commission shall be valid until the fees have been paid. The filing fee shall not be refunded should the subdivider fail to perfect his formal application for preliminary plat approval or should the plat be disapproved. The preliminary plat application shall include preliminary cost estimates for all proposed site improvements. The City of Niederwald reserves the right to have the City Engineer review the preliminary estimated construction costs and require changes to the preliminary cost estimates, if in the City Engineer’s opinion the

preliminary cost estimates are not accurate. 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 detention and storm water conveyance design and calculations;
- e. Water Quality improvements as specified in the current City of Austin Environmental Criteria Manual or in TNRCC Document No. RG-348 dated June 1999, "Complying with Edwards Aquifer Rules: Technical Guidance on Best Management Practices".
- f. Erosion and sedimentation controls, where appropriate.

Preliminary Construction Plan Review Fee: The preliminary plat shall be accompanied by a fee in the amount of one percent (1%) of the estimated total construction costs outside the incorporated limits of the City, and eight-tenths of one percent (0.8%) of estimated total construction costs within the corporate limits of the City, with a \$750.00 minimum.

Preliminary Construction Inspection Fee: The preliminary plat shall be accompanied by a fee in the amount of five percent (5%) of estimated total construction costs outside the corporate limits of the City, and three percent (3%) of estimated total construction costs within the corporate limits of the City, with a \$500.00 minimum.

III.

That Section 10.B.4. of Ordinance No. 122000-A is hereby amended to read as follows:

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

a. Filing Fee: \$30.00 per lot, with a minimum fee of \$750.00 per plat.

b. Construction Plan Review Fee: One percent (1%) of estimated total construction costs outside the incorporated limits of the City, and eight-tenths of one percent (0.8%) of estimated total construction costs within the corporate limits of the City, with a \$750.00 minimum. The City of Niederwald reserves the right to have the City Engineer review the estimated construction cost and require changes

to the cost estimate, if in the City Engineer's opinion the cost estimate is not accurate. The amount due to the City pursuant to this subsection shall be reduced by the amount of the Preliminary Construction Plan Review Fee previously paid to the City in accordance with Section 9.C.of this Ordinance.

c. Construction Inspection Fee: Five percent (5%) of estimated total construction costs outside the corporate limits of the City, and three percent (3%) of estimated total construction costs within the corporate limits of the City, with a \$500.00 minimum. The amount due to the City pursuant to this subsection shall be reduced by the amount of the Preliminary Construction Inspection Fee previously paid to the City in accordance with Section 9.C.of this Ordinance.

IV.

That Section 10.B.5 of Ordinance No. 122000-A is hereby amended to read as follows:

- 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 any other applicable laws, ordinances, or regulations;
 - b. The uses proposed for the property being subdivided are consistent with its zoning; and
 - c. It conforms to the engineering design standards and other specifications of the City and its current and future streets, alleys, parks, playgrounds, and public utility facilities.

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 construction improvements therein. Approval of the final plat, plans, and specifications required herein shall not prevent the Council or the entity responsible for reviewing such documents from thereafter requiring the correction of errors in said plans and specifications and in the construction of the associated improvements.

V.

That Section 10.B. of Ordinance No. 122000-A is hereby amended to add a new subsection 10.B.7, to read as follows:

7. **Expiration of Final Plat.** Except as otherwise provided herein, an unrecorded final plat expires twelve (12) months from the date the City Council officially approves the final plat. Upon expiration, the City Council's approval of the unrecorded final plat shall be void. The City Council, if a written application and appropriate fee is received from the subdivider prior to the expiration of the final plat, may, for just cause, grant one (1) extension of up to six (6) additional months. If any changes to the final plat are required by the City Council, the City Council may require the submission of a revised final plat. Further, within six (6) months after final approval by the City Council, the subdivider shall complete construction of the required public improvements or file an appropriate financial surety instrument guaranteeing the completion of the required improvements, or such approval of the unrecorded final plat shall be void.

VI.

That Section 11 of Ordinance No. 122000-A is hereby amended to read as follows:

Section 11. Guarantee of Performance

- A. **Construction Inspection and Certification.** All plans and actual construction of required improvements shall be inspected by the City Engineer of the City of Niederwald or his designated representative. No plans or completed construction will be considered for approval or acceptance by the Council without certification from said engineer 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 engineer shall make frequent field inspections during the construction period and arrange for testing in accordance with accepted civil engineering practice. The engineer shall submit periodic progress reports to the Council during the construction period. The final responsibility for the adequacy and acceptability of all plans and actual construction of required improvements shall rest with the subdivider.
- B. **Assurances for Completion of Improvements.**
 1. **Purpose.** The provisions herein are designed and intended to insure that, for all subdivision of land within the jurisdiction of the City (i.e. within the corporate limits and extraterritorial jurisdiction of the City), all improvements as required herein are installed in a timely manner in order that:

a. The City can provide for the orderly and economical extension of public facilities and services.

b. All purchasers of property within the subdivision shall have a usable, buildable parcel of land.

c. All required improvements are constructed in accordance with the City's engineering design standards and all other applicable ordinances, codes, policies and regulations.

2. **General Policy.** Upon approval of the a final plat by the City, and prior to it being signed by the Mayor of the City, and before said final plat shall be allowed to be recorded in the plat records of the county, the applicant requesting final plat approval shall, within the time period for which the final plat has been conditionally approved by the City:

a. Construct all improvements as required by this Ordinance and the City's engineering design standards, and provide a surety instrument guaranteeing their maintenance as required herein.

b. Provide a surety instrument guaranteeing the construction of all improvements required by this Ordinance and the City's engineering design standards, and as provided for herein.

In all instances, the original copy of the final plat, without the benefit of required signature of the Mayor, shall be held in escrow by the City and shall not be released for any purpose until such time as the conditions of this Section are satisfied.

Upon the requirements of this Section being satisfied, the final plat shall be considered fully approved, except as otherwise provided for in this Ordinance, and the original copy of the final plat shall be signed by the Mayor of the City, and the subdivider may shall file said final plat in the plat records of the county.

3. **Completion of Improvements.** Prior to the signing of the approved final plat by the Mayor of the City of Niederwald, the subdivider shall:

a. Complete all improvements required by this Ordinance in accordance with the approved construction plans, engineering design standards, and other applicable ordinances, codes, regulations, and policies, and subject to the approval of the City Engineer and acceptance by the City, except as otherwise provided for in this Ordinance.

4. **Alternative to Completing Improvements.** The City may waive the requirement that the subdivider complete all improvements required by this Ordinance and the City's engineering design standards prior to the signing of the approved final plat, contingent upon securing from the subdivider a guarantee, as provided for by this Section, for completion of all required improvements, including the City's cost for collecting the guarantee funds and administering the completion of improvements, in the event the subdivider defaults. The Planning

Commission and the City Council must be notified that this waiver is being requested by the subdivider at the time of preliminary plat application and submission. Such guarantee shall take one of the following forms:

a. Performance Bond. The subdivider shall post a performance bond with the City, as set forth herein, in an amount equal to one hundred ten percent (110%) of the estimated construction costs for all remaining required improvements, using a City-approved form.

b. Escrow Account. The subdivider shall deposit cash, or other instrument readily convertible into cash at face value, either with the City, or in escrow with a bank or savings and loan institution. The use of any instrument other than cash shall be subject to the approval of the City. The amount of the deposit shall equal one hundred ten percent (110%) of the estimated construction costs for all remaining required improvements. In the case of any escrow account, the subdivider shall file with the City an agreement, using a City-approved form, between the financial institution and the subdivider guaranteeing the following:

i. That the funds of said escrow account shall be held in trust until released by the City and may not be used or pledged by the subdivider as security in any other matter during that period.

ii. That in the case of a failure on the part of the subdivider to complete said improvements, the financial institution shall immediately make the funds in said account available to the City for use in the completion of those improvements.

c. Letter of Credit. The subdivider shall provide a letter of credit from a bank or other reputable institution or individual. This letter shall be submitted to the City, using the standard City form, and shall certify the following:

i. That the creditor does guarantee funds equal to one hundred ten percent (110%) of the estimated construction costs for all remaining required improvements.

ii. That, in the case of failure on the part of the subdivider to complete the specified improvements within the required time period, the creditor shall pay to the City immediately, and without further action, such funds as are necessary to finance the completion of those improvements, up to the limit of credit stated in the letter.

iii. That this letter of credit may not be withdrawn, or reduced in amount, until approved by the City according to the provisions of this Ordinance.

d. Cost Estimates. A registered professional engineer licensed to practice in the State of Texas shall furnish estimates of the costs of all required improvements to the City Engineer. The City Engineer shall review the estimates in order to determine the adequacy of the guarantee instrument for insuring the construction of the required facilities.

e. Surety Acceptance. The bank, financial institution, insurer, person or entity providing any letter of credit, bond or holding any escrow account,

pursuant to this Ordinance, shall meet or exceed the minimum requirements established by City ordinance and shall be subject to approval by the City.

f. Sufficiency. Such surety shall comply with all statutory requirements and shall be satisfactory to the City Attorney as to form, sufficiency, and manner of execution. All such surety instruments shall be both a payment and performance guarantee.

g. If the project is located in the extraterritorial jurisdiction of the City, and is subject to the bonding requirements of the County for the construction of roadways, then that amount of money shall be reduced from the amount required to be posted with the City, provided that the instrument is transferable from the County to the City upon annexation.

5. Time Limit for Completing Improvements. The period within which required improvements must be completed shall be incorporated in the surety instrument and shall not in any event, without prior approval of the City, exceed six (6) months from the date of final plat approval.

a. The Planning Commission may, upon application of the subdivider and upon proof of hardship, recommend to the City Council extension of the completion date set forth in such bond or other instrument for a maximum period of six (6) additional months. An application for extension shall be accompanied by an updated estimate of construction costs prepared by a registered professional engineer, licensed to practice in the State of Texas. A surety instrument for guaranteeing completion of remaining required improvements must be filed in an amount equal to one hundred ten percent (110%) of the updated estimate of construction costs as approved by the City Engineer.

b. The City Council may at any time during the period of such surety instrument accept a substitution of principal sureties.

6. Failure to Complete Improvements. Approval of final plats shall be deemed to have expired in subdivisions for which no assurances for completion have been posted or the improvements have not been completed within six (6) months of final plat approval, unless otherwise approved by the City. In those cases where a surety instrument has been required and improvements have not been completed within the terms of said surety instrument, the City may declare the subdivider and/or surety to be in default and require that all the improvements be installed.

7. Acceptance of Construction. The City Engineer shall inspect such improvements upon completion of construction to determine compliance with City requirements, approved construction plans, City engineering design standards, and all other applicable ordinances, codes, policies and regulations. The City Engineer shall notify the subdivider and the City Council in writing as to his acceptance or rejection of the improvements. The City Engineer shall reject such improvements if the improvements fail to comply with the standards and specifications contained or referred to herein. If the City Engineer rejects such

improvements, the City Engineer shall issue a punch list to the subdivider denoting items remaining to be completed. If the City Engineer rejects such improvements, the Council may proceed to enforce the guarantees provided for in this Ordinance. The City shall not accept dedications of required improvements nor release or reduce a performance bond or other assurance, until such time as it determines that:

- a. All improvements have been satisfactorily completed.
- b. Two (2) copies of as-built plans have been submitted to and approved by the City Engineer, along with a statement by a licensed professional engineer that all improvements have been installed and constructed in accordance with the submitted as-built plans.
- c. Copies of all inspection reports, shop drawings and certified test results of construction materials have been submitted to and approved by the City Engineer.
- d. Diskette(s) containing computer generated drawings of all public improvements shown on the construction plans have been submitted to the City Engineer to update City record drawings.
- e. The required maintenance guarantee has been provided.
- f. Any and all other requirements of the final plat process have been satisfied.

8. Reduction or Release of Improvement Surety Instrument.

a. A surety instrument may be reduced, upon recommendation of the City Engineer and with the approval of the City Council, upon actual construction of required improvements by a ratio that the completed improvements bear to the total public improvements required for the subdivision, as determined by the City Engineer.

b. Before the City shall reduce said surety instrument, the subdivider shall provide a new surety instrument in an amount equal to one hundred ten percent (110%) of the estimated cost of the remaining required improvements, and such new surety instrument shall comply with this Ordinance.

c. The substitution of a new surety instrument shall in no way change or modify the terms and conditions of the performance surety instrument or the obligation of the subdivider as specified in the performance surety instrument.

d. in no event shall surety instrument be reduced below ten percent (10%) of the principal amount of the original estimated total costs of improvements for which surety was given, prior to completion of all required improvements.

e. The City shall not release a surety instrument unless and until all the conditions of this Ordinance have been met.

C. Maintenance Guarantee.

1. Before the release of any surety instrument guaranteeing the construction of required subdivision improvements or the signing of the final plat where subdivision improvements were made prior to the filing of the final plat for

recordation, the subdivider shall furnish the City with a maintenance bond or other surety to assure the quality of materials and workmanship, and maintenance of all required improvements including the City's costs for collecting the guaranteed funds and administering the correction and/or replacement of covered improvements in the event the subdivider defaults.

2. The maintenance bond or other surety instrument shall be satisfactory to the City Attorney as to form, sufficiency, and manner of execution.

3. Said bond or other instrument shall be in an amount equal to ten percent (10%) of the cost of improvements verified by the City Engineer and shall run for a period of one (1) calendar year measured from the date of release of the performance surety instrument, or signing and recording of the final plat, whichever occurs later.

4. In an instance in where a maintenance bond or other surety instrument has been posted and a defect or failure of any required improvement occurs within the period of coverage, the City may declare said bond or surety to be in default and require that the improvements be repaired or replaced.

5. Whenever a defect or failure of any required improvement occurs within the period of coverage, the City shall require that a new maintenance bond or other surety instrument be posted for a period of one (1) full calendar year sufficient to cover the corrected defect or failure.

VII.

That Section 12 of Ordinance No. 122000-A is hereby amended to read as follows:

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 specification:

A. General

1. **Conformity with Regulations.** The subdivision shall conform to any Master Plans, Codes, Regulations, Ordinances and engineering design standards 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 any conflicting 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.
5. **Driveways.** Each lot shall have a separate driveway.
6. **Housing.** All housing shall comply with the following standards:
 1. The structure shall be secured on a permanent foundation as defined in this ordinance or other applicable law.
 2. The main roof shall be pitched, rather than flat.
 3. The house shall appear to face the street and have a gabled entry or other such break in the façade of equivalent proportions.
 4. The exterior walls shall look like wood or masonry, regardless of the actual composition.
 5. The foundation shall form a complete enclosure under exterior walls.
 6. Size shall be consistent with other houses in the neighborhood.
7. **Conformity with Flood Damage Prevention Ordinance.** The subdivision shall conform to the Flood Damage Prevention Ordinance of the City. A subdivider that is required by the Flood Damage Prevention Ordinance to submit a development permit application shall pay to the City of Niederwald a fee of \$750.00 for review of the development permit application. Said fee must accompany the application, and the application shall be considered incomplete until said development review fee is paid. Said fee is in addition to any other fee that may be required by this or any other ordinance of the City of Niederwald.

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 engineering design standards and all other specifications 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.** Street jogs with centerline offsets of less than one hundred twenty-five feet (125') 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 eighty degrees (80°) be permitted.
7. **Dead-End Streets.** Dead-end streets shall be prohibited except as short stubs to permit future extension.
8. **Cul-de-sacs.** In general, cul-de-sacs shall not exceed six hundred feet (600') in length. Cul-de-sacs shall conform to the requirements of the City's engineering design standards.
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 the City's engineering design standards and this Ordinance. 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. Due to the expansive soils in the area, the City reserves the right to require Lime-Stabilized subgrade or other

subgrade stabilization methods as determined by the City Engineer. Developer shall be required to pay the cost of subgrade and pavement testing. Testing shall be done by a qualified geotechnical engineer acceptable to the City.

- b. **Flexible Base.** Flexible Base shall be at least twelve inches (12") of compacted crushed limestone or an acceptable equivalent according to the City's engineering design standards.
- c. **Surface or Pavement Types.** Surfacing shall comply with the City's engineering design standards. Curbing type and/or style shall be determined by the City Engineer.
- 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. Area-wide roadway needs shall be considered by the subdivider to the degree that such needs may relate to the subject subdivision. Area-wide 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 I).** Pavement widths and rights-of-way and shoulder width (where required) shall comply with the minimum requirements specified in Table I.
- b. **Right-of-Way Coverage.** As a general requirement, the right-of-way shall include the entire traveled way, including shoulders and vehicles recovery area, walkways, and the parallel and contiguous drainage ways. 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 to comply with

this Ordinance and the City's engineering design standards.

- c. Streets Improvements by the Developer.** When the City determines that a proposed development will impact the transportation infrastructure of the City, the City will require the Developer to post fiscal security in an amount sufficient to fund all costs of improving the transportation infrastructure adequately to offset the impact of the development. The City will draw on the fiscal security as it sees fit to make the needed improvements. Improvements to be funded in this manner include, but are not limited to, sidewalks, paving and widening existing streets adjacent to the proposed development, or improving off-site streets or intersections as needed to offset the burden of the proposed development on the City. The need for these improvements and the amount of improvements necessary to offset the effects of the development will be determined by the City. The developer will be required to dedicate additional right-of-way adjacent to the proposed development as needed to meet City Standards. Where a county road is adjacent to a proposed development or planned through a development, the developer must coordinate road improvements within and adjacent to the proposed development with both the City and the County, and obtain City and County approval of the proposed roads, including posting fiscal security for road improvements as described in this paragraph. The City may allow actual construction of road improvements in lieu of fiscal security, under circumstances satisfactory to the City.

13. Drainage

- a. General.** Street drainage shall comply with the City's engineering design standards.
- b. Standards for Roadside Channels.** Roadside channels shall comply with the City's engineering design standards.

c. **Fordable Driveways Preferred.** Driveways and Roadways shall comply with the City's engineering design standards.

d. **Culvert Design and Location.** Driveway culverts shall comply with the City's engineering design standards.

**TABLE I.
MINIMUM REQUIREMENTS FOR STREETS**

Road Classification	Lot Frontage	Driveway Spacing	Right-of-Way	Pavement Width
Local street	125'	25'	50'	30'
Minor collector	125'	75'	60'	40'
Major collector	150'	100'	70'	48'
Minor arterial	150'	100'	90'	70'
Major arterial	150'	100'	120'	100'
Freeway	150'	100'	80'	60'

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 by the City and shall conform to the City's engineering design standards and the standards set forth in the Texas Department of Transportation Manual on Uniform Traffic Control Devices for Streets and Highways.

Traffic regulatory signs and safety signs shall be installed by the subdivider in accordance with the Texas Department of Transportation Manual on Uniform Traffic Control Devices for Streets and Highways.

C. **Alleys.** Alleys shall not be permitted.

D. Utility Installation & Easements. Each block shall have utility easements reserved for the use of all public utility lines, conduits and equipment. All utilities shall be installed underground except as otherwise provided in the City's engineering design standards.

E. Reserved for future use.

F. 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 available will be in effect.
- 2. Water Supply and Distribution.** All items pertaining to water supply and distribution shall be in accordance with the City's engineering design standards.
- 3. Fire Hydrants.** Purchase and installation of fire hydrants within the proposed subdivision shall be at the expense of the subdivider and shall be in accordance with the City's engineering design standards.
- 4. Storage and Pumping for Fire Flow.** All items pertaining to storage and pumping for fire flow shall be in accordance with the City's engineering design standards.

G. Sewers.

- 1. General.** All subdivisions shall be provided with sewage treatment and disposal services that comply with the City's engineering design standards. Where septic tanks are to be installed, the subdivider shall conduct percolation tests, if required, under the supervision of the Caldwell and/or Hays 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 Commission on Environmental Quality and the Niederwald City Council, 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 Caldwell and/or Hays County Health Department and has been inspected and approved by Caldwell and/or Hays County.

3. **Design Criteria.** Each sewage treatment and disposal system shall comply with this Ordinance and the City's engineering design standards.

H. **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.

I. **Monuments.** Shall be in compliance with this Ordinance and the City's engineering design standards.

J. **Drainage.**

1. **General.** The interpretation of the requirements set forth in this section shall be made by the City 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 right-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 City of Niederwald 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. This does not relieve the subdivider of the responsibility for providing storm water detention on-site.

3. **Design Criteria.** Shall be in compliance with this Ordinance and the City's engineering design standards. Natural drainage channels shall be preserved whenever possible. Open surface drainage through grass-lined swales shall be preferred over the use of streets and street rights-of-way as the central drainage network. The provisions of Section

12.B.13 shall apply in regard to street drainage. The rate of runoff after construction shall be less than or equal to the site's runoff prior to construction.

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 a City representative for inspection. All easements, twenty-five (25) and one hundred (100) year flood plain boundaries shall be clearly shown on drainage plans and the final plat whenever such plans and plats contain flood plains or floodway segments.

K. 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. **Temporary Erosion and Sedimentation Control, Required Program.** The developer shall be required to submit plans for and execute a program of erosion and sedimentation control during the construction period for all parts of the proposed project, and adjacent lands, including easements and right-of-ways. The control plans must be approved by the City Engineer, and must comply with this Ordinance and the City's engineering design standards.
3. **Permanent Water Quality Control, Required Program.** For all development within the City, the Developer shall be required to provide permanent water quality controls adequate to provide for mitigation of non-point source pollution. The control plans must be approved by the City Engineer, and must comply with this Ordinance and the City's engineering design standards.
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 riprap around each opening. All drainage channels must comply with this Ordinance and the City's engineering design standards.

L. **Blocks.** Block length shall not exceed fifteen hundred feet (1,500'), nor be less than three hundred feet (300').

M. **Lots.**

1. **Minimum Lot Size.** All lots shall consist of a minimum area of one (1) acre for an unsewered lot and one-half (1/2) acre for a sewerred lot. 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. 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 Council may require, on the basis of recommendation by the 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 water connection will be made for any lot without installation of approved septic or soil absorption system.

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

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

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 feet (150') for an unsewered lot and one hundred twenty five feet (125') for a sewerred lot. Lots on a cul-de-sac street

shall have a minimum street frontage of sixty feet (60'). 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 feet (40'). Corner lots shall have at least the minimum forty feet (40').
7. **Rear Yards.** Minimum rear yard depths of forty feet (40') shall be required.
8. **Side Yards.** Minimum side yard width of twenty feet (20') 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, an 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 feet (50') 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 feet (50') be required.
10. **Flood Plain Setback Lines.** Where a lot is adjacent to a natural watercourse or drainage way (determination regarding what is a natural drainage way shall be made by the city, however, if the drainage way serves an area of sixty-four (64) acres or more, it shall be considered a natural drainage way), a minimum building setback line shall be established along the one hundred (100) year flood plain boundary on each such lot. The building setback shall be fifty feet (50') from the 100-year floodplain for drainage ways serving areas of two hundred (200) acres or less and one hundred feet (100') for drainage ways serving over two hundred (200) acres. The subdivider shall demonstrate that each lot with such a setback can support the proposed use of the lot while leaving the floodplain and setback in a natural state. Within the flood plain area and setback, 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. The City may prohibit the construction of streets, ponds, or other improvements within the floodplain and setback.

Clearing or removal of natural ground cover and trees within the flood plain setback area of a natural watercourse shall be minimized, and may be prohibited by the city. The subdivider shall clearly show on his development plans the locations of any trees with a trunk diameter of ten inches (10") or more, measured at a height of four feet from the ground. The City will require replacement of all such trees removed at a rate of two times the caliper inches of tree removed. No tree of eighteen inches (18") diameter or more shall be removed.

11. **Setbacks Shown on Plat.** The minimum setback lines, minimum lot 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.

N. **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.

O. **Parks.** A space equivalent 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 Commission to the 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 Council. Alternatively, the developer may appeal the recommendation of the Commission to the Council, who shall exercise final jurisdiction over all such appeals. 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 Council, pay cash in lieu of dedication of parkland. The cash contribution shall be determined in accordance with the following schedule:

(a)**Classification Residential:** Two hundred fifty dollars (\$250.00) 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 dedication 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 parkland dedication shall be deposited by the City into a special park fund account and shall be spent by the City on the acquisition of parklands or the improvement 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. No area or facility shall be dedicated for such public purposes unless approved and accepted by the Council.

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 incur any expenses within any subdivision.

VIII.

That Section 13 of Ordinance No. 122000-A is hereby amended to read as follows:

Section 13. Summary of Fees

- A. **Variances:** \$50.00 per variance requested.
- B. **Preliminary Conference:** \$300.00 per conference.
- C. **Preliminary Plat Filing Fee:** Filing fee of \$395.00 plus \$30.00 per lot.
- D. **Final Plat Filing Fee:** \$30.00 per lot, with a minimum fee of \$750.00 per plat.
- E. **Construction Plan Review Fee:**
 1. **Outside City Limits:** 1.0% of estimated construction costs, with a \$750.00 minimum.

2. Inside City Limits: 0.8% of estimated construction costs, with a \$750.00 minimum.

F. Construction Inspection Fee.

1. Outside City Limits: 5% of estimated construction costs, with a \$500.00 minimum.

2. Inside City Limits: 3% of estimated construction costs, with a \$500.00 minimum.

G. Park Land Dedication: 5% of total property to be subdivided or, at the City's option, \$250.00 per residential lot or a 5% raw land value for commercial lot.

H. Plat Vacation: \$500.00 per plat.

I. Replat Filing Fee: Same as for final plat.

J. Plat Correction Fee: \$ 500.00 per plat.

K. Final Plat Extension Fee: \$500.00 per plat

L. Fine for Violations: Up to \$500.00 per offense per day for as long as the violation continues.

M. Flood Damage Prevention Ordinance: \$750.00 per development permit application review submitted to the City pursuant to the Flood Damage Prevention Ordinance.

IX.

That 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.

X.

All ordinances, parts of ordinances, or resolutions in conflict herewith are expressly repealed.

XI.

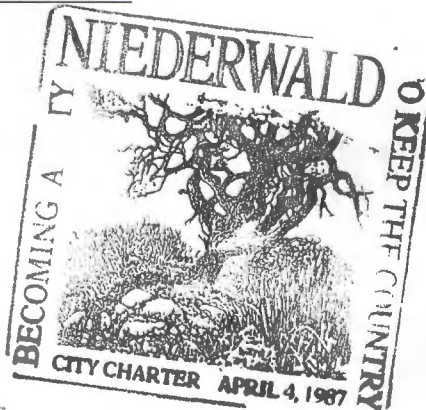
That this Ordinance shall become effective upon its passage and publication as required by law.

READ, PASSED AND APPROVED this 26th day of January, 2005.

Shirley Whisenant
HON. SHIRLEY WHISENANT, Mayor
City of Niederwald, Texas

ATTEST:

Angie Schulze
ANGIE SCHULZE, City Secretary
City of Niederwald, Texas



13851 Camino Real
Niederwald, Texas 78640-4807

City of
Niederwald

Tel. 512-398-6338
FAX: 512-376-9966



STATE OF TEXAS}

COUNTY OF HAYS}

I hereby certify, in the performance of the functions of my office, that the attached instrument is a full, true and correct copy of Ordinance No. 012605-A as the same appears of record in my office and that said document is an official record from the public office of the City Secretary of the City of Niederwald, Hays County, Texas, and is kept in said office.

I further certify that I am the City Secretary of the City of Niederwald, Texas, that I have legal custody of said record, and that I am a lawful possessor and keeper and have legal custody of the records in said office.

In witness whereof I have hereunto set my hand and affixed the official seal of said office this 21th day of January, 2005.

Angie Schube
City Secretary
City of Niederwald
Hays County, Texas



Original