

ARTICLE III. - DEVELOPMENTS

DIVISION 1. - GENERALLY

Sec. 126-251. - Requirements for developments falling outside existing categories.

With the rapid changes that occur in development ideas and layouts, it is impossible to write regulations to cover every conceivable development. The commission, upon recommendation of the director of planning and development and the city engineer, is empowered to determine the specific requirements for each development that does not logically fall in an existing category. The commission may adjust the requirements for lot size, street construction, individual metering and sidewalks in developments that are proposed which do not fit existing categories. In approving developments under this section, the commission should determine that:

- (1) The proposed use is appropriate and reasonable for the area;
- (2) Approval will not be detrimental to the public health, safety, and welfare;
- (3) The effect of the development will not prevent orderly subdivision of other land in the vicinity; and
- (4) The development will not cause the city to be required to provide city services at a level above that required in other subdivisions.

(Code 1967, § 27-36; Ord. No. 6983, § 2, 4-14-94)

Sec. 126-252. - Floodprone areas.

- (a) Development of floodprone areas is prohibited except as permitted by this chapter and chapter 110 pertaining to flood hazard areas.
- (b) Subdivision of floodprone areas is prohibited where the cost of providing utilities and governmental services would pose an unreasonable economic burden.
- (c) The location, elevation and construction of all utilities and facilities, such as sewer, gas, electrical and water systems and streets, shall be in such manner as to minimize or eliminate damage by flooding.
- (d) Adequate drainage shall be provided to reduce the community's exposure to flood hazards with respect to adjacent, upstream and downstream developments.
- (e) No platted residential lot shall be approved that does not contain a suitable building site of sufficient elevation to permit construction utilizing the lowest floor elevation, including the basement, above the base flood level elevation.

(Code 1967, § 27-61; Ord. No. 3655, § 3, 7-28-83)

Cross reference— Floods generally, ch. 110.

Sec. 126-253. - Gate design for emergency access.

- (a) *Approval.* The construction plans of the design of any gate constructed in the development of commercial properties, industrial properties or private subdivisions must be submitted to and approved by the chief of the fire department as well as the city engineer.

- (b) *Access.* All restricted access entrances in commercial or industrial developments or in private subdivision developments must provide at all times a means for access by city employees discharging their responsibilities, providing any municipal services, or enforcing any of the rules and regulations contained in this code or any code adopted by this code as well as by all personnel of other governmental entities charged with enforcing laws, rules or regulations or providing services within the city into the subdivision in accordance with this section. If the corporation, community association or other legal entity responsible for maintaining the private streets fails to maintain reliable access as required to provide the city services, the city may enter the subdivision and remove any gate or device which constitutes a barrier to access at the sole expense of the corporation, community association or other legal entity responsible for maintaining the same. The corporation, community association or other legal entity responsible for maintaining the streets in need of repair shall be responsible for the costs associated with the removal of any and all gates from a private subdivision together with all maintenance expenses to bring the street in compliance with this division. Such costs must be paid within 30 days after receipt of a bill therefor.
- (c) *Location and specifications.* All plans for installation of gates shall be approved by the chief building official and the chief of the fire department prior to any construction. Gates shall be set back at least 45 feet from any public way to allow fire apparatus to park completely off the street while gaining access. The minimum clear opening for any gate shall be equal to the minimum width of the fire lane or fire apparatus access road. The minimum clear opening must remain unobstructed at all times. A minimum centerline turning radius on either side of the gate shall be 35 feet. Gates shall be equipped with an automatic reversing system in the event the gate strikes an object while opening or closing. There shall be neither exposed gears nor overhead electrical wiring in any gate system. Electric gates shall be equipped with a single key, city-approved emergency access system designed to open and lock open both the entry and exit gates. The key switch shall be installed in a location approved by the fire department. In addition, a system key controlled "fail safe" mechanism shall be installed to allow the gate to be manually opened in the event of a power or mechanical failure. All fittings for system padlocks shall have a minimum one-half inch diameter hole. The city-approved control access system shall be operational and pass inspections of both the chief building official as well as the chief of the fire department before the gate may be placed in operation. Secondary emergency access gates shall be equipped with city-approved emergency access system padlocks and shall be unobstructed at all times. These gates shall be equipped with a positive mechanical latch to lock them in the open position. All fire lane widths, turning radiuses, set back and turnaround requirements of this Code will apply to the portion of the private street where the gate is installed.

(Ord. No. 10,683, § 1, 8-23-07)

Secs. 126-254—126-280. - Reserved.

DIVISION 2. - RESIDENTIAL

Subdivision I. - In General

Sec. 126-281. - Location of fire hydrants.

Fire hydrants shall be spaced no further than 500 feet apart along access ways in residential areas.

(Ord. No. 10,683, § 2, 8-23-07)

Secs. 126-282—126-300. - Reserved.

Subdivision II. - Reserved^[3]

Footnotes:

--- (3) ---

Editor's note— Ord. No. 10,287, § 1, adopted March 23, 2006, repealed Subdiv. II, §§ 126-301—126-304, which pertained to planned unit developments and derived from Code 1967, § 27-31(a)—(d), Ord. No. 3655, § 3, adopted July 28, 1983.

Secs. 126-301—126-320. - Reserved.

Subdivision III. - Condominiums

Sec. 126-321. - Definitions.

The following words, terms and phrases, when used in this subdivision, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Apartment-type dwelling unit means a structure designed for or to be used for occupancy by more than three families, or those units having more than two points or areas of attachment with other dwelling units, except that units located on the ends of structures shall have more than one common point or area of attachment.

Condominium means the separate ownership of single units or apartments in a multiple-unit structure with any common element.

Condominium project means a real estate condominium project; a plan or project whereby four or more apartments, rooms (office spaces), or other units in existing or proposed buildings or structures are offered or proposed to be offered for sale.

Condominium regime means the declaring, through the recordation of a master deed, lease or declaration, the intent to submit the property to joint ownership as a condominium.

Co-owner means a person, firm, corporation, partnership, association, trust or other legal entity or any combination thereof, owning a unit within the condominium project.

Council of co-owners means the association of unit owners that administers and maintains the common property and common elements of the condominium regime.

Developer means a person who undertakes to develop a real estate condominium project.

General common elements means and includes the following:

- (1) The land, whether leased or in fee simple, on which the building stands;
- (2) The foundations, bearing walls and columns, roofs, halls, lobbies, stairways and entrances and exits or communication ways;
- (3) The basement, flat roofs, yard and gardens, except as otherwise provided or stipulated;
- (4) The premises for the lodging of janitors or persons in charge of the building, except as otherwise provided or stipulated;

- (5) The compartments or installation of central services such as power, light, gas, cold and hot water, refrigeration, central air conditioning and central heating, reservoirs, water tanks and pumps, swimming pools and the like;
- (6) The elevators and shafts, garbage incinerators and in general all devices or installations existing for common use; and
- (7) All other elements of the building desirable or rationally of common use or necessary to the existence, upkeep and safety of the condominium regime and any other elements described in the declaration.

Townhouse-type dwelling unit means a structure that is one or a series of dwelling units designed for single-family occupancy, which dwelling units are structurally connected or immediately adjacent to each other without side yards between individual dwelling units.

Unit means an enclosed space consisting of one or more rooms occupying all or part of a floor in a building of one or more floors or stories, regardless of whether it is designed for residence, for business office or for any other type of independent use, provided it has a direct exit to a thoroughfare or to a given common space leading to a thoroughfare.

(Code 1967, § 27-32(b); Ord. No. 3655, § 3, 7-28-83)

Cross reference— Definitions generally, § 1-2.

Sec. 126-322. - Commission approval required.

It shall be unlawful for any developer or agent of any developer to offer for sale or sell any structure or building or offer for sale or sell any unit of a condominium project without the approval of the commission.

(Code 1967, § 27-32(a); Ord. No. 3655, § 3, 7-28-83)

Sec. 126-323. - Townhouse-type dwelling units.

A proposed condominium project consisting of townhouse-type dwelling units shall, in addition to the requirements of this subdivision, comply with all townhouse subdivision regulations and any amendments thereto.

(Code 1967, § 27-32(c); Ord. No. 3655, § 3, 7-28-83)

Sec. 126-324. - Apartment-type dwelling units.

A proposed condominium project consisting of apartment-type dwelling units shall, in addition to the requirements of this subdivision, comply with all fire lane easement regulations and any amendments thereto.

(Code 1967, § 27-32(d); Ord. No. 3655, § 3, 7-28-83)

Sec. 126-325. - Procedure for approval.

- (a) Every developer, sole owner or the co-owners of a building or proposed building within the city or its extraterritorial jurisdiction who expressly declares, through the recordation of a master deed, lease or declaration, the desire to submit the property to a condominium regime shall file a plat of such land with the commission for its approval in conformance with the standard rules of such commission and

dedicating public streets, easements and all other dedications and covenants required in this subdivision.

- (b) Such map or plat shall accurately describe the entire area or tract of land upon which the building is located or is to be constructed and shall indicate the location of all public streets, buildings, easements and common areas. Such map or plat shall be prepared in conformance with the requirements and rules of the commission.
- (c) In addition to such map or plat, such persons shall file the declaration of covenants, conditions and restrictions establishing a condominium regime with the commission. Such declaration shall contain the following:
 - (1) The legal description of the land, which description shall be depicted by a plat showing the land involved and the location of each building or proposed building to be located thereon. Each building shall be denoted by letter: A, B, C, etc.;
 - (2) The general description and the number of each apartment, expressing its square footage, its location and any other data necessary for its identification, which information will be depicted by a plat of the floor of each building showing also the letter of the building and the number of the floor and the number of the apartment;
 - (3) The general description of each garage, carport or any other area to be subject to individual ownership and exclusive control, which information will be depicted by a plat showing such garage, carport or other area appropriately lettered or numbered;
 - (4) The description of the general common elements less subsection (a) of this section;
 - (5) The description of the limited common elements;
 - (6) The fractional or percentage interest that each apartment bears to the entire condominium regime, the sum of which shall be one if expressed in fractions and 100 if expressed in percentages; and
 - (7) Any further provisions, matters or covenants desired.
- (d) To ensure the proper administration of the condominium regime and the creation of a council of co-owners, the developer shall submit the bylaws of the condominium project to the commission for their review.

(Code 1967, § 27-32(e); Ord. No. 3655, § 3, 7-28-83)

Secs. 126-326—126-345. - Reserved.

Subdivision IV. - Townhouse Subdivisions

Sec. 126-346. - Definitions.

The following words, terms and phrases, when used in this subdivision, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Access street means a public street within or bounding a townhouse subdivision that serves a townhouse subdivision and other adjacent property.

Interior street means a public street not more than 600 feet long with a townhouse subdivision, which street is located and designed to serve a limited area within such subdivision and shall not serve other properties outside the subdivision.

Open space means private property under common ownership designated for recreation area, private park for use of property owners within the subdivision, plat lot area, plaza area, building setbacks

other than those normally required and ornamental areas open to general view within the subdivision. Open space does not include streets, alleys, utility easements and required building setbacks.

Parcel means that tract of land proposed to be developed and owned in fee by the developer.

Townhouse means a structure that is one of a series of dwelling units designed for single-family occupancy, which dwelling units are structurally connected or immediately adjacent to each other without side yards between individual dwelling units.

Townhouse subdivision means those developments in which it is proposed to partition land into individual lots and construct townhouses, which may be individually owned, and where the minimum lot sizes are to be less than those required under this chapter.

(Code 1967, § 27-33(a); Ord. No. 3655, § 3, 7-28-83; Ord. No. 3899, § 1, 7-12-84)

Cross reference— Definitions generally, § 1-2.

Sec. 126-347. - Requirements generally.

Any person proposing or intending to develop a townhouse subdivision within the city or its extraterritorial jurisdiction shall, before any building permit is issued, cause a plat of such townhouse subdivision to be approved by the commission, which plat shall be in conformance with all of the requirements of this chapter, except to the extent that such requirements are inconsistent with the requirements in this subdivision, which shall control with regard to townhouse subdivisions.

(Code 1967, § 27-33(b); Ord. No. 3655, § 3, 7-28-83; Ord. No. 3899, § 1, 7-12-84)

Sec. 126-348. - Streets.

- (a) Interior streets in a townhouse subdivision shall have a minimum right-of-way of 50 feet and shall be developed with a minimum 29-foot paving section with concrete curbs and gutters in accordance with standards set forth in article IV of this chapter.
- (b) Access streets shall have a minimum right-of-way width of 60 feet and shall be developed with a minimum 39-foot paving section with concrete curbs and gutters in accordance with such standards.
- (c) All townhouse subdivisions shall have a direct access from at least one dedicated and accessible public street having a right-of-way width of not less than 50 feet.

(Code 1967, § 27-33(b)(1); Ord. No. 3655, § 3, 7-28-83; Ord. No. 3899, § 1, 7-12-84)

Sec. 126-349. - Reserved.

Editor's note— Section 1 of Ord. No. 11,607, adopted March 24, 2011, repealed § 126-349, which pertained to building setback lines. See the Code Comparative Table for a complete derivation.

Sec. 126-350. - Lots.

- (a) Lot area in a townhouse subdivision shall be a minimum of 2,500 square feet, except as provided in this section.
- (b) Lot width shall be a minimum of 24 feet, except as provided in this section.

- (c) Lot size may be reduced under the provision that open space, as defined in this chapter, is provided according to the following schedule: For every 100 square feet of open space per lot provided, the minimum lot area may be reduced by 200 square feet and the width of the lot may be reduced as shown in the following table. No lot shall, however, have a lot area of less than 2,000 square feet or a width of less than 20 feet.

Open Space Provided per Dwelling Unit Lot (in square feet)	Minimum Lot Area (in square feet)	Minimum Lot Width (in feet)
0	2,500	24
100	2,300	23
200	2,100	21
250	2,000	20

- (d) Open space must be provided in increments as shown in subsection (c) of this section, and credit will not be allowed on a proportionate basis. The dedication, location and use of open space shall in all cases be subject to the approval of the commission.

(Code 1967, § 27-33(b)(3); Ord. No. 3655, § 3, 7-28-83; Ord. No. 3899, § 1, 7-12-84)

Sec. 126-351. - Reserved.

Editor's note— Section 1 of Ord. No. 11,607, adopted March 24, 2011, repealed § 126-351, which pertained to density standard. See the Code Comparative Table for a complete derivation.

Sec. 126-352. - Screening walls.

Where townhouse lots in a townhouse subdivision are backing or siding upon an existing public street, a two-foot-wide private easement shall be provided abutting the street, and a masonry wall not less than six feet high shall be constructed upon the easement to provide a visual screen.

(Code 1967, § 27-33(b)(5); Ord. No. 3655, § 3, 7-28-83; Ord. No. 3899, § 1, 7-12-84)

Secs. 126-353—126-380. - Reserved.

DIVISION 3. - COMMERCIAL DEVELOPMENTS

Sec. 126-381. - Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Dwelling, single-family, detached means a fixed building containing only one dwelling unit and occupied by only one family and entirely surrounded by open space on its building site.

Easement means a grant by the property owner to the city, a corporation or persons of the use of a strip of land for specific purposes.

Fire lane easement means an easement improved and maintained by the owner or co-owner of the land across which it is located for the primary purpose of providing ingress and egress to buildings served thereby for police officers, firefighters and firefighting and emergency vehicles and equipment and for the location therein of water mains, fire hydrants and other public utilities. A fire lane easement remains private property except for the restrictions imposed in this division.

Permanent open space means an open space that, in the judgment of the commission, may be expected to remain open and undeveloped. Examples of permanent open space are existing public parks or flood control drainage easements. Land in private ownership or a public street right-of-way does not constitute permanent open space.

Street means a public right-of-way that provides primary public vehicular access to abutting property and is designated as either a street, highway, thoroughfare, major thoroughfare, freeway, parkway, avenue, lane, boulevard, road or drive.

(Code 1967, § 27-34(a); Ord. No. 3655, § 3, 7-28-83; Ord. No. 3836, § 1, 4-26-84; Ord. No. 6149, § 1, 2-13-91)

Cross reference— Definitions generally, § 1-2.

Sec. 126-382. - Plat required.

Before making application for building permit for the erection of any structure on any tract of land within the city's corporate limits and before receiving plat approval by the planning and zoning commission for lands in the city's extraterritorial jurisdiction, owner shall file either:

- (a) A plat of such land with the commission for its approval in conformance with the rules of such commission and dedicating thereon fire lane easements for approved fire access roads and all other dedications and covenants required in this division when the building is:
 - (1) Designed for or to be used for occupancy by two families;
 - (2) Designed for use or occupancy by more than one business, industrial or commercial establishment; or
 - (3) Located more than 150 feet from a public street or in conflict with the major thoroughfare plan; or
- (b) A fire lane easement with the planning department for its director's written approval in conformance with the standards of this division; provided that there are no covenants or dedications required, other than the dedication of a fire lane easement for approved fire access roads. The easement must be in a form approved by the city attorney.

(Code 1967, § 27-34(b)(1); Ord. No. 3655, § 3, 7-28-83; Ord. No. 3836, § 1, 4-26-84; Ord. No. 6149, § 1, 2-13-91; Ord. No. 8771, § 1, 11-23-99; Ord. No. 10,683, § 3, 8-23-07; Ord. No. 10,984, § 1, 10-9-08)

Sec. 126-383. - Plat contents, preparation and filing.

- (a) The plat required in section 126-382(a) shall accurately describe the entire area or tract of land upon which the buildings are to be located and shall indicate the location of all public streets, fire lane easements, buildings, easements and fire hydrants. Such plat shall be prepared in conformance with the requirements in this division and with rules of the commission and shall be submitted according to the plat submittal procedure and requirements. Upon final approval of the commission, the plat shall be recorded in the map records of the county wherein the land is situated.
- (b) The easement required in section 126-382(b) shall accurately describe by a metes and bounds description the location of the fire lane easement. Such easement shall be prepared in conformance with the requirements in this division and with rules of the planning department for the written approval of the planning director. Upon approval by the planning director, the owner shall tender to the city an amount sufficient for the city to record the easement; and the easement shall be recorded in the deed records of the county wherein the land is situated.
- (c) Building permits may be issued only upon satisfactory compliance with this division.
- (d) If a fire lane is required by this Code, the planning and zoning commission may approve a final plat only if the plat dedicates the required fire lane or if a fire lane easement has been approved by the planning director and funds have been tendered to the city for the recording of the same.

(Code 1967, § 27-34(b)(2); Ord. No. 3655, § 3, 7-28-83; Ord. No. 3836, § 1, 4-26-84; Ord. No. 6149, § 1, 2-13-91; Ord. No. 10,984, § 2, 10-9-08)

Sec. 126-384. - Waiver of final plat.

- (a) Notwithstanding the general requirements in sections 126-382 and 126-383, the director of planning and community development may, upon review of the preliminary plat submittal as required, not require the filing of a final plat in the county records provided the following specific conditions are met:
 - (1) A fire lane or utility easement will not be required due to the location and accessibility of the building with respect to the existing public street system;
 - (2) Density requirements are not exceeded;
 - (3) All structures lie within 150 feet of a dedicated and improved street;
 - (4) No conflict exists with the major thoroughfare plan; and
 - (5) No street right-of-way dedication is required.
- (b) This action does not release the developer from meeting drainage requirements.

(Code 1967, § 27-34(b)(3); Ord. No. 3655, § 3, 7-28-83; Ord. No. 3836, § 1, 4-26-84; Ord. No. 6149, § 1, 2-13-91; Ord. No. 10,683, § 4, 8-23-07)

Sec. 126-385. - Location of structures; fire hydrants; fire lane easements.

- (a) Approved fire apparatus access roads as defined in the city's fire prevention code adopted in section 38-61, including fire lanes, shall be provided for every structure or portion thereof in a commercial or industrial development within the city or its extraterritorial jurisdiction. The exterior walls of the first story of a building in a commercial or industrial development shall be located within a 150-foot travel distance from a dedicated, accessible, and approved public street or fire access lane easement. The fire chief is authorized to increase the distance of 150 feet in accordance with the city's fire prevention code adopted in section 38-61.

- (b) Fire hydrants shall be spaced no further than 300 feet apart along access ways in commercial and industrial developments. In commercial and industrial developments, fire hydrants shall be required in accordance with the city's fire prevention code adopted in section 38-61.
- (c) A fire lane easement shall have a minimum width of 24 feet of paved roadway. Fire lane easements shall receive primary access from a dedicated and improved public street of not less than 50 feet of right-of-way.
- (d) Fire lane easements that curve, turn or change directions shall meet the following standards:
 - (1) All curves, turns or changes in direction shall have a minimum centerline curve radius of 35 feet.
 - (2) All reverse curves shall have a minimum tangent length of 50 feet between points of curve.
- (e) Dead-end fire apparatus access roads as defined in the city's fire prevention code adopted in Section 38-61, including fire lanes, in excess of 150 feet in length shall be provided with an approved area for turning around fire apparatus, in accordance with the city's fire prevention code adopted in section 38-61.
- (f) Fire lanes and access to buildings shall comply with the specifications of the fire prevention code adopted by the city dealing with access to buildings by fire apparatus.
- (g) Dead-end fire lane easements in excess of 300 feet in length must be approved by the fire chief.

(Code 1967, § 27-34(c)(1); Ord. No. 3655, § 3, 7-28-83; Ord. No. 3836, § 1, 4-26-84; Ord. No. 6149, § 1, 2-13-91; Ord. No. 8555, § 1, 4-8-99; Ord. No. 10,683, § 5, 8-23-07)

Sec. 126-386. - Site standards.

- (a) Under this division, a residential development designed for rental occupancy shall not exceed 20 dwelling units per parcel acre except that:
 - (1) In computing the developer's parcel acreage, credit may be given for up to one-half of any abutting permanent open space as determined by the commission.
 - (2) In no case shall open space be utilized to permit densities in excess of 150 percent of those otherwise permitted.
- (b) On-site parking shall be provided for residential development designated for rental occupancy at the rate of 2¼ spaces per dwelling unit.
- (c) Controlled income and rent housing may be approved upon recommendation by the commission and approval of the city council, utilizing the following criteria:
 - (1) The site must be approved by the federal agency responsible for financing, and the contemplated project must be subject to income limitations set forth in the federal regulations;
 - (2) Density allowances will take into consideration family sizes and ages of intended occupants; and
 - (3) Parking requirements may be adjusted by the commission with the approval of the city council to fit demonstrated demand in similar projects.

(Code 1967, § 27-34(d); Ord. No. 3655, § 3, 7-28-83; Ord. No. 3836, § 1, 4-26-84; Ord. No. 6149, § 1, 2-23-91)

Sec. 126-387. - Off-street parking.

- (a) The commission shall be responsible for off-street parking requirements for commercial developments that must be platted.
- (b) The commission may grant an exception to the requirements of chapter 112 when in its opinion one or more of the following apply to the platted development:
 - (1) The exception is not inconsistent with the intent of the ordinance;
 - (2) The development of additional phases will include provisions for any shortage;
 - (3) The proposed development is shown to not fit existing categories; or
 - (4) The proposed structures include areas that will not be used as a part of the majority use proposed.

(Code 1967, § 27-34(e); Ord. No. 3655, § 3, 7-28-83; Ord. No. 3836, § 1, 4-26-84; Ord. No. 6149, § 1, 2-13-91; Ord. No. 11,866, § 24, 2-23-12)

Secs. 126-388—126-415. - Reserved.

DIVISION 4. - LARGE LOT ESTATE DEVELOPMENT

Sec. 126-416. - Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Large lot residential estate development means a subdivision in which the minimum lot size is one acre and the minimum street frontage for any lot is 60 feet with a minimum lot width of 120 feet at the building setback line.

(Code 1967, § 27-35(1); Ord. No. 6983, § 1, 4-14-94)

Cross reference— Definitions generally, § 1-2.

Sec. 126-417. - Scope.

Large lots with wide frontage result in less drainage and traffic demands than single-family residential developments consisting of small lots with narrow frontages and widths. Therefore, the facility requirements and public impacts of the larger estate-type developments are less intensive. Such developments are desirable for the community to attract and encourage development and should not have to conform to the same standards that apply to the more intense developments. Residential developments undertaken pursuant to this division shall conform to this division and are considered exempt from conflicting provisions specified elsewhere in this chapter.

(Code 1967, § 27-35; Ord. No. 6983, § 1, 4-14-94)

Sec. 126-418. - Lot standards.

(a) *Minimum area.*

- (1) Except as provided in subsection (2) of this subsection, in a large lot estate development, the minimum lot area shall be one acre.

- (2) No more than 15 percent of the residential lots within a large lot development may be less than one acre, provided that:
 - a. The overall density remains at least one residential lot per acre; and
 - b. No residential lot within a large lot subdivision shall be less than 32,000 square feet.

As used in this subsection, the overall density shall be calculated by dividing the total acreage of all residential lots by the total number of lots.

- (b) *Setback requirements.* Setbacks in the development shall be as follows:
 - (1) Front yard, 40 feet;
 - (2) Rear yard, 20 feet; and
 - (3) Side yard, ten feet.
- (c) *Street frontage.* The minimum street frontage shall be 60 feet.
- (d) *Minimum width.* The minimum lot width shall be 120 feet, to be measured at the building setback line.

(Code 1967, § 27-35(2); Ord. No. 6983, § 1, 4-14-94; Ord. No. 8934, § 1, 3-22-00)

Cross reference— Table of property development standards, § 130-601.

Sec. 126-419. - Streets.

In a large lot development, streets can be constructed using either asphalt or concrete as follows:

- (1) *Right-of-way.* The street right-of-way shall be a minimum of 60 feet;
- (2) *Asphalt streets.* Asphalt streets shall be constructed as follows:
 - a. The width shall be 22 feet of paved HMAC surface;
 - b. Shoulders shall be four feet on each side paved with an asphaltic chip seal; and
 - c. The pavement and shoulders shall both have an eight-inch flexible base and a six-inch lime stabilized subgrade. The HMAC surface shall be 1.5 inches thick.
- (3) *Concrete streets.* Concrete streets shall be constructed as follows:
 - a. The width shall be 22 feet of paved surface;
 - b. Shoulders shall not be required on concrete streets; and
 - c. The concrete pavement shall be a minimum of six inches thick with a six-inch lime stabilized subgrade that extends one foot beyond the edge of the pavement. The concrete pavement shall be constructed in accordance with specifications for such pavement provided for in article V of this chapter. The outer three feet of each side of the pavement shall have the steel reinforcement placed on 12-inch centers; and
- (4) *Roadside ditches.* Roadside ditches may be used for drainage if constructed as follows:
 - a. The maximum side slopes shall be 3:1; and
 - b. The maximum depth shall be five feet measured from the crown of the finished pavement.

(Code 1967, § 27-35(3); Ord. No. 6983, § 1, 4-14-94)

Sec. 126-420. - Extension of utilities.

If municipal water or sewer utilities of sufficient capacity are available within 2,000 feet of the proposed site of a large lot estate development, the developer shall extend the utilities to the site and make them available to every lot in the development.

(Code 1967, § 27-35(3)e; Ord. No. 6983, § 1, 4-14-94)

Secs. 126-421—126-430. - Reserved.

DIVISION 5. - PRIVATE SUBDIVISION DEVELOPMENT

Sec. 126-431. - Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Private street means any street, alley, road, or right-of-way, not dedicated to the public.

Private subdivision means a subdivision containing one or more private streets.

(Ord. No. 8452, § 1, 11-24-98)

Sec. 126-432. - Applicability of division.

The requirements in this division shall apply to all private subdivisions within the city's corporate limits and its extraterritorial jurisdiction, unless expressly stated otherwise, and shall be in addition to all otherwise applicable requirements in this chapter.

(Ord. No. 8452, § 1, 11-24-98)

Sec. 126-433. - Infrastructure requirements.

- (a) *Private streets.* Improved portions of private streets shall comply with the specifications and design standards set forth in articles IV and V of this chapter. Private streets shall be owned and maintained by a corporation, community association or other legal entity established for this purpose.
- (b) *Sidewalks, driveways, curbs and gutters.* Cement or concrete sidewalks, driveways, curbs and gutters shall comply with the specifications and regulations contained in chapter 122. Deed restrictions shall be required to ensure sidewalks remain unobstructed. Sidewalks, curbs and gutters in a private subdivision shall be owned and maintained by a corporation, community association or other legal entity established for this purpose.
- (c) *Wheelchair ramps.*
 - (1) Wheelchair ramps shall be constructed at the entrance to all crosswalks where sidewalks exists or where otherwise required by section 122-91.
 - (2) Where sidewalks or curbs exist, wheelchair ramps shall be added at locations specified in subsection (1), above, whenever any work is proposed to existing driveways, curbs, or sidewalks. Also, wheelchair ramps shall be added wherever missing sidewalks or curb segments are added in front of any lot or block of subdivision.
 - (3) Wheelchair ramps shall conform to the design and construction standards of the city. Any deviation from the standards must be approved in writing by the director of public works in consultation with the director of human resources.

- (4) Wheelchair ramps shall be owned and maintained by a corporation, community association or other legal entity established for this purpose.
- (d) *Utilities.* All utility systems shall comply with the requirements of this chapter, chapter 98 and any other applicable regulations of the city. Water, sanitary sewer, and storm sewer systems within a private subdivision shall be dedicated to the public and maintained by the city in the same manner as its other water, sanitary sewer, and storm sewer systems. All utilities so dedicated within the city limits must be accepted in writing by the city prior to recording of the final plat.
- (e) *Easements.* Publicly owned and/or maintained utilities shall be placed in public streets or easements dedicated to the public, which are a minimum of 16 feet in width unless a narrower width is approved by the city engineer.

(Ord. No. 8452, § 1, 11-24-98)

Sec. 126-434. - Infrastructure compliance.

Upon completion of construction and prior to approval by the city engineer, the city engineer shall be provided with a written certification signed by a registered professional engineer certifying that all infrastructure enumerated in section 126-433 was designed and installed as required by the provisions of this chapter. The construction of all infrastructure detailed in section 126-433 shall be inspected while in progress by the city engineer and must receive final approval upon completion by the city engineer. The platting, review, approval and filing processes described in article II of this chapter shall govern all plats of private subdivisions.

(Ord. No. 8452, § 1, 11-24-98)

Sec. 126-435. - Common areas and facilities maintenance.

- (a) *Responsibility for maintenance.* Adequate provision shall be made for a community association or other legal entity with direct responsibility to, and control by, the property owners involved to provide for the operation and maintenance of all common areas and facilities, including private streets and sidewalks which are a part of the private subdivision. The applicant shall submit a legal instrument establishing a plan for the use and permanent maintenance of the common areas/facilities and demonstrating that the community association is self-perpetuating and adequately funded to accomplish its purposes, and providing the city and other governmental authorities with written permission for access at any time without liability when on official business, and further to permit the city to remove obstructions if necessary for emergency vehicle access and assess the cost of removal to the owner of the obstruction. The instrument must be approved as to legal form by the city attorney prior to any plat recordation and shall be recorded at the same time as the plat.
- (b) *Inspections.* The city may periodically inspect private streets and sidewalks and require repairs necessary to ensure public health, safety and emergency access as specified in subsection (c), below.
- (c) *Repairs ordered by the city.* All repairs to and maintenance of private streets and sidewalks, which are ordered by the city engineer in writing and sent to the community association or other legal entity responsible for such repairs and/or maintenance as specified in the deed restrictions approved by the city attorney, must be completed within the time specified in the notice. Failure to timely complete the ordered repairs or maintenance may result in any one or more of the following, at the sole option of the city:
 - (1) Emergency services being withheld if emergency vehicles cannot safely access the emergency site; and/or
 - (2) The removal of all gates inhibiting access to the public and the dedication of the private streets, sidewalks, and rights-of-way to the public.

(Ord. No. 8452, § 1, 11-24-98)

Sec. 126-436. - Lot size.

All lots within a private subdivision within the city limits shall conform to this chapter and the Unified Land Development Code, including, but not limited to, the property development standards enumerated therein.

(Ord. No. 8452, § 1, 11-24-98; Ord. No. 11,866, § 25, 2-23-12)

Sec. 126-437. - Streetlights and signs.

Streetlights and street name signs shall be in compliance with sections 126-642 and 126-643, respectively. Furthermore, the entrances to all private streets from public ways must be marked with a sign stating that the street is a private street.

(Ord. No. 8452, § 1, 11-24-98)

Sec. 126-438. - Reserved.

Editor's note— Ord. No. 10,683, § 6, adopted Aug. 23, 2007, repealed § 126-438, which pertained to gate design for emergency access, and derived from Ord. No. 8452, § 1, adopted Nov. 24, 1998.

Sec. 126-439. - Location restrictions on private subdivisions.

- (a) A private subdivision may not cross an existing or proposed thoroughfare.
- (b) A private subdivision may not disrupt or cross any existing or proposed public pedestrian pathway, hike and bike trail, or park, as shown on the city's most recent park plan.

(Ord. No. 8452, § 1, 11-24-98)

Sec. 126-440. - Garbage collection.

If in the opinion of the director of public works, private streets within the city limits are arranged so that garbage may be collected without creating a safety hazard, the city will collect the garbage. Garbage collection locations shall be subject to the approval of the director of public works. In the event the city does not collect garbage within a private subdivision within the city limits, all units may be exempted from payment of garbage fees upon furnishing evidence ensuring acceptable removal of all garbage and refuse by private means. To receive such exemption, written application must be submitted to and approved by the director of finance.

(Ord. No. 8452, § 1, 11-24-98)

Sec. 126-441. - Additional information on plat required.

- (a) *Indemnification.* On the subdivision final plat shall be the following language:

It shall be expressly understood and agreed by and between the owner of the subdivided property that the owner, its officers, agents and employees and/or its successors, assigns (collectively the

"owner") shall defend, indemnify and hold the city, its officers, agents and employees (collectively the "city"), harmless against any and all claims, lawsuits, judgments, costs and expenses, including attorneys' fees, for personal injury, death, property damage or other harm for which recovery of damages is sought, suffered by any person, that may arise out of or be occasioned in any way by the repair, maintenance or condition of any utility, private street, sidewalk, streetlight, or street sign located within the subdivision or the gates and/or barriers restricting access to the private subdivision, where such injuries, death or damages are caused by the joint negligence of the city and the owner, and/or by the joint or sole negligence of the owner. It is the expressed intention of the parties hereto, both the owner and the city, that the indemnity provided for in this subsection is indemnity by the owner to indemnify, protect and defend the city from the consequences of the city's own negligence where that negligence is a concurring cause of the injury, death or damage with that of the owner's joint and sole negligence. Furthermore, the indemnity provided for in this subsection shall have no application to any claim, loss, damage, cause of action, suit and liability where the injury, death or damage results from the sole or concurrent negligence of the city unmixed with the fault of the owner. If any action or proceeding is brought against the city by reason of any of the private subdivision in any way, the owner further agrees and covenants to defend the action or proceeding by legal counsel acceptable to the city, such acceptance not to be unreasonably withheld.

- (b) *Dedication to public.* The final subdivision plat shall also include verbiage approved by the city attorney which results in the private streets, sidewalks and/or other common areas noted thereon being dedicated, without consideration, to the public at the option of the city should the private streets or sidewalks, or access to the same fail to comply with this division.

(Ord. No. 8452, § 1, 11-24-98)

Sec. 126-442. - Notice to purchasers.

- (a) A person who sells or conveys real property located within a private subdivision shall tender a written notice to purchaser as provided in this section.
- (b) The provisions of this section shall not be applicable to:
 - (1) Transfers of title under any type of lien foreclosure;
 - (2) Transfers of title by deed in cancellation of indebtedness secured by a lien upon the property conveyed; or
 - (3) Transfers of title by reason of a will or probate proceedings.
- (c) The notice required herein shall be executed by the seller and shall read as follows:

The real property, described below, that you are about to purchase is located within a private subdivision as defined by Chapter 126 of the Code of Ordinances of the City of Baytown, Texas. The streets, sidewalks, driveways, curbs and gutters within the private subdivision are not maintained by the City of Baytown, but by a corporation, community association or other legal entity, with direct responsibility to, and controlled by, the property owners of property within the private subdivision. Such corporation, community association or other legal entity solely has the obligation to provide for the operation and maintenance of all streets, sidewalks, driveways, curbs, gutters, and other common areas within the subdivision.

Failure to timely complete repairs or maintenance to streets, sidewalks, driveways, curbs and gutters within as ordered by the city engineer may result in (i) emergency services being withheld if emergency vehicles cannot safely access the emergency site; and/or (ii) the removal of all gates inhibiting access to the public into the subdivision and the dedication of the private streets, sidewalks, and right-of-way to the public without consideration.

Additionally, because the private subdivision prevents access to the general public, emergency services may be delayed in order for the emergency vehicles to gain access to the private subdivision.

The legal description of the property you are acquiring is as follows:

Signed this the ___ day of _____, 1998.

Signature of Seller

The undersigned purchaser hereby acknowledges receipt of the foregoing notice at or prior to execution of a binding contract for the purchase of the real property described in such notice or at closing of purchase of the real property.

Signed this the ___ day of _____, 1998.

Signature of Purchaser

- (d) The notice required by this section shall be given to the prospective purchaser prior to execution of a binding contract of sale and purchase either separately or as an addendum or paragraph of a purchase contract. If, however, the seller fails to furnish the required notice at or prior to closing the purchase and sale contract and the purchaser closes on the property, it shall be conclusively presumed that the purchaser closed on such property with knowledge of all of the information contained in the notice.
- (e) At the closing of purchase and sale, a separate copy of such notice shall be executed by the seller and purchaser, acknowledged, and thereafter recorded in the deed records of the county in which the property is located.
- (f) For the purposes of this section, an executory contract of purchase and sale having a performance period of more than six months shall be considered a sale under subsection (a), above.

(Ord. No. 8452, § 1, 11-24-98)

Sec. 126-443. - Petition to convert to private streets.

- (a) All petitions for the conversion of public streets to private streets shall be submitted by a corporation, community association or other legal entity, which will be responsible for the maintenance and repair of the streets and fulfill the other obligations specified in this division, to the city clerk, who will verify that all of the appropriate signatures are on the petition. The petition must be signed by each person owning property along or property accessed from each proposed private street and must include a metes and bounds description of each street to be conveyed as a private street. If not all of the requisite signatures are on the petition, the city clerk shall return the petition to the corporation, community association or other legal entity that submitted the same. On the other hand, if the city clerk determines that all of the requisite signatures are on the petition, the city clerk shall submit the petition to the commission for consideration and recommendation to the city council.
- (b) The commission shall review the location, alignment and width for a proposed private street. If such complies with this division as well as the thoroughfare plan, the commission shall recommend that the city council grant preliminary approval of the private street conversion. If the proposed public

street dedication does not comply with the thoroughfare plan, the planning and zoning commission shall recommend disapproval.

- (c) The city council, after receipt of the recommendation of the commission shall grant approval or disapproval of the conversion of the street from public to private. If approval is granted:
 - (1) The conveyance of the property shall contain a possibility of reversion back to the city at its option should the street, sidewalks and gates not be maintained in accordance with this division;
 - (2) The corporation, community association or other legal entity established for maintaining and repairing the private street shall tender in full the purchase price of the street to the city within ten days after receiving written notice of the city council's approval of the petition. The sales price shall be determined by an independent appraisal conducted by an appraiser approved by the city manager and certified by the state appraiser licensing and certification board. The appraiser shall be paid by the corporation, community association or other legal entity desiring to purchase the public street;
 - (3) The corporation, community association or other legal entity established for maintaining and repairing the private street shall comply with all other provisions of this division.

(Ord. No. 8452, § 1, 11-24-98; Ord. No. 9621, § 13, 9-11-03)

Secs. 126-444—126-450. - Reserved.