

CITY OF LAVON, TEXAS
ORDINANCE NO. 2019-08-05

Subdivision Code Amendment - Implementation of HB 3167

**AN ORDINANCE OF THE CITY OF LAVON, TEXAS, ENACTING
AMENDMENTS TO THE CITY'S SUBDIVISION ORDINANCE;
PROVIDING FOR COMPLIANCE WITH NEW STATE
LEGISLATION AFFECTING PROCEDURES FOR APPROVING
PLATS, REPLATS AND RELATED SITE PLANS; PROVIDING A
CONFLICT CLAUSE; PROVIDING A SEVERANCE CLAUSE;
AND SETTING AN EFFECTIVE DATE**

WHEREAS, the 2019 Legislature enacted HB 3167, revising procedures for approval of subdivision plat and related site plans and affecting procedures for approval of replats; and

WHEREAS, HB 3167 has an effective date of September 1, 2019; and

WHEREAS, it is the intent of the City Council of the City of Lavon, Texas, to fully comply with the provisions of HB 3167, while maximizing the public health, safety and general welfare of its citizens; and

WHEREAS, HB 3167 did not amend laws affecting procedures for approval of zoning-related plans, plans required for approval of building permits, or procedures for determining the completeness of subdivision applications; and

WHEREAS, there is insufficient time before HB 3167 takes effect to amend specific provisions of the City's subdivision regulations that may conflict with the provisions of those laws; and

WHEREAS, the City Council finds that it is necessary to change certain procedures in the subdivision ordinance to comply with HB 3167 and;

WHEREAS, the City Council further finds that it is necessary to delegate certain responsibilities of the Planning and Zoning Commission under HB 3167 to administrative officials in order to assure compliance with the timelines in the statute, subject to a right of appeal to the Commission; and

WHEREAS, it is the intent of this Ordinance to supersede the procedures for approval of plats, replats and related site plans that conflict with the provisions of HB 3167; and

WHEREAS, HB 3167 and HB 3314 contain identical language with respect to procedures for approval of replats; and

WHEREAS, the City has given notice of the amendments to the subdivision regulations contained in this Ordinance in accordance with all provisions of state law and the City's ordinances; and

WHEREAS, a public hearing on this Ordinance before the City Council was convened on August 20, 2019, at which testimony was taken, and the hearing was closed on the date of the same; and

WHEREAS, the City Council finds that this Ordinance substantially advances the public health, safety and general welfare of the citizens of Lavon, Texas;

NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LAVON, TEXAS:

Section 1. Incorporation of Recitals. The foregoing recitals hereby are incorporated by reference and made a part hereof as if fully set forth.

Section 2. Definitions. The following definitions apply to the provisions of this Ordinance:

(a) "Planning commission" means the city authority responsible for approving plats, and includes the term "planning and zoning commission," where the city has combined the functions of a zoning commission and a planning commission pursuant to Tex. Loc. Gov't Code section 211.007.

(b) "Plat" means a preliminary plat, general plan (including a master plan or plat), final plat, and replat.

(c) "Subdivision application" means a request for approval of a plat or subdivision plan required to initiate the division or development of land pursuant to Tex. Loc. Gov't Code Ch. 212, Subchs. A or B.

(d) "Subdivision plan" means a subdivision development plan, subdivision plan, subdivision construction plan, land development application, site development plan or site plan required for approval of a plat, which is authorized under Tex. Loc. Gov't Code Ch. 212, Subchs. A or B. A subdivision plan excludes a zoning plan.

(e) "Subdivision Ordinance" or "Subdivision Regulations" means Ord. No. 2002-01-03, as amended, prior to the effective date of this Ordinance.

(f) "Zoning plan" means a concept plan, site plan or similar document required to determine compliance with land use regulations which are authorized under Tex. Loc. Gov't Code, Ch. 211.

Section 3. Applicability.

(a) This Ordinance applies to the procedures for approval of plats and subdivision plans for the division or development of property pursuant to Tex. Loc. Gov't Code Ch. 212, Subchs. A or B.

(b) This Ordinance does not apply to the procedures for approval of zoning plans or plans required to accompany applications for building permits.

(c) This Ordinance does not apply to any plat or subdivision plan filed before September 1, 2019.

Section 4. Stages of Plat Approval. Notwithstanding any other provision of the Subdivision Ordinance to the contrary, the stages of plat approval shall be as follows:

(a) Except for minor plats, replats and amending plats, all applications for plat approval shall consist of an application for preliminary plat approval, followed by an application for final plat approval. Applications for preliminary plat approval and final plat approval shall not be submitted nor processed simultaneously. Each plat application shall require the approval of the planning and zoning commission and the city council, as hereinafter provided.

(b) Any procedure in the Subdivision Ordinance that provides for a shorter time for approval of a plat application than that required for approval of a preliminary or final plat application is superseded by the procedures of this Ordinance.

(c) Except as hereinafter provided, any appeal from a planning commission decision on a plat to the city council is superseded by the procedures of this Ordinance.

(d) Procedures for review of an application for completeness authorized by the Subdivision Ordinance or to be undertaken pursuant to Tex. Loc. Gov't Code sec 245.002(e) are superseded by the procedures in section 5 and 6 of this Ordinance, except as otherwise provided in section 7 of this Ordinance.

(e) A subdivision plan must be submitted for approval with an application for preliminary or final plat approval, unless approval of the subdivision plan is required prior to submittal of a plat application. Any procedure for approval of a subdivision plan before the commission or council approves or disapproves a plat application is superseded by the procedures of this Ordinance.

(f) Conditional approval of a preliminary plat application shall mean that each such condition must be satisfied prior to final plat approval. Such conditions are not subject to the procedures in Section 6 of this Ordinance.

(g) Because the technical requirements for submittal of a plat or subdivision plan application are essential for determining whether the application should be approved, conditionally approved, or disapproved, any deficiency in the submittal requirements for such application shall be grounds for disapproval of the application, unless the plat or subdivision plan application is to be reviewed under the alternative procedures in Section 7 of this Ordinance.

Section 5. Procedures for Approval of Plats and Subdivision Plans.

(a) Initial Approval by Commission. The planning commission shall approve, approve with conditions, or disapprove a preliminary plat, final plat or subdivision plan application within 30 days after the date the plat or subdivision plan application is filed. A plat or subdivision plan application is deemed approved by the commission unless it is conditionally approved or disapproved within that period in the manner provided in and documented pursuant to subsection (e).

(b) Initial Approval by Council. The City Council shall approve, approve with conditions, or disapprove a preliminary plat, final plat or subdivision plan application within 30 days after the date the commission approves the plat or subdivision plan application. A plat or subdivision plan application is deemed approved by the city council unless it is conditionally approved or disapproved within that period in the manner provided in documented pursuant to subsection (e).

(c) Extension by Agreement. The applicant may request in writing and the planning commission or the city council, as the case may be, may approve the request for an extension of the time for plat or subdivision plan approval required by subsections (a) or (b) for a period not to exceed 30 days. The written request must be made within 15 days of the date the application is filed and approved by the commission or council prior to the time for a decision on the application required by subsections (a) or (b).

(d) Limitation on Submittals. Following the filing of the plat or subdivision plan application, the applicant may not submit additional materials in support of the application during the initial 30-day period during which the commission or the council must decide the application, unless the applicant withdraws the original application and submits a new application with the additional materials. If an extension is sought and granted under subsection (c), the applicant may submit additional materials in support of the application no later than 15 days from the date the commission or council is scheduled to review the application without filing a new application.

(e) Documentation for Conditional Approval or Disapproval. The planning commission or the city council, as the case may be, shall provide the applicant a written statement of the conditions for the conditional approval or reasons for disapproval that clearly articulates each specific condition for the conditional approval or reason for disapproval. Each condition or reason specified in the written statement must be directly related to the requirements of the Subdivision Ordinance and include a citation to the applicable law, including a statute or municipal ordinance, that is the basis for the conditional approval or disapproval. The conditions or reasons cannot be arbitrary.

Section 6. Post-Decision Procedures.

(a) Applicant's Response. After the conditional approval or disapproval of a plat or subdivision plan under section 5, the applicant may submit to the commission or the council, as the case may be, that conditionally approved or disapproved the plat or subdivision plan, a written response that satisfies each condition for the conditional approval or remedies each reason for disapproval provided. The commission or the council may not establish a deadline for an applicant to submit the response.

(b) Reply to Applicant's Response. The commission or council, as the case may be, that receives an applicant's response in accordance with subsection (a) shall determine whether to approve, conditionally approve or disapprove the applicant's previously conditionally approved or disapproved plat or subdivision plan not later than the 15th day after the date the response was submitted. The commission or council may further conditionally approve or disapprove the application for a specific condition or reason that is provided to the applicant in the manner prescribed in section 5(e) of this Ordinance. The commission or council must approve the plat or subdivision plan application if the response adequately addresses each condition of the conditional approval or each reason for the disapproval.

(c) Delegation to Administrative Official. The administrative official(s) designated by the Subdivision Ordinance for reviewing and evaluating plat and/or subdivision plan applications, or his delegee(s), hereby is delegated authority to reply to an applicant's response in the manner provided in section 5(e). The applicant may appeal the administrative official's decision within 15 days thereof to the planning commission or the city council, as the case may be, which shall hear the appeal at its next scheduled regular meeting. The applicant may also request a delay in the reply in order to have the response considered and decided by the planning commission or city council, as the case may be, at its next scheduled regular meeting.

(d) Failure to Timely Reply. If the response meets the criteria in subsection (a) and the administrative official, or the planning commission or city council, as the case may be, fails to act upon the response within the time provided in subsections (b) or (c), the plat or subdivision plan application shall be deemed approved.

(e) New Application Required. In the event that the administrative official, or the planning commission or city council, as the case may be, timely disapproves the plat or subdivision plan application, a new application shall be required.

Section 7. Alternative Review Procedures. In lieu of the procedures set forth in Sections 5 and 6, every applicant for approval of a plat or subdivision plat may elect in writing to follow the procedures in this section if the election is made at the time the application is first submitted for filing. Election under this section does not waive the procedures in sections 5 and 6 of this Ordinance, which shall commence as provided in subsection (c).

(a) Within 10 business days of the time the application is submitted for filing, the official(s) responsible for administering the Subdivision Ordinance or his designee shall make his determination whether the application meets the technical requirements for submittal. The official

or his designee shall notify the applicant in writing not later than the 10th business day after the application is submitted whether the application is complete or incomplete. If the application is incomplete, the notice shall specify the documents or information that are necessary to complete the application and also shall state that the application is subject to expiration, as provided in subsection (b).

(b) Following the receipt of written notice, the applicant shall have 45 days from the time the application was submitted for filing to submit the necessary documents or information to render the application complete. If the applicant fails to do so, the application shall expire on the 45th day after the application was submitted for filing. An applicant may request a conference with the administrative official to assist in completing the application. If the application expires, the applicant may submit a new plat or subdivision plan application without prejudice. If the new application is submitted within 10 days after the expiration of the original application, review fees will be waived.

(c) The procedures for review of an application for plat or subdivision plan approval in sections 5 and 6 of this ordinance shall commence on one of the following dates:

(1) The date of the notice required by subsection (a) if the application is determined to be complete.

(2) The date the applicant submits documents or information necessary to complete the application within the 45-day period specified in subsection (b).

(3) The date the applicant submits a new application in the event the original application has expired.

Section 8. Procedures for Approval of Replats. Notwithstanding any other provision of the Subdivision Ordinance to the contrary, the procedures for replats hereby are amended as follows:

(a) A replat of a subdivision or part of a subdivision may be recorded and is controlling over the preceding plat without vacation of the plat if the replat is (1) signed and acknowledged by only the owner of the property being replatted, (2) is approved by the planning commission and (3) does not attempt to amend or remove any covenants or restrictions. A public hearing is not required before approval of the plat.

(b) A replat without vacation of the preceding plat must conform to the requirements of Tex. Loc. Gov't Code section 212.015(a), in addition to the provisions of section 212.014, as amended. If such replat requires a variance or exception, a public hearing must be held by the planning commission or the city council. If such replat does not require a variance or exception, the city shall, not later than the 15th day after the date the replat is approved, provide written notice by mail of the approval of the replat to each owner of a lot in the original subdivision that is within 200 feet of the lots to be replatted according to the most recent municipal or country tax roll. The notice must include (1) the zoning designation of the property after the replat and (2) a telephone number and e-mail address an owner of a lot may use to contact the municipality about

the replat. This requirement does not apply to a proposed replat if the city holds a public hearing and gives notice of the hearing pursuant to Tex. Loc. Gov't Code section 212.015(b).

Section 9. Conflict Clause. To the extent any provisions of the Subdivision Ordinance are in conflict with this Ordinance, this Ordinance shall control.

Section 10. Savings Clause. It is hereby declared by the City Council of the City of Lavon that if any of the sections, paragraphs, sentences, clauses, phrases, words, or provisions of this ordinance should be declared unconstitutional or otherwise invalid for any reason, such event shall not affect any remaining sections, paragraphs, sentences, clauses, phrases, words, or provisions of this ordinance.

Section 11. Effective Date. This Ordinance shall take effect immediately upon its passage.

DULY PASSED AND APPROVED by the City Council of the City of Lavon, Texas, this 20th day of August 2019.



Vicki Sanson, Mayor

ATTEST:



Kim Dobbs, City Administrator/City Secretary

