

# **SUBDIVISION ORDINANCE**

**CITY OF DES MOINES, IOWA**



# **SUBDIVISION REGULATIONS**

## **CITY OF DES MOINES, IOWA**

### **NOTICE**

This is an unofficial and annotated copy of excerpts from the Municipal code of the City of Des Moines, Iowa, 2000, as amended through January 14, 2003. The text of the Municipal Code is subject to change from time to time. An official copy of the Municipal Code is on file in the office of the City Clerk.

Date as of January 14, 2003

Chapter 106 SUBDIVISIONS\*

**\*Cross references:** Buildings and building regulations, ch. 26; environment, ch. 42; floodplains, ch. 50; planning, ch. 82; public improvements, ch. 94; streets, sidewalks, skywalks, and other public places, ch. 102; utilities, ch. 118; vegetation, ch. 122; waterways, ch. 130; zoning, ch. 134; sewer districts, app. G.

**State law references:** Authority to establish subdivision regulations, I.C. § 354.8.

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Plat approval fees:

- A. Upon submission of a preliminary subdivision plat for a Major Plat(plat with streets): **\$1000.00 plus \$10.00 per lot.**
- B. Upon submission of a final subdivision plat the applicant shall pay the following fee together with the estimated cost of contract preparation and construction inspection as determined by the Engineering Department:
  - (1) Major Plat (plat with a street): **\$150.00 plus \$10.00 per lot.**
  - (2) Minor Plat (plat with a street): **\$500.00 plus \$100.00 per lot.**
  - (3) Auditor's Plat: **\$200.00 plus \$10.00 per lot.**

C. Additional fee for each submittal of a preliminary or final plat after the second submittal:	<b>\$100.00</b>
Plat of Survey approval fee for original submittal:	<b>\$200.00</b>
Additional Plat of Survey approval fee for each subsequent submittal:	<b>\$100.00</b>

**ARTICLE I. IN GENERAL**

**Sec. 106-1. Title.**

This chapter shall be known, cited and referred to as the "subdivision regulations" of the city.  
(C62, § 55-1; O.7716; C75, § 24-1; O.9305; C75, C79, C91, § 24-2)

**Sec. 106-2. Definitions.**

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

*Alley* means a public or private right-of-way primarily designed to serve as secondary access to the side or rear of those properties whose principal frontage is on some other street.

*Applicant* means a proprietor or subdivider of land proposed to be subdivided or his or her representative.

*Auditor's plat* means a subdivision plat required by either the county auditor or the county assessor and prepared by a registered land surveyor under the direction of the county auditor.

*Benefited property* means the property identified in the stormwater runoff control plan and the stormwater facility maintenance covenant and permanent easement agreement as being served by the stormwater maintenance facility to control and address storm water runoff from the property.

*Bond* means cash deposits, surety bonds or instruments of credit in an amount and form satisfactory to the city attorney and finance director or their authorized representatives.

*Building* means any structure, excluding signs and billboards, designed or intended for the support, enclosure, shelter or protection of persons, animals or property.

*Building line* means a line on a plat between which line and public right-of-way line no buildings or other structures may be erected.

*City engineer* means the chief civil engineer of the city or his or her designated representative.

*Cluster subdivision* means an alternative to conventional subdivision development wherein variable lot sizes are permitted in conjunction with a minimum lot size standard and which retains the same types and density of uses established by the applicable regulations and restrictions of chapter 134.

*Commission* means the city plan and zoning commission.

*Comprehensive plan* means the current comprehensive plan for the general development of the city adopted by the city council pursuant to section 82-77, including any part of such plan and any amendment to such plan separately adopted.

*Construction plan* means the maps or drawings prepared by a registered professional engineer accompanying a plat and showing the specific location and design of improvements to be installed in the subdivision in accordance with the requirements of the city engineer and the plan and zoning commission.

*Design standards* means the design standards policy manual for construction of public improvements approved by the commission and adopted by the city council.

*Drainageway, improved* means an improved ditch with invert protection, graded slopes and controlled velocities.

*Drainageway, natural* means an existing ditch in as natural a condition as possible and which can be maintained as such in the opinion of the city engineer.

*Escrow* means a deposit of cash with the city in lieu of an amount required and still in force under the surety bond and placed in an identified separate account by the city treasurer.

*Flood fringe* means the portion of a floodplain between a floodway and the outer limits of a 100-year flood.

*Floodway* means the channel of a stream or other watercourse and the adjacent land areas required to carry and discharge a 100-year flood.

*Grade* means the slope of a road, street or other public way, specified in percent of vertical to horizontal measurements.

*Improvement* means any drainage ditch, roadway, parkway, storm sewer, sanitary sewer, water main, sidewalk, pedestrian way, or other facility for which the city may ultimately assume the responsibility for maintenance and operation or which may affect an improvement for which city responsibility is established.

*Lot* means a tract of land in a subdivision intended as a unit for the purpose, whether immediate or future, of transfer of ownership or for building development and represented and identified by a letter or number designation on a plat.

*Model building* means a building used initially for display purposes which typifies the type of units that will be constructed in the subdivision.

*Official plat* means either a subdivision plat or an auditor's plat that meets the requirements of I.C. § 354.1 et seq., and this chapter and that has been filed for record in the offices of the county recorder, auditor and assessor.

*Parcel* means a part of a tract of land.

*Permit and development center coordinator* means the individual assigned to manage the city permit and development center.

*Planning director* means the planning director of the city or his or her designated representative.

*Plans of record* means plans prepared by a registered professional engineer showing his or her signature and certifying that the public improvements have been constructed as shown.

*Plat* means a graphical representation of the subdivision of land, prepared by a registered land surveyor, having a number or letter designation for each lot and a succinct name or title that is unique.

*Plat, major* means any subdivision plat, which incorporates a new street.

*Plat, minor* means any subdivision plat, which does not include a new street.

*Plat of survey* means the graphical representation of a survey of one or more parcels of land, including a complete and accurate description of each parcel within the plat, prepared by a registered land surveyor.

*Proprietor* means any person who has a recorded interest in land sought to be subdivided under this chapter, including a person selling or buying the land pursuant to a contract, but excluding persons holding a mortgage, easement or lien interest.

*Registered land surveyor* means a land surveyor properly licensed and registered in the state who engages in the practice of land surveying pursuant to I.C. ch. 542B.

*Registered professional engineer* means an engineer properly licensed and registered in the state who engages in the practice of engineering pursuant to I.C. ch. 542B.

*Responsible party* means the applicant and owner, and all benefited property owners responsible for maintenance of the storm water management facility. The city shall only authorize a transfer of such responsibility from the applicant or owner to owners of the benefited property.

*Right-of-way* means a strip of land to be dedicated as a roadway, walkway, or another special use established and shown on a final plat as separate and distinct from the adjoining lots and not included within the dimensions of such lots.

*Standard specifications* means the standard specifications for construction of public improvements adopted by the city council.

*Stormwater facility maintenance covenant and permanent easement agreement* or *stormwater facility maintenance agreement* means that covenant and easement agreement that has been approved in writing by the city engineer which is binding on all subsequent owners of land and benefited property served by the stormwater management facilities and is recorded in the applicable county recorder's office. The stormwater facility maintenance agreement shall provide for the access to the stormwater management facilities and the land it serves at reasonable time for inspection by the responsible party and the city and for regular or special assessments of property owners to ensure that the stormwater management facilities are maintained in proper working condition.

*Stormwater management facility* means those structures and plantings designed and installed pursuant to an approved stormwater runoff control plan pursuant to section 106-136.

*Street classifications* means an assignment of functional character and carrying capacity to streets and highways officially given in the urban transportation plan.

*Street, dead-end* means a street permanently or temporarily closed to through traffic.

*Street, major* means a street that provides for traffic movement between collector or arterial streets and local streets and direct access to abutting property.

*Street, minor* means a local service street used primarily for access to abutting property.

*Street tree* means a tree in a public place, street, special easement, or right-of-way adjoining a street.

*Structure* means anything constructed or erected with a fixed location on the ground, or attached to something having a fixed location on the ground.

*Subdivider* means any person who:

- (1) Having an interest in the land causes it, directly or indirectly, to be divided into a subdivision or to be included in a proposed subdivision;
- (2) Directly or indirectly, sells, leases, or develops or offers to sell, lease, or develop or advertise for sale, lease, or development any interest, lot, parcel, site, unit, or plat in a proposed subdivision; or
- (3) Engages, directly or through an agent, in the business of selling, leasing, developing or offering for sale, lease, or development a subdivision or any interest, lot, parcel, site, unit, or plat in a proposed subdivision.



*Subdivision* means a tract of land divided or proposed to be divided into three or more parcels, whether by subdivision plat, plat of survey, or otherwise; the act of creating a subdivision.

*Tract* means an aliquot part of a section within the United States public land survey system, a lot within an official plat, or a government lot.

*Urban transportation plan* means a part of the comprehensive plan providing for the development of traffic circulation throughout the city in a manner that will safely accommodate increased traffic volume at optimal speeds.

*Zoning ordinance* means the official zoning ordinance of the city, together with any and all amendments thereto, set forth in article X of chapter 22 and in chapter 134.

(C42, § 3A-1; O.4972; C54, C62, § 55-1; O.7716; C62, § 55-2; O.8251; C75, § 24-2; O.9305; C75, C79, § 24-1; O.9726; C85, § 24-1; O.11,191, 11,611; C91, § 24-1; O.13,004, 13,289, 14,708)

**Cross references:** Definitions generally, § 1-2.

### **Sec. 106-3. Policy.**

(a) It is declared to be the policy of the city to consider the subdivision of land and the subsequent development of the subdivided plat as subject to the control of the city to ensure orderly and planned development in conformance with the comprehensive plan.

(b) Land to be subdivided shall be of such character that it can be used safely for building purposes without danger to health or peril from fire and flood and shall not be subdivided until adequate utilities, drainage, streets and similar improvements exist or are satisfactorily provided.

(c) The existing and proposed improvements shall conform to and be properly related to the proposals shown in the comprehensive plan, and it is intended that this chapter shall supplement and facilitate the enforcement of the provisions and standards contained in building and housing codes, the zoning ordinance and the comprehensive plan.

(d) A plat of survey may be approved in lieu of a subdivision plat when the permit and development coordinator, with the concurrence of the planning director and city engineer, determines that each parcel has access to all necessary public utilities and all necessary public improvements are in place.

(C75, § 24-3; O.9305; C79, C85, § 24-3; O.11,611; C91, § 24-3; O.13,004)

### **Sec. 106-4. Purposes.**

(a) This chapter is adopted to:

(1) Protect and provide for the public health, safety, and general welfare of the city.

(2) Guide the future growth and development of the city, in accordance with the comprehensive plan.

(3) Provide for adequate light, air, and privacy, and secure safety from fire and flooding.

(4) Guide public and private policy and action in order to provide adequate and efficient transportation, water, sewerage, schools, parks, playgrounds, recreation, and other public requirements and facilities.

(5) Provide the most beneficial relationship between the uses of land and buildings and circulation of traffic in and adjacent to proposed development and the pedestrian traffic movements appropriate to the various uses of land and buildings, and provide for the proper location and width of streets and building lines.

(6) Establish reasonable standards of design and procedures for subdivisions, in order to further the orderly layout and use of land, and ensure proper legal descriptions and monumenting of subdivided land.

(7) Ensure that public facilities are available and will have a sufficient capacity to serve the proposed subdivision.

(8) Prevent the pollution of air, streams, and ponds; ensure the adequacy of drainage facilities; safeguard the water table; and encourage the wise use and management of natural resources throughout the city in order to preserve the integrity, stability, and beauty of the community and the value of land.

(9) Preserve as much as possible the natural beauty and topography of the city and ensure appropriate development with regard to these natural features.

(10) Provide for due consideration to be given to the preservation of canopied areas and mature trees and to provide for the mitigation of canopied areas and mature trees which are removed for development.

(11) Provide for open spaces through the most efficient design and layout of the land.

(12) Provide for the extent and manner in which streets shall be graded and improved and the extent to which water, sewer and other utility services shall be provided to protect the public health and general welfare.

(b) To the extent the applicant has complied with the remaining sections of this chapter and the design standards, standard specifications and any other standards set by the city engineer, it shall be presumed that the policies and purposes set forth in subsection (a) of this section have been addressed.

(C75, § 24-4; O.9305; C79, C85, § 24-4; O.11,611; C91, § 24-4; O.14,890)

### **Sec. 106-5. Jurisdiction.**

(a) The city's review and approval of subdivisions pursuant to this chapter shall apply to the subdivision of land within the city boundaries and, under the authority of I.C. § 354.9, to the subdivision of land within the area that includes all land within two miles of the city boundaries.

(b) The subdivision of land within the city boundaries or within the area that includes all land within two miles of the city boundaries shall be of no effect unless a subdivision plat or plat of survey for such subdivision has received final approval from the city and such plat has been recorded in the office of the county recorder.

(c) No building permit shall be issued for any parcel of land within a subdivision unless the subdivision plat or plat of survey for such subdivision has received final approval from the city and has been recorded in the office of the county recorder, except as provided for in this chapter. Further, no excavation of land or construction of improvements for a proposed subdivision shall commence except as provided for in this chapter.

(d) Notwithstanding subsections (a) through (c) of this section, the city council may by resolution waive the city's right to review a subdivision within the area that includes all land within two miles of the city boundaries, provided the following conditions are met:

- (1) The city has received certification from the county that the subdivision complies with all county ordinances and regulations;
- (2) The city council has determined that the subdivision will not conflict with the extension of existing city streets and other city rights-of-way; and
- (3) The city council has determined that the subdivision will not interfere with development under the comprehensive plan.

The city council shall not act to waive the city's right to review a subdivision until after it has received the recommendations of the plan and zoning commission. If the city council acts to waive the city's right to review, the city clerk shall deliver a certified copy of the city council resolution to the subdivider for recordation with the plat.

(C42, § 3A-2; O.4972; C54, C62, § 55-2, O.7716; C62, § 55-3; O.8542; C75, § 24-4; O.9305; C75, C79, C85, § 24-5; O.11,611; C91, § 24-5; O.13,004)

### **Sec. 106-6. Interpretation and conflict.**

(a) In its interpretation and application, this chapter shall be held to be the minimum requirements to further orderly community growth and to promote the public health, safety, and general welfare.

(b) This chapter is not intended to interfere with, abrogate, or annul federal, state or local statute, rule, regulation, or other provision of law.

(c) This chapter is not intended to abrogate any easement, covenants, or other private agreement or restriction.

(C75, § 24-6; O.9305; C79, C85, § 24-6; O.11,611; C91, § 24-6(a)--(c))

#### **Sec. 106-7. Amendments.**

Any regulation or section of this chapter may be amended from time to time by the city council. However, such amendments shall not become effective until after study and report by the plan and zoning commission and until after public notice and hearing before the commission and the city council.

(C42, § 3A-7; O.4972; C54, C62, § 55-7; O.7716; C62, § 55-9; C75, § 24-26; O.9305; C75, C79, C85, § 24-9; O.11,611; C91, § 24-9)

#### **Sec. 106-8. Compliance with conditions.**

Under this chapter, each applicant has the duty of compliance with reasonable conditions laid down by the plan and zoning commission for design, dedication, improvement, and use of the land so as to conform to the physical and economical development of the city and to the safety and general welfare of the future lot owners. To that end, the commission may require that a proprietor incorporate certain regulations in this chapter as deed restrictions. Such regulations shall be intended to protect the character and value of the surrounding development and shall also tend to secure the most appropriate character of development in the property which is subdivided.

(C42, § 3A-4; O.4972, 5105; C54, § 55-4; O.6642; C62, § 55-4; O.7585, 7716; C62, § 55-5; O.8400, 8542; C75, § 24-20; O.9305; C75, C79, C85, § 24-10; O.11,611; C91, § 24-10)

#### **Sec. 106-9. Acre subdivision.**

Whenever a tract of land is subdivided and the plat shows one or more lots containing more than one acre of land so situated that such lot might eventually be further subdivided into smaller lots, the plan and zoning commission may require that the plat allow for the future opening of streets and the ultimate extension of adjacent streets. Easements providing for the future opening and extension of such streets may be required as a condition to approval of the plat.

(C42, § 3A-4; O.4972, 5105; C54, § 55-4, O.6642; C62, § 55-4; O.7585, 7716; C62, § 55-5; O.8400, 8542; C75, § 24-13; O.9305; C75, C79, C85, § 24-11; O.11,611; C91, § 24-11)

#### **Sec. 106-10. Auditor's plats.**

With regard to auditor's plats, the plan and zoning commission and the council shall have the right to waive provisions governing preliminary approval and public improvements outlined in article II and in division 1 of article III of this chapter, providing there is on file with the

commission a copy of the request of the county auditor or county assessor ordering such plat and a letter from the county auditor stating that the plat as submitted is satisfactory.

(C42, § 3A-2; O.4972; C54, C62, § 55-2; O.7716; C62, § 55-3; O.8542; C75, § 24-5; O.9305; C75, C79, C85, § 24-12; O.11,611; C91, § 24-12)

### **Sec. 106-11. Area plan.**

If a tract of land proposed for subdivision is a part of a larger area that could reasonably be subdivided, the community development department may prepare a possible plan of such larger undeveloped area to be used by the plan and zoning commission and the city council as an aid in judging the proposed plat. The city engineer shall cooperate in the preparation of this plan and shall furnish surveys and data as may be deemed necessary.

(C42, § 3A-2; O.4972; C54, C62, § 55-2; O.7716; C62, § 55-3; O.8542; C75, § 24-6; O.9305; C75, C79, C85, § 24-13; O.11,611; C91, § 24-13; O.13,015)

### **Sec. 106-12. Variations and exceptions.**

(a) Whenever the tract proposed to be subdivided is of such unusual size or shape or is surrounded by such development or unusual conditions that the strict application of the requirements contained in this chapter would result in substantial hardships or injustices, the applicant, at time of preliminary plat application, may request a modification or variation of such requirements. The plan and zoning commission shall review and make its recommendation concerning such request at the time of consideration of the preliminary plat. Within 30 days thereafter, the recommendation of the commission concerning such requested variation or modification shall be placed upon the agenda for the next regularly scheduled meeting of the city council.

(b) All such variations and exceptions granted under this chapter shall be in harmony with the intended spirit of this chapter and granted with the view toward protecting the public welfare and interest of the city and surrounding areas.

(C54, § 55-4.01; O.6229; C62, § 55-4.01; O.7716; C62, § 55-6; C75, § 24-23; O.9305; C75, § 24-16; O.9353; C79, C85, § 24-16; O.11,611; C91, § 24-16)

### **Sec. 106-13. Fees.**

(a) Before a preliminary plat, a plat of survey or an amendment to an approved plat may be considered by the city, the applicant shall deposit a fee in the amount set in the schedule of fees adopted by the city council by resolution.

(b) Resubmission of a plat due to amendments required or made to the plat as previously submitted may be made once without additional fee. Thereafter, the resubmitted plat shall not be considered by the plan and zoning commission until the applicant has deposited the additional fee in the amount set in the schedule of fees adopted by the city council by resolution.

(c) An application made for property wholly owned by the federal government may be made without paying the fee described in this section.

(C42, § 3A-5; O.4972; C54, C62, § 55-5; O.7716; C62, § 55-7; O.8521; C75, § 24-24; O.9202, 9305; C75, C79, C85, § 24-17; O.11,611; C91, 24-17; O.11,777, 11,813, 13,004, 14,169)

#### **Sec. 106-14. Enforcement, violations and penalties.**

(a) It shall be the duty of the zoning enforcement officer to enforce this chapter and to bring to the attention of the city council any violations or lack of compliance with this chapter.

(b) Appropriate actions and proceedings may be taken by law or in equity to prevent any violation of this chapter; to prevent unlawful construction; to recover damages; to restrain, correct, or abate a violation; and to prevent illegal occupancy of a building, structure or premises, and these remedies shall be in addition to the penalties described in section 1-15 of this Code.

(c) Any person who fails to perform an act required by this chapter or who commits an act prohibited by this chapter shall be guilty of a misdemeanor punishable by fine or imprisonment as provided by section 1-15 of this Code or shall be guilty of a municipal infraction punishable by a civil penalty as provided by section 1-15 of this Code.

(C42, § 3A-6; O.4972; C54, C62, § 55-6; O.7585, 7716; C62, § 55-8; C75, § 24-25; O.9305; C75, C79, C91, § 24-18)

Secs. 106-15--106-40. Reserved.

## **ARTICLE II. APPLICATION, PROCEDURE AND APPROVAL PROCESS**

### **DIVISION 1. GENERALLY**

#### **Sec. 106-41. General procedure.**

(a) Whenever a subdivision of land is proposed, the subdividing owner or his or her authorized agent shall apply for and secure approval of such proposed subdivision in accordance with the following procedure:

(1) Subdivision plats and cluster subdivisions.

- a. Preapplication conference with staff.
- b. Preliminary plat approval by the plan and zoning commission.
- c. Final plat approval by the city council.
- d. Assurance for completion of improvements.

(2) Plat of survey.

- a. Preapplication conference with staff.
- b. Plat of survey approval by permit and development coordinator.

(b) No contract shall be made for the sale of any part of the proposed subdivision and no permit for the erection of a structure in such proposed subdivision shall be granted until compliance with the procedures set out in subsection (a) of this section, except as provided in subsection 106-72(h) of this article.

(C75, § 24-19; O.9305; C79, § 24-19; O.10,561; C85, § 24-19; O.11,191; C91, § 24-19; O.13,004)

Secs. 106-42--106-70. Reserved.

## **DIVISION 2. MAJOR PLATS AND CLUSTER SUBDIVISIONS**

### **Sec. 106-71. Preapplication conference.**

Whenever a major plat of any tract or parcel of land located within the platting jurisdiction of the city is proposed, the applicant shall submit to the city permit and development center a request for a preapplication conference. The conference shall include the applicant, his or her engineer and appropriate city staff. The purpose of the conference shall be to acquaint city staff with the proposed subdivision and acquaint the applicant and his or her engineer with procedures and with the regulations and policies that might relate to the subdivision. The applicant shall furnish a legal description of the property to be subdivided at the time he or she submits his or her request for a preapplication conference, and the conference shall be held within 15 days of such request.

(C42, § 3A-2; O.4972; C54, C62, § 55-2; O.7716; C62, § 55-3; O.8542; C75, § 24-3; O.9305; C75, C79, § 24-21; O.10,561; C85, § 24-21; O.11,611; C91, § 24-21; O.13,004)

### **Sec. 106-72. Preliminary plat approval by commission.**

(a) After completion of the preapplication conference required in section 106-71 of this division and if the applicant wishes to proceed to subdivide the property that was the subject of such preapplication conference, he or she shall cause to be prepared a preliminary plat of such subdivision and shall submit 13 copies of such preliminary plat and such other information as is required in this section to the city permit and development center for preliminary study and recommendation.

(b) The preliminary plat shall be drawn to a scale of not less than one inch to 100 feet, shall be certified by a registered professional engineer and a registered land surveyor and shall show the following:

(1) Title and complete legal description of the tract of land to be subdivided, showing north point, scale, date, certification by the surveyor staking the lots, and the names, addresses and telephone numbers of the owner, subdivider and surveyor/engineer.

(2) Existing and proposed contour intervals of not more than two feet; provided, however, that a minimum of two contours shall be shown on any plat. If the applicant does not propose to grade any portion of the subject property, he or she shall so indicate on the plat.

(3) The location of property lines, existing and proposed public easements, and all such surface features as buildings, railroads, utilities, watercourses, canopied areas and similar items affecting the development; also, the general location and size of all existing and proposed subsurface features such as storm and sanitary sewers, water mains, culverts, gas mains, underground electric lines or cables, and drainpipes. The preliminary plat must be accompanied by a tree removal and mitigation plan containing the information required by section 42-554 of the tree removal and mitigation ordinance.

(4) A vicinity sketch or key map at a scale of not more than 500 feet to the inch shall be shown on or shall accompany the proposed plat. Such map shall show existing streets and alleys and neighboring subdivisions or undeveloped property.

(5) All existing adjacent subdivisions, streets and tract lines of acreage parcels together with the names of record owners of unsubdivided parcels of land immediately adjoining the proposed subdivision and between it and the nearest existing streets.

(6) The sites proposed for streets, alleys, parks, open areas, school property, other areas of public use and outlot areas set aside for future development, all assigned a progressive letter with the proposed use clearly designated.

(7) The zoning district classification of the tract of land to be subdivided.

(8) Proposed street paving widths, the radii of curvature of streets, maximum grades for streets, and changes in grades of streets in accordance with division 1 of article III of this chapter, the design standards and the standard specifications.

(9) A soils report for the tract of land to be subdivided prepared by a registered professional engineer experienced in soils investigation showing general soil conditions and including recommendations as to the adaptability of such soils for the proposed development. This requirement may be waived at the discretion of the city engineer.

(10) All established floodway or flood fringe encroachment limits.

(11) A drainage report prepared in accordance with the design standards by a registered professional engineer.

(12) The numbered address of each proposed lot assigned pursuant to article XII of chapter 102 of this Code.

(c) Upon submission of such preliminary plat, the permit and development center coordinator shall retain three copies and forward copies to city departments, county agencies and utilities, as appropriate. The permit and development center coordinator shall instruct the city departments,



county agencies and utilities to complete their review of the preliminary plat and forward their comments concerning the plat to the city permit and development center within 14 days after the date of submission of such plat to the city permit and development center.

(d) Upon receipt of comments from the appropriate city departments, county agencies and utilities, the permit and development center coordinator shall prepare a report on the preliminary plat which shall incorporate the comments and concerns of the city departments, county agencies and utilities. To ensure compatibility with the city's planning goals and policies, such report shall be reviewed with the planning director, after which the permit and development center coordinator, in consultation with the planning director, shall prepare a recommendation on the preliminary plat and forward such recommendation to the applicant. The planning director shall forward the plat and recommendation to the plan and zoning commission for consideration.

(e) The commission shall determine if such preliminary plat conforms to the standards and requirements outlined in I.C. § 354.1 et seq., and this chapter and shall approve, conditionally approve or reject such plat within 45 days after the date of submission to the city permit and development center. Unless the applicant agrees in writing to an extension of time, the preliminary plat shall be deemed approved if the commission does not act within such 45-day period. The commission's action for approval or conditional approval shall be null and void unless the final plat is submitted to the city permit and development center within 270 days after the date of such action; provided, however, that the permit and development center coordinator may grant, upon written request of the applicant, up to a 90-day extension for submittal of the final plat to the city permit and development center.

(f) Before approving a preliminary plat, the commission may in its discretion hold a public hearing, notice of which shall be given as provided by law.

(g) The permit and development center coordinator shall promptly notify the applicant of the commission's recommendations regarding the plat.

(h) Subject to approval of the permit and development center coordinator, one model building may be constructed prior to final approval of the plat, provided:

- (1) The model building shall be constructed on a designated parcel on the proposed plat;
- (2) The designated parcel shall derive its access from an existing open street;
- (3) The designated parcel shall meet all minimum bulk regulations of the zoning district in which it is located;
- (4) The designated parcel is not located in an area where a future street or other improvement is proposed;
- (5) The designated parcel shall be shown as a lot in the proposed plat; and
- (6) If the designated parcel is sold prior to completion of the plat, the subdivider shall:
  - a. Ensure the installation of required improvements for the parcel; and
  - b. Obtain all documents from the subsequent proprietors, mortgage holders and lienholders required as attachments to plats under I.C. § 354.1 et seq.

(i) If the applicant desires to commence construction of any required improvement after approval of the preliminary plat, but prior to approval of the final plat by the city council, he or she shall comply with the contractor's bond requirements set forth in division 2 of article III of this chapter.

(j) Grading of the site shall comply with the following:

(1) If the applicant proposes to grade, strip, excavate, fill, undertake or cause any earth change on the site or stockpile any granular construction materials in excess of 5,000 cubic yards on the site, he or she shall submit to the city permit and development center an application for a grading permit, containing all of the information set forth in section 42-87 of this Code. The application for the grading permit shall be processed in the manner set forth in section 42-88 of this Code.

(2) An application for grading permit may be submitted at the time the preliminary plat is submitted to the city permit and development center, or at any time thereafter, but in no event shall the applicant proceed to grade, strip, excavate, fill, undertake or cause any earth change on the site or stockpile any granular construction material in excess of 5,000 cubic yards on the site until after approval of the preliminary plat and issuance of the grading permit by the city engineer.

(3) The bond requirements set forth in division 2 of article III of this chapter shall apply to the installation and construction of permanent soil erosion control measures on areas of the site to be dedicated to the city.

(C42, §§ 3A-2, 3A-3; O.4972; C54, C62, §§ 55-2, 55-3; O.7716; C62, § 55-4; C75, §§ 24-3, 24-10; O.9305, C75, § 24-22; O.9455; C79, § 24-22, O.9726, 10,561; C85, § 24-22; O.11,191, 11,611; C91, § 24-22; O.13,289, 14,890)

### **Sec. 106-73. Final plat approval.**

(a) Within 270 days after approval of the preliminary plat by the plan and zoning commission, plus any extensions granted by the permit and development center coordinator pursuant to subsection 106-72(e) of this division, the applicant shall submit to the city permit and development center for its review and recommendation five copies of a final plat of the subdivision made from an accurate survey certified by a registered land surveyor and drawn to a scale of 100 feet to the inch or larger, which plat shall contain the following information:

(1) The boundaries of the plat, the right-of-way lines and width of all proposed streets and alleys, and lines for any parks, open areas, school property, other areas of public use and outlot areas set aside for future development accurately established by sufficient information, including dimensions and angles or bearings. The boundaries of the plat shall be accurately described and shall give reference to two section corners within the United States public land survey system in which the plat lies or, if the plat is a subdivision of any portion of an official plat, two established monuments within the official plat. All streets, alleys, parks, open areas, school property, other areas of public

use and outlot areas set aside for future development shall be assigned a progressive letter and shall have the proposed use clearly designated.

(2) The right-of-way lines, width and names of adjoining streets and alleys.

(3) All lot lines, with applicable addresses and all easements, accurately established by sufficient information, including dimensions and angles or bearings.

(4) All surveying dimensions and requirements as set forth in division 1 of article III of this chapter.

(5) A complete legal description and list of proprietors of the property to be subdivided, showing the location and extent, points of compass, scale of plat, and certification and name of the surveyor responsible for staking the lots. All adjoining properties shall be identified, and where such adjoining properties are a part of an official plat, the name of that plat shall be shown.

(6) An outline of all property to be reserved by deed covenant for the common use of subsequent property owners in the subdivision.

(7) A proposed consent to plat statement and proposed dedication statement for all property within the plat to be designated for streets, alleys, parks, open areas, school property, or other public use.

(8) All other information required under I.C. § 354.6.

(b) Upon submission of such proposed final plat with all required documents and information, the permit and development center coordinator shall retain three copies and forward copies to city departments, county agencies and utilities as appropriate. The permit and development center coordinator shall instruct the city departments, county agencies and utilities to complete their review of the proposed final plat and forward their comments concerning the plat to the permit and development center within 21 days after the date of submission of such final plat to the permit and development center.

(c) The permit and development center coordinator shall determine if the proposed final plat conforms to the standards and requirements outlined in I.C. § 354.1 et seq., and this chapter and shall approve, conditionally approve or reject such plat. The permit and development center coordinator shall notify the applicant of the action regarding the proposed final plat within 30 days after the date of submission thereof to the permit and development center. Unless the applicant agrees in writing to an extension of time, the proposed final plat shall be deemed approved if the permit and development center coordinator does not act within such 30-day period.

(d) The applicant may make a written appeal, in whole or in part, of the action of the permit and development center coordinator to the plan and zoning commission. Such written appeal must be submitted to the permit and development center within 30 days after the date of final action by the permit and development center coordinator.

(e) If an appeal occurs, the commission, in conformity with the standards and requirements outlined in I.C. § 354.1 et seq., and this chapter, shall hear and decide such appeal within 30 days of the date the appeal is submitted to the permit and development center. If the commission does not act within such 30-day period, the portion of the permit and development center coordinator's action appealed from shall be deemed reversed.

(f) The permit and development center coordinator shall promptly notify the applicant of the commission's decision on the appeal.

(g) The action for approval or conditional approval shall be null and void unless a complete application for final plat approval is submitted to the city council within one year after the date on which action on such plat was taken by the permit and development center coordinator; provided, however, that the permit and development center coordinator may grant, upon written request of the applicant, a 90-day extension for submittal of the final plat to the city council.

(C42, §§ 3A-2, 3A-3; O.4972; C54, C62, §§ 55-2, 55-3; O.7716; C62, § 55-4; O.8542; C75, §§ 24-7, 24-11; O.9305; C85, § 24-23; O.11,611; C91, § 24-23; O.11,816, 13,289)

#### **Sec. 106-74. Final approval by city council.**

(a) Within one year after the date on which action on the proposed final plat is taken by the permit and development center coordinator, plus any extensions granted by the permit and development center coordinator pursuant to subsection 106-73(g) of this division, the applicant shall apply for final plat approval by the city council by submitting the following items to the permit and development center:

(1) Twenty copies of the proposed final plat as recommended for approval.

(2) A statement by the proprietors and their spouses, if any, that the plat is prepared with their free consent and in accordance with their desire, signed and acknowledged before an officer authorized to take the acknowledgment of deeds. The statement by the proprietors shall also include a dedication to the public of all lands within the plat that are designated for streets, alleys, ways, parks, open areas, school property, improvements or other public use.

(3) A statement from the mortgage holders or lienholders, if any, that the plat is prepared with their free consent and in accordance with their desire, signed and acknowledged before an officer authorized to take the acknowledgement of deeds. An affidavit and bond, as provided for in I.C. § 354.12, may be recorded in lieu of the consent of the mortgage or lienholder. When a mortgage or lienholder consents to the subdivision, a release of mortgage or lien shall be recorded for any areas and improvements conveyed to the city council or dedicated to the public.

(4) An opinion by an attorney at law admitted to practice in the state who has examined the abstract of title of the land being platted, which abstract shall be dated no earlier than 30 days prior to the date set for city council action on approval of the plat. The opinion shall state the names of the proprietors and holders of mortgages, liens, or other encumbrances on the land being platted and shall note the encumbrances, along with any

bonds securing the encumbrances. Utility easements shall not be construed to be encumbrances for the purpose of this section.

(5) All public easements required by the city engineer for access to and for construction, maintenance and operation of improvements.

(6) Statement of compliance with section 106-138 of this chapter.

(7) A subdivision bond as required under division 2 of article III of this chapter.

(8) A copy of the schedule for the division of conditional deficiency as required under article X of chapter 94 of this Code.

The application shall be considered complete for approval by the city council only after the proposed final plat has been recommended for approval pursuant to section 106-73 of this division and after all items referenced in this subsection have been submitted in their proper form to the permit and development center. Following a recommendation for approval of the proposed final plat pursuant to section 106-73 of this division, the date all items referenced in this subsection are submitted in their proper form shall be the date of application for final plat approval by the city council.

(b) Upon submission of the complete application for final plat approval by the city council, the permit and development center coordinator shall:

(1) Forward a copy of all documents required under subsection (a) of this section to the legal department for review.

(2) Forward copies of the plat to the city engineer and the planning director for review and certification.

(3) Forward a copy of any subdivision bond to the legal department for review and approval.

(4) Forward a copy of any schedule for the division of conditional deficiency to the engineering department for review and approval.

If all documents required under subsection (a) of this section are given necessary approval or certification, the permit and development center coordinator shall cause the application for final plat approval to be placed upon the agenda for the next regularly scheduled meeting of the city council.

(c) The city council shall study such final proposed plat and shall determine whether it conforms with the standards and requirements outlined in I.C. § 354.1 et seq., and this chapter and shall determine whether it conforms to the comprehensive plan. The council shall further give consideration to the possible burden on public improvements and to a balance of interests between the proprietors, future purchasers and the public interest in the plat. The council shall act to approve, conditionally approve or reject the plat. The council shall not issue final approval of the plat unless the plat conforms to I.C. §§ 355.8, 354.6 and 354.11, and this chapter. If the council disapproves the plat, it shall state how the plat is objectionable. As part of plat approval, the council shall approve any dedication to the public of all lands within the plat that are designated for streets, alleys, ways, parks, open areas, school property or other public use.

(d) The council shall review and approve the subdivision bond in the manner set forth in division 2 of article III of this chapter.

(e) The council shall review, approve and certify to the county auditor the schedule for division of conditional deficiency in the manner set forth in article X of chapter 94 of this Code.

(f) The permit and development center coordinator shall promptly notify the applicant of the city council's action on the final plat.

(C42, § 3A-2; O.4972; C54, C62, § 55-2; O.7716; C62, § 55-3; O.8542; C75, § 24-8; O.9305; C75, § 24-24; O.9353; C79, § 24-24; O.9726, 9847, 10,561; C85, § 24-24; O.11,611; C91, § 24-24; O.13,289)

### **Sec. 106-75. Issuance of building permits.**

(a) Upon approval of the subdivision final plat by the council, the city clerk shall certify such approval on the plat.

(b) Within 30 days after approval of the final plat by the city council, the applicant shall cause the certified final plat with all attachments required under I.C. § 354.1 et seq., to be recorded in the office of the county recorder and shall cause an exact copy of the plat to be filed in the offices of the county auditor and assessor. The applicant shall then notify the city clerk in writing that the plat has been recorded in compliance with I.C. § 354.1 et seq. Following recording of the certified final plat and notification to the city clerk, the applicant may proceed to offer, sell, lease or develop any interest in a tract of land, lot, or parcel, within the plat.

**State law references:** Similar provisions, I.C. § 354.18.

(c) The city clerk shall confirm that the certified final plat has been recorded and shall forward exact copies of the plat to city departments, county agencies and utilities as appropriate. The building official may then proceed to issue building permits for lots contained within such plat.

(d) Unless written application for an extension of time is granted by the city council, approval of the final plat by the council shall become null and void if the plat is not recorded within 30 days after the approval date. The permit and development center coordinator shall notify the county recorder in writing if the final plat becomes null and void.

(C75, § 24-25; O.9305; C79, § 24-25; O.9847, 10,561; C85, § 24-25; O.11,611; C91, § 24-25; O.13,015, 13,289)

Secs. 106-76--106-100. Reserved.

## **DIVISION 3. MINOR PLATS**

### **Sec. 106-101. Preapplication conference.**

Whenever a minor plat of any tract or parcel of land located within the platting jurisdiction of the city is proposed, the applicant shall submit to the city permit and development center a request for a preapplication conference. The conference shall include the applicant, his

or her engineer and appropriate city staff. The purpose of the conference shall be to acquaint the city staff with the proposed subdivision and acquaint the applicant and his or her engineer with the procedures and with the regulations and policies that might relate to the subdivision. The applicant shall furnish a legal description of the property to be subdivided at the time he or she submits his or her request for a preapplication conference, and the conference shall be held within 15 days of such request.

(C42, § 3A-2; O.4972; C54, C62, § 55-2; O.7716; C62, § 55-3; O.8542; C75, § 24-3; O.9305; C75, C79, § 24-27; O.10,561; C85, § 24-27; O.11,611; C91, § 24-27; O.13,004)

### **Sec. 106-102. Plat approval by commission.**

(a) After completion of the preapplication conference required in section 106-101 of this division and if the applicant wishes to proceed to subdivide the property that was the subject of such preapplication conference, he or she shall cause to be prepared a preliminary plat and proposed final plat of such subdivision and shall submit 13 copies of such preliminary plat and five copies of such final plat and such other information as is required in this section to the city permit and development center for its study and recommendation.

(b) Such plats shall be drawn to a scale of not less than one inch to 100 feet. The preliminary plat shall be certified by a registered professional engineer and a registered land surveyor, and the final plat shall be certified by a registered land surveyor and shall contain the following:

(1) The preliminary plat shall show the following:

- a. Title and complete legal description of the tract of land to be subdivided, showing north point, scale, date, certification by the surveyor staking the lots, and the names, addresses, and telephone numbers of the owner, subdivider and surveyor/engineer.
- b. Existing and proposed contour intervals of not more than two feet; provided, however, that a minimum of two contours shall be shown on any plat. If the applicant does not propose to grade any portion of the subject property, he or she shall so indicate on the plat.
- c. The location of property lines, existing and proposed public easements, and all such surface features as buildings, railroads, utilities, watercourses, canopied areas, and similar items affecting the development; also, the location and size of all existing and proposed subsurface features such as storm and sanitary sewers, water mains, culverts, gas mains, underground electric lines or cables, and drainpipes. The preliminary plat must be accompanied by a tree removal and mitigation plan containing the information required by section 42-554 of the tree removal and mitigation ordinance.
- d. A vicinity sketch or key map at a scale of not more than 500 feet to the inch shall be shown on or shall accompany the proposed plat. Such map shall show existing streets and alleys and neighboring subdivisions or undeveloped property.
- e. All existing adjacent subdivisions, streets and tract lines of acreage parcels, together with the names of record owners of unsubdivided parcels of land immediately adjoining the proposed subdivision and between it and the nearest existing streets.

- f. The sites proposed for parks, open areas, school property, other areas of public use and outlot areas set aside for future development, all assigned a progressive letter with the proposed use clearly designated.
- g. The zoning district classification of the tract of land to be subdivided.
- h. All established floodway and flood fringe encroachment limits.
- i. A soils report for the tract of land to be subdivided prepared by a registered professional engineer experienced in soils investigation showing general soil conditions and including recommendations as to the adaptability of such soils for the proposed development. This requirement may be waived at the discretion of the city engineer.
- j. A drainage report prepared in accordance with the design standards by a registered professional engineer.
- k. The numbered address of each proposed lot assigned pursuant to article XII of chapter 102 of this Code.

(2) The proposed final plat shall show the following:

- a. An outline of all property to be reserved by deed covenant for the common use of subsequent property owners of the subdivision.
  - b. All surveying dimensions and requirements set forth in division 1 of article III of this chapter.
  - c. All lot lines, with applicable addresses and all easements, accurately established by sufficient information, including dimensions and angles or bearings.
  - d. The boundaries of the plat and lines for any parks, open areas, school property, other areas of public use and outlot areas set aside for future development accurately established by sufficient information, including dimensions and angles or bearings. The boundaries of the plat shall be accurately described by giving reference to two section corners within the United States public land survey system in which the plat lies or, if the plat is a subdivision of any portion of an official plat, two established monuments within the official plat. All parks, open areas, school property, other areas of public use and outlot areas set aside for future development shall be assigned a progressive letter and shall have the proposed use clearly designated.
  - e. A complete legal description and list of proprietors of the property to be subdivided, showing the location and extent, points of compass, scale of plat, and certification and name of the engineer or surveyor responsible for staking the lots. All adjoining properties shall be identified, and where such adjoining properties are a part of an official plat, the name of that plat shall be shown.
  - f. A proposed consent to plat statement and proposed dedication statement for all property within the proposed plat to be designated for parks, open areas, school property, improvements or other public use.
  - g. All other information required under I.C. § 354.6.
- (c) Upon submission of such plats, the permit and development center coordinator shall retain three copies of the preliminary plat and three copies of the proposed final plat and shall forward copies to city departments, county agencies and utilities as appropriate. The permit and development center coordinator shall instruct the city departments, county agencies and utilities to complete their review of the plats and forward their comments concerning the plats to the city permit and development center within 20 days after the date of submission of such plats to the city permit and development center.



(d) Upon receipt of comments from the appropriate city departments, county agencies and utilities, the permit and development center coordinator shall prepare a report on the plats which shall incorporate the comments and concerns of the city departments, county agencies and utilities. To ensure compatibility with the city's planning goals and policies, such report shall be reviewed with the planning director, after which the permit and development center coordinator, in consultation with the planning director, shall prepare a recommendation on the plats and forward such recommendation to the applicant. The planning director shall forward the preliminary plat and recommendation to the plan and zoning commission for consideration.

(e) The commission shall determine if the preliminary plat conforms to the standards and requirements outlined in I.C. § 354.1 et seq., and this chapter and shall approve, conditionally approve or reject such plat within 45 days after the date of submission thereof to the city permit and development center. Unless the applicant agrees in writing to an extension of time, the preliminary plat shall be deemed approved if the commission does not act within such 45-day period.

(f) Before approving the preliminary plat, the commission may in its discretion hold a public hearing, notice of which shall be given as provided by law.

(g) After approval of the preliminary plat by the commission, the permit and development center coordinator shall determine if the proposed final plat conforms to the standards and requirements outlined in I.C. § 354.1 et seq., and this chapter and shall approve, conditionally approve or reject such plat within ten days after the date of approval of the preliminary plat by the commission. Unless the applicant agrees in writing to an extension of time, the proposed final plat shall be deemed approved if the permit and development center coordinator does not act within such ten-day period.

(h) The permit and development center coordinator shall promptly notify the applicant of the action taken by the commission and the permit and development center coordinator regarding the plats.

(i) The applicant may make a written appeal, in whole or in part, of the action of the permit and development center coordinator to the commission. Such written appeal must be submitted to the city permit and development center within 30 days after the date of final action by the permit and development center coordinator.

(j) If an appeal occurs, the commission, in conformity with the standards and requirements outlined in I.C. § 354.1 et seq., and this chapter, shall hear and decide such appeal within 30 days of the date the appeal is submitted to the city permit and development center. If the commission does not act within such 30-day period, the portion of the permit and development center coordinator's action appealed from shall be deemed reversed.

(k) The permit and development center coordinator shall promptly notify the applicant of the commission's decision on the appeal.

(l) The action for approval or conditional approval shall be null and void unless a complete application for final plat approval is submitted to the city council within six months after the date on which action on such plat was taken by the permit and development center coordinator; provided, however, that the permit and development center coordinator may grant, upon written request of the applicant, a 90-day extension for submittal of the final plat to the city council.

(m) If the applicant desires to commence construction of any required improvement after approval of the preliminary plat, but prior to approval of the final plat by the city council, he or she shall comply with the contractor's bond requirements set forth in division 2 of article III of this chapter.

(n) Grading of the site shall comply with the following:

(1) If the applicant proposes to grade, strip, excavate, fill, undertake or cause any earth change on the site or stockpile any granular construction material in excess of 5,000 cubic yards on the site, he or she shall submit to the city permit and development center an application for a grading permit, containing all of the information set forth in section 42-87 of this Code. The application for the grading permit shall be processed in the same manner set forth in section 42-88 of this Code.

(2) An application for grading permit may be submitted at the time the preliminary and final plats are submitted to the city permit and development center or at any time thereafter, but in no event shall the applicant proceed to grade, strip, excavate, fill, undertake or cause any earth change on the site or stockpile any granular construction material in excess of 5,000 cubic yards on the site until after approval of the preliminary plat and issuance of the grading permit by the city engineer.

(3) The bond requirements set forth in division 2 of article III of this chapter shall apply to the installation and construction of permanent soil erosion control measures on areas of the site to be dedicated to the city.

(C42, §§ 55-2, 55-3; O.4972; C54, C62, §§ 55-2, 55-3; O.7716; C62, § 55-4; O.8542; C75, §§ 24-3, 24-7, 24-10, 24-11; O.9305; C75, § 24-28; O.9455; C79, § 24-28; O.9726, 10,561; C85, § 24-28; O.11,611; C91, § 14-28; O.11,816; C91, § 24-28; O.13,289, 14,890)

### **Sec. 106-103. Final approval by city council.**

(a) Within one year after the date on which action on the proposed final plat is taken by the permit and development center coordinator, plus any extensions granted by the permit and development center coordinator pursuant to subsection 106-102(l) of this division, the applicant shall apply for final plat approval by the city council by submitting the following items to the city permit and development center:

(1) Twenty copies of the proposed final plat as recommended for approval.

(2) A statement by the proprietors and their spouses, if any, that the plat is prepared with their free consent and in accordance with their desire, signed and acknowledged before an officer authorized to take the acknowledgment of deeds. The statement by the proprietors

shall also include a dedication to the public of all lands within the plat that are designated for parks, open areas, school property, improvements or other public use.

(3) A statement from the mortgage holders or lienholders, if any, that the plat is prepared with their free consent and in accordance with their desire, signed and acknowledged before an officer authorized to take the acknowledgement of deeds. An affidavit and bond as provided for in I.C. § 354.12, may be recorded in lieu of the consent of the mortgage or lienholder. When a mortgage or lienholder consents to the subdivision, a release of mortgage or lien shall be recorded for any areas and improvements conveyed to the city council or dedicated to the public.

(4) An opinion by an attorney at law admitted to practice in the state who has examined the abstract of title of the land being platted, which abstract shall be dated no earlier than 30 days prior to the date set for city council action on approval of the plat. The opinion shall state the names of the proprietors and holders of mortgages, liens, or other encumbrances on the land being platted and shall note the encumbrances, along with any bonds securing the encumbrances. Utility easements shall not be construed to be encumbrances for the purpose of this section.

(5) All public easements required by the city engineer for access to and for construction, maintenance and operation of improvements.

(6) Statement of compliance with section 106-138 of this chapter.

(7) A subdivision bond as required under division 2 of article III of this chapter.

(8) A copy of the schedule for the division of conditional deficiency as required under article X of chapter 94 of this Code.

The application shall be considered complete for approval by the city council only after the proposed final plat has been recommended for approval pursuant to section 106-102 of this division and after all items referenced in this subsection have been submitted in their proper form to the city permit and development center. Following a recommendation for approval of the proposed final plat pursuant to section 106-102 of this division, the date all such items referenced in this subsection are submitted in their proper form shall be the date of application for final plat approval by the city council.

(b) Upon submission of the complete application for final plat approval by the city council, the permit and development center coordinator shall:

(1) Forward a copy of all documents required under subsection (a) of this section to the legal department for review.

(2) Forward copies of the plat to the city engineer and the planning director for review and certification.

(3) Forward a copy of any subdivision bond to the legal department for review and approval.

(4) Forward a copy of any schedule for the division of conditional deficiency to the engineering department for review and approval.

If all documents required under subsection (a) of this section are approved or certified, the permit and development center coordinator shall cause the application for final plat approval to be placed upon the agenda for the next regularly scheduled meeting of the city council.

(c) The city council shall study such final proposed plat and shall determine whether it conforms with the standards and requirements outlined in I.C. § 354.1 et seq., and this chapter and shall determine whether it conforms to the comprehensive plan. The council shall further give consideration to the possible burden on public improvements and to a balance of interests between the proprietors, future purchasers and the public interest in the plat. The council shall act to approve, conditionally approve or reject the plat. The council shall not issue final approval of the plat unless the plat conforms to I.C. §§ 355.8, 354.6 and 354.11 and this chapter. If the council disapproves the plat, it shall state how the plat is objectionable. As part of plat approval, the council shall approve any dedication to the public of all lands within the plat that are designated for parks, open areas, school property or other public use.

(d) The council shall review and approve the subdivision bond in the manner set forth in division 2 of article III of this chapter.

(e) The council shall review, approve and certify to the county auditor the schedule for division of conditional deficiency in the manner set forth in article X of chapter 94 of this Code.

(f) The permit and development center coordinator shall promptly notify the applicant of the city council's action on the final plat.

(C42, § 3A-2; O.4972; C54, C62, § 55-2; O.7716; C62, § 55-3; O.8542; C75, § 24-8; O.9305; C75, § 24-29; O.9353; C79, § 24-29; O.9726, 9847, 10,561; C85, § 24-29; O.11,611; C91, § 24-29; O.13,289)

#### **Sec. 106-104. Issuance of building permits.**

(a) Upon approval of the subdivision final plat by the council, the city clerk shall certify such approval on the plat.

(b) Within 30 days after approval of the final plat by the city council, the applicant shall cause the certified final plat with all attachments required under I.C. § 354.1 et seq., to be recorded in the office of the county recorder and shall cause an exact copy of the plat to be filed in the offices of the county auditor and assessor. The applicant shall then notify the city clerk in writing that the plat has been recorded in compliance with I.C. § 354.1 et seq. Following recording of the certified final plat and notification to the city clerk, the applicant may proceed to offer, sell, lease or develop any interest in a tract of land, lot, or parcel within the plat.

(c) The city clerk shall confirm that the certified final plat has been recorded and shall forward exact copies of the plat to city departments, county agencies and utilities as appropriate. The building official may then proceed to issue building permits for lots contained within such plat.

(d) Unless written application for an extension of time is granted by the city council, approval of the final plat by the council shall become null and void if the plat is not recorded within 30 days after the approval date. The permit and development center coordinator shall notify the county recorder in writing if the final plat becomes null and void.

(C75, § 24-30; O.9305; C79, § 24-30; O.9847, 10,561; C85, § 24-30; O.11,611; C91, § 24-30; O.13,015, 13,289)  
Secs. 106-105--106-130. Reserved.

## **ARTICLE III. IMPROVEMENTS**

### **DIVISION 1. GENERALLY**

#### **Sec. 106-131. Conformance to applicable rules and regulations.**

(a) The applicant shall submit construction plans of all sidewalks, streets and alleys; storm, sanitary and footing drain sewers; utility services; and improved drainageways to the city permit and development center prior to or at the time of submission of the proposed subdivision final plat. The construction plans shall comply with the design standard specifications, and, with the exception of sidewalk improvements, all required improvements shall be designed by a registered professional engineer. In addition to the requirements established in this division, all subdivision plats shall comply with the following plans, laws, rules and regulations:

- (1) All applicable sections of state law, as amended.
- (2) All applicable sections of this Code, as amended.
- (3) The comprehensive plan and the urban transportation plan of the city.
- (4) All applicable rules of the Iowa Administrative Code.
- (5) The design standards and standard specifications and other applicable standards and requirements of all boards, commissions, departments, agencies and officials of the city adopted pursuant to any law or ordinance.
- (6) All applicable federal statutes, rules and regulations.

(b) When the design standards and standard specifications are not applicable or complete for any particular situation or are not applicable to a proposed modification in an improvement design, the city engineer shall set all necessary additional standards. Plat approval shall be withheld if a subdivision is not in conformity with the regulations and requirements established in subsection (a) of this section.

(C75, § 24-36; O.9305; C79, § 24-36; O.9726; C85, § 24-36; O.11,611; C91, § 24-36)

#### **Sec. 106-132. Platting of land.**

In the design of any subdivision plat, due consideration shall be given to the preservation of scenic and historic sites, drainageways, stands of fine trees, marshes, lakes and ponds, and watersheds and shall be in accordance with the following:

(1) *Suitability of land.* Land subject to improper surface or subsurface drainage, excessive erosion, or steep or unstable slopes and which, for these reasons, is unsuitable for development shall not be platted for any use that will constitute a danger to health, safety, or property. Land subject to flooding within the floodway limits as established by the U.S. Army Corps of Engineers or the state department of natural resources shall only be developed for usage allowed within an FW floodway zoning district and in accordance with article II of chapter 50 of this

Code. Land located within the flood fringe may be platted subject to the applicable requirements set forth by the U.S. Army Corps of Engineers, the state department of natural resources, article II of chapter 50 of this Code, article X of chapter 22 of this Code and chapter 134 of this Code and the plan and zoning commission.

(2) *Block design.*

- a. The lengths, widths, and shape of blocks shall be suited for the planned use of the land, zoning requirements, and need for convenient access, control and safety of street traffic and the limitations of topography.
- b. Two dimensions of a block in a residential area shall not be less than 600 feet in length between street lines unless dictated by unusual topography or other limiting factors of good design.
- c. Blocks shall have sufficient width to provide for two tiers of lots of appropriate depth except where otherwise required to separate residential development from through traffic. Public rights-of-way for interior pedestrian walks shall be not less than ten feet in width and shall be provided near the center and entirely across any block which is 900 feet or more in length where such is necessary to provide adequate pedestrian circulation or access to schools, commercial areas, churches, parks, transportation facilities, or other residences.

(3) *Lot design.* The lots shall be designed to provide a proper architectural orientation with regard to sunlight, air, abutting street or other rights-of-way, and lot grades for the buildings contemplated. In addition the development of lots shall conform to the following:

- a. Corner lot lines shall have an extra width over that required in the zoning district in which the property is located to permit adequate building setbacks from side streets.
- b. Lot depth should generally not exceed three times the lot width.
- c. Lot depth should generally follow municipal boundary lines rather than cross them.
- d. Double frontage and reverse frontage lots may be approved at the time of final plat approval where necessary to provide separation of residential development from through traffic or overcome specific disadvantages of terrain and orientation.
- e. Residential lots fronting or backing on a railroad right-of-way or on major streets shall be platted with a minimum depth of 150 feet to permit increased distances between the buildings and trafficways.
- f. Minimum lot dimensions and lot area shall conform to the requirements of the zoning ordinance. Each lot shall have an average depth of at least 100 feet.
- g. Any lot not served by a sanitary sewer shall have a lot area of not less than one acre.
- h. When land is subdivided into larger lots than typically required for building, such lots shall be arranged in such a manner as to allow for the opening of future streets and logical further subdivision of the lots.
- i. Depth and width of lots reserved or laid out for commercial or industrial use shall be adequate to provide for the off-street service and parking facilities required by the type of use and development contemplated.
- j. Where application of the building setback requirements of the zoning ordinance would not properly safeguard the character of adjacent existing development or because of

unusual physical condition, more restrictive setback lines may be established by the commission.

k. No land shall be reserved by the subdivider unless the land is of sufficient size and shape to be of some practical use or service as determined by the commission. All areas to be reserved shall be clearly described on the plat.

l. If a tract being subdivided contains a water body, or portion thereof, lot lines shall be so drawn as to distribute the entire ownership of the water body among the owners of adjacent lots. The commission may approve an alternative plan of ownership and use, provided the ownership of and responsibility for safe maintenance of the water body is placed on private entities. Where a watercourse separates the buildable area of a lot from the street by which it has access, provisions shall be made for suitable vehicular/pedestrian access.

(4) *Surveying requirements.*

a. The applicant shall have a registered land surveyor install permanent control monuments at least 30 days prior to the conveyance of the first lot after the recording of the final plat.

b. Permanent control monuments shall be constructed of reasonably permanent material solidly embedded in the ground and capable of being detected by commonly used magnetic or electronic equipment. The registered land surveyor shall affix to the top of the monument reasonably inert material bearing an embossed or stencil cut marking of his or her state registration number.

c. Control monuments and additional monuments shall be placed at locations required by state law. Additional control monuments may be required by the city engineer.

d. All dimensions, both linear and angular, necessary for locating boundaries of the subdivided area or of the lots, streets, alleys, easements, and building line setback and any other similar public or private uses shall be shown on the final plat. The linear dimensions shall be expressed in feet and decimals of a foot. The angular dimensions shall be expressed in degrees and minutes and, if required, seconds.

e. All radii, arc and chords, points of tangency, central angles for all curvilinear streets, and radii for rounded corners shall be shown in the final plat.

f. All surveyor's monuments, together with their descriptions shall be shown on the final plat.

g. All distances shall be shown on the final plat in feet to the nearest 1/100 of a foot, and in accordance with the definition of the international foot. All measurements shall refer to the horizontal plane.

h. The course of every boundary line shown on the plat shall be indicated by a direct bearing reference or by an angle between the boundary line and an intersecting line having a shown bearing, except when the boundary line has an irregular or constantly changing course, as along a body of water, or when a description of the boundary line is better achieved by measurements shown at points or intervals along a meander line having a shown course. All bearings and angles shown shall be given to at least the nearest minute of arc.

i. The minimum unadjusted acceptable error of closure for all subdivision boundaries shall be 1:10,000 and shall be 1:5,000 for any individual lot.

(5) *Tree preservation and mitigation.* The proposed tree removal and mitigation plan shall comply with the requirements of the tree removal and mitigation ordinance codified in article X of chapter 42 of this Code.

(6) *Scenic and historic sites and natural features.* The design of any subdivision shall give due consideration to the preservation of scenic and historic sites, drainageways, marshes, lakes and ponds, and watersheds.

(7) *Buffer strips.* Buffer strips include treatment of railroad rights-of-way and limited access highways. Wherever the proposed subdivision contains or is adjacent to a railroad right-of-way or limited access highway or where lots back onto a public street, the subdivision shall provide the following treatment: In residential districts a buffer strip at least 25 feet in depth, in addition to the required lot depth, shall be provided adjacent to a railroad right-of-way. This strip shall be a part of the platted lots and shall contain planted materials approved by the planning director. The plat shall contain the following restriction lettered on the face: Buffer strip to be planted by subdivider and maintained by property owners; erection of any aboveground structure is prohibited.

(8) *Plats straddling municipal boundaries.* Wherever access to the subdivision is required across land outside the corporate limits, the commission may request that access be legally established, subject to approval of the city engineer to ensure that the access road is adequately improved, or that a bond has been duly executed and is sufficient to ensure construction of the access road.

(9) *Final plat approval.* Approval of the final plat by the council is subject to installation of improvements designated in this division, together with a bond that such improvements shall be installed. The city engineer shall be responsible for approving all plans and specifications for the required improvements and shall ensure adequate inspection of construction for compliance with the approved plans and specifications and for issuing a certificate of satisfactory completion upon the acceptable completion of the work.

(C42, §§ 3A-3, 3A-4; O.4972, 5105; C54, §§ 55-3, 55-4; O.6642; C62, § 55-4; O.7585, 7716; C62, § 55-5; O.8400, 8542; C75, §§ 24-11, 24-17, 24-18; O.9305; C75, C79, C85, § 24-37; O.11,611; C91, § 24-37; O.13,289, 14,890)

### **Sec. 106-133. Street layout.**

(a) *Generally.* Street layout in a subdivision shall be in compliance with the following:

(1) In any new subdivision the street layout and construction shall conform to the current comprehensive plan, urban transportation plan and the design standards. In areas where such plans may not apply, the streets shall be designed and located in proper relation to existing and proposed streets, terrain, natural features such as streams and tree growth, public convenience and safety, proposed use of the land served by such streets, and suitable development of the adjoining area.

(2) Proposed streets shall extend to the boundary line of the tract being subdivided unless prevented by topography or other physical conditions or unless, in the opinion of



the plan and zoning commission, such extension is not necessary or desirable for the coordination of the layout of the subdivision or for the suitable development of the adjacent tracts.

(3) The following shall apply to all subdivision streets within the city:

a. Grading. All public streets shall be graded to their full right-of-way width unless special conditions warrant the waiving of this requirement by the city engineer. Finished grade, cross section and profiles for each street shall be approved by the city engineer.

b. Paving. Road base and paving shall be installed in accordance with the standard specifications.

(b) *Relation to adjoining street system.* The arrangement of streets in new subdivisions shall provide for the continuation and proper intersection of the principal streets with existing streets and shall provide for proper projection to accommodate the extension of improvements on adjoining property that has not been subdivided. The width of such streets in new subdivisions shall comply with the requirements established by the design standards. If a principal street in an existing subdivision is continued in the new subdivision, the applicant shall provide for the removal of any vehicular turnaround on such street, and the applicant shall be responsible for the construction or reconstruction of driveways and sidewalks and regrading made necessary as a result of such removal.

(c) *Half streets.* Where an existing dedicated half street is adjacent to the tract being subdivided, the other half of the street right-of-way shall be dedicated and built by the subdivider. Half street dedications for new streets are not permitted, except where the city council may require extension of an existing street and (i) all adjacent owners agree to construct the full street or (ii) the city is the owner of the other half of the proposed street and gives the subdivider permission to build over the street at the subdivider's expense.

(d) *Relation to railroad right-of-way or limited access highways.* The relation of streets to railroad rights-of-way or limited access highways shall be as follows:

(1) In commercial and industrial districts, provisions shall be made on each side of a railroad right-of-way or limited access highway for streets approximately parallel to such right-of-way or highway at a distance suitable for the appropriate commercial or industrial use of the land. In no instance shall this be less than 150 feet.

(2) Streets parallel to the railroad right-of-way or limited access highway shall, when intersecting a major street, be located at a minimum distance of 250 feet from such right-of-way or highway. Such distance, where desirable and practicable, shall be determined with due consideration of the minimum distance required for the future separation of grades by means of appropriate approach gradients. Location of minor streets immediately adjacent and parallel to railroad right-of-way shall be avoided.

(e) *Limited access.* Access to major streets may be limited as follows:

(1) Wherever the proposed subdivision contains or is adjacent to a major street, adequate protection of residential properties, limitations of access, and the separation of

through and local traffic shall be considered. Where feasible there shall be a reserved frontage strip with screen planting, provided by the subdivider and maintained by the owner, plus a nonaccess deed restriction covering such strip or provision of a frontage road.

(2) There shall be no reserve strips controlling access to streets. Frontage roads may be included in the final plat with the concurrence of the commission.

(f) *Intersections.* Street intersections shall be in compliance with the following:

(1) Streets shall intersect each other at as nearly right angles as permitted by topography or other limiting factors of good design. There shall not be more than four street approaches at any intersection.

(2) The number of new intersections with major streets shall be held to a minimum. Wherever practicable the distance between such intersections shall not be less than 1,200 feet. Property lines at street intersections need not be rounded unless required by the commission or recommendation of the city engineer.

(3) Minor streets need not continue across major or collector streets. However, if the centerlines of such minor streets approach the major streets from opposite sides thereof, such centerlines shall be directly aligned or offset a minimum distance of 125 feet.

(g) *Dead-end streets.* Dead-end streets shall be in compliance with the following:

(1) *Permanent dead-end street.* Where a street does not extend to the boundary of the subdivision and its continuation is not required by the commission for access to adjoining property, its terminus should normally not be nearer to such boundary than 50 feet. However, the commission may require the reservation of an appropriate easement to accommodate the extension of drainage facilities, pedestrian traffic or utilities. A turnaround shall be provided at the end of a permanent dead-end street in accordance with the design standards and standard specifications. Permanent dead-end streets shall not have a length greater than 660 feet from the centerline of the intersecting street to the center of the turnaround.

(2) *Temporary dead-end street.* Where a street extends to the boundary of a subdivision and its continuation may be required by the commission for future access to adjoining property, such street shall be provided with a vehicular turnaround in accordance with the design standards and standard specifications. Such vehicular turnaround shall not be required for temporary dead-end streets having a depth of one lot or less. The commission may require the reservation of appropriate easements to accommodate the extension of drainage facilities, pedestrian traffic, utilities, or paving turnaround.

(h) *Street right-of-way and paving widths.* The minimum right-of-way and paving widths of all proposed streets shall be those specified in the design standards.

(i) *Street grades.* Grades of streets shall be in compliance with the following:

(1) The maximum street grades shall not exceed those established in the design standards except as otherwise permitted by the city engineer to compensate for unusual terrain.

(2) All changes in street grades shall be connected by vertical curves and shall be designed for safe stopping sight distances as determined by the city engineer in accordance with the design standards and American Association of State Highway Transportation Officials (AASHTO) standards.

(3) Wherever practicable, street grades shall be established in such a manner to avoid excessive grading or removal of ground cover and tree growth and general leveling of the terrain. However, grades so established shall be such as to minimize hazards by maintaining adequate sight distances based on the street type and anticipated traffic volume.

(j) *Street radii of curvature.* Circular curves shall have a radius of curvature on the centerline set forth in the design standards. Any variations to these standards shall be subject to approval by the city engineer.

(k) *Required street improvements.* Required street improvements shall be as follows:

(1) *Street trees.* The applicant shall provide for the planting of shade trees in accordance with the design standards.

(2) *Signing and barricading.* Street name signs and dead-end street barricades shall be provided and erected by the developer in accordance with the adopted standards and specifications of the city engineer.

(C42, § 3A-4; O.4972, 5105; C54, § 55-4; O.6642; C62, § 55-4; O.7585, 7716; C62, § 55-5; O.8400, 8542; C75, §§ 24-14, 24-15, 24-16; O.9305; C75, C79, § 24-38; O.9847, 10,561; C85, § 24-38; O.11,611; C91, § 24-38)

#### **Sec. 106-134. Sanitary sewers.**

(a) Under this chapter, the applicant shall construct sanitary sewers and provide a connection for each lot in conformance with the standard specifications. All sewers shall be designed by a registered professional engineer and sized with capacity to permit ultimate development of the sewer service area. The sewer lines shall be constructed to the extremities of the development where necessary to accommodate future extension. Sewage treatment plants and pumping stations, if necessary, shall be designed and constructed in conformance with the design standards and specification requirements of the state department of natural resources and shall be subject to approval by the city engineer.

(b) The applicant shall dedicate all sewers and convey permanent maintenance easements to the city for all sanitary sewers required by the city engineer. These easements shall have a minimum width of 15 feet on each side of the sewer centerline and such additional width as deemed necessary by the city engineer to ensure access by city maintenance equipment.

(c) Where existing and adequate sewer lines for connection are not located within a reasonable distance, as determined by the city engineer, installation of private sewer facilities or septic tanks may be permitted subject to the requirements and approval of the city and the county.

(C42, § 3A-4; O.4972, 5105; C54, § 55-4; O.6642; C62, § 55-4; O.7585, 7716; C62, § 55-5; O.8400, 8542; C75, § 24-22; O.9305; C75, C79, C85, § 24-39; O.11,611; C91, § 24-39)

**Sec. 106-135. Storm sewers or drainageways.**

(a) Under this chapter, the applicant shall construct storm sewers in conformance with the design standards and standard specifications. Where improved drainageways are recommended by the city engineer, they shall be designed in conformance with such design standards to ensure the improvements necessary to properly accommodate storm flows in a manner to control erosion and possible loss and damage to life, land, and property. If a drainageway is proposed over an area with existing physical features such as streams, ponds, ravines, wooded areas, or other natural features, the width and location of the drainageway shall be approved by the plan and zoning commission following recommendation of the city engineer in order to protect the existing physical features.

(b) All storm drainage facilities shall be designed by a registered professional engineer and sized with capacity to permit ultimate development of the drainage basin, and the improvements shall be constructed to the extremities of the development where necessary to accommodate future extension.

(c) The subdivider shall dedicate to the city all public storm drainage facilities required by the city engineer so as to provide for the drainage of stormwater through the development. The subdivider shall convey permanent storm sewer maintenance easements to the city for all such facilities. The minimum width for storm sewer easements shall not be less than 30 feet. Natural or improved drainageway easements shall have a width that complies with the design standards. Bridges and culverts shall be constructed only at locations approved by the city engineer in accordance with the design standards.

(C42, § 3A-4; O.4972, 5105; C54, § 55-4; O.6642; C62, § 55-4; O.7585, 7716; C62, § 55-5; O.8400, 8542; C75, §§ 24-21, 24-22; O.9305; C75, § 24-40; O.9455; C79, C85, § 24-40; O.11,611; C91, § 24-40)

**Sec. 106-136. Stormwater runoff control.**

The following stormwater runoff control and reduction requirements shall apply to all subdivisions, as well as new developments permitted by site plans and grading permits for land one acre or larger or less than one acre but which is part of a larger common plan of development that is one acre or larger, and no subdivision approval, site plan approval, or grading permit may be issued until the applicant has complied with the requirements of this section:

(1) A stormwater runoff control plan, prepared and certified by a professional engineer, architect or landscape architect licensed in the state and familiar with retention and detention calculations and stormwater runoff control methods and techniques, must be submitted by the applicant for approval by the city engineer. Such plan shall include all reports, tests and calculations and all other information required by the city engineer to determine the viability of such plan.

(2) A stormwater runoff control plan shall reduce projected runoff for a project by controlling rain events that total 1.25" or less in a 24-hour period, with the resulting volume being released at a rate that allows for a detention time of 24 hours through incorporation of stormwater management facilities. The stormwater management facilities may, but are not required to, include those provided in such stormwater control policies adopted by the city council by resolution.

(3) The city engineer shall review the stormwater runoff control plan for conformance with the objectives set forth in subsection (2). Each plan will be evaluated on its own merits according to the particular characteristics of the project and the site to be developed.

(4) The city engineer shall approve or disapprove a complete stormwater runoff control plan within 15 working days after receipt of submittal. If the plan is disapproved, the reasons for disapproval shall be given in writing to the applicant. Any plan disapproved by the city engineer must be revised by the applicant and resubmitted for approval. A resubmitted plan will be approved or disapproved within 15 working days of submittal.

(5) An applicant desiring a full or partial waiver of compliance with this section may make a written application on forms supplied by the city engineer. Waiver applicants must show that incorporation of storm water management facilities set forth in the subdivision stormwater runoff control policies are not possible to install due to exceptional physical limitations of the site. If a waiver is granted, the applicant must develop and incorporate other measures, which the applicant can demonstrate to the satisfaction of the city engineer comply with the requirements of subsection (2) to the extent reasonably possible. Requests for waivers shall be granted or denied, in writing by the city engineer. Applicants may appeal such decision of the date of issuance by making appeal to the plan and zoning commission in accordance with section 106-199.

(6) Prior to approval of the subdivision plan, site plan, grading permit or stormwater runoff control plan, or the issuance of any permit that has a stormwater runoff control plan requirement, the owner of the property must execute a stormwater facility maintenance agreement that shall be binding on all benefited property. The stormwater facility maintenance agreement shall provide for access to the facility for the responsible party for inspection and maintenance purposes and for the city for inspection and maintenance purposes, at the city's discretion. The stormwater facility maintenance agreement shall be recorded by the city at the expense of the applicant or property owner.

(7) The applicant and owner shall be responsible for the maintenance of the stormwater management facilities to their design capacity unless or until the city engineer agrees in writing to a transfer of such responsibility to another responsible party.

(8) Stormwater management facilities must be maintained by the responsible party in conformance with the following requirements:

- a. Stormwater runoff control facilities, including pipes, inlets and outlets, shall be periodically inspected.

- b. Litter, sediment and debris shall be promptly removed from such facilities.
- c. The vegetation shall not be removed or changed without the prior written consent of the city engineer or public works director except for stormwater runoff control facilities that must be moved in accordance with the stormwater runoff control plan.
- d. No yard debris as defined in chapter 98, soil or rocks or concrete, or similar materials, shall be placed within a swale, or retention or detention pond without the prior written consent of the city engineer or public works director.
- e. The area of the stormwater runoff control facilities shall not re-graded without the prior written consent of the city engineer or public works director.
- f. Records of inspection, maintenance and repair must be maintained and kept for at least five years and made available upon request to the city engineer.
- g. Any action that will render a stormwater management facility inoperable or will significantly decrease its functioning is prohibited.

(9) Where dams are proposed in any subdivision, they shall be designed by a registered professional engineer. A preliminary engineering report including soil investigations and design procedures shall be submitted to the city engineer for review. When such dam is constructed, the subdivider's engineer shall certify to the city engineer that the dam is constructed in accordance with the approved plans and specifications.

(C75, § 24-41; O.9305; C79, C91, § 24-41; O.14,708)

**Editor's note:** Ord. No. 14,708 changed the title of § 106-136 from "Detention of stormwater runoff" to "Stormwater runoff control." Said ordinance also enacted provisions intended for use as subsections (a)--(i). To preserve the style of this Code, and at the discretion of the editor, said provisions have been redesignated as subsections (1)--(9).

### **Sec. 106-137. Sidewalks.**

Sidewalks shall be constructed by the subdivider on all new and existing streets, within the street right-of-way and public pedestrian walk right-of-way in accordance with the standard specifications. However, in the interest of a better arrangement of pedestrian circulation and to accommodate special design features of the development, this requirement may be waived or alternative locations required as approved by the plan and zoning commission and the council.

(C42, § 3A-4; O.4972, 5105; C54, § 55-4; O.6642; C62, § 55-4; O.7585, 7716; C62, § 55-5; O.8400, 8542; C75, § 24-22; O.9305; C75, C79, C85, § 24-42; O.11,611; C91, § 24-42)

### **Sec. 106-138. Utilities.**

(a) All utility lines and mains including telephone, electric, cable television and street lighting lines; gas and water mains; and other necessary facilities, except electric lines in excess of 15,000 volts, shall be installed under ground in the subdivision. The subdivider shall be responsible for making the necessary arrangements with the utility companies for installation of such facilities. Such utility lines shall be installed in such a manner so as not to interfere with other underground utilities. Incidental appurtenances, such as transformers and their enclosures, pedestal-mounted terminal boxes, meters and meter cabinets may be placed above ground

subject to the approval of the city engineer, but shall be located so as not to be unsightly or hazardous to the public. Such incidental appurtenances shall be in accordance with the design standards.

(b) Water distribution systems, including the number and location of fire hydrants, shall be designed by a registered professional engineer and approved by the city water board prior to installation by the subdivider.

(C42, § 3A-4; O.4972, 5105; C54, § 55-4; O.6642; C62, § 55-4; O.7585, 7716; C62, § 55-5; O.8400, 8542; C75, § 24-22; O.9305; C75, C79, C85, § 24-43; O.11,611; C91, § 24-43)

### **Sec. 106-139. Standards for cluster subdivisions.**

(a) *Minimum size.* The minimum size of the area to be included in a cluster subdivision shall be five acres.

(b) *Density.* The maximum number of dwelling units to be erected within the cluster subdivision shall not exceed the number of dwelling units allowed by the zoning district in which the cluster subdivision is located.

(c) *Principal permitted use.* Only those types of dwelling units allowed by the zoning district in which the cluster subdivision is located shall be permitted.

(d) *Bulk regulations.* Lots, yards and heights shall be in compliance with the following:

(1) Lot area shall not be less than 75 percent of the minimum permitted by the zoning district in which the cluster subdivision is located.

(2) Lot area per dwelling unit shall not be less than 75 percent of the minimum permitted by the zoning district in which the cluster subdivision is located.

(3) Front yard shall not be less than 75 percent of the minimum permitted by the zoning district in which the cluster subdivision is located.

(4) Side yard shall not be less than 75 percent of the minimum permitted by the zoning district in which the cluster subdivision is located.

(5) Rear yard shall not be less than 75 percent of the minimum permitted by the zoning district in which the cluster subdivision is located.

(6) Building height shall be the same as allowed by the zoning district in which the cluster subdivision is located.

(7) Contiguous lots shall be grouped in such a manner so as to provide open space, and no more than 15 lots may be grouped in a continuous row.

(e) *Open space.* At least ten percent of the gross area of the cluster subdivision shall be reserved as public or private open space, as follows:

(1) *Private open space.*

a. If the open space is to be privately owned, such area shall be delineated on the subdivision plat with an appropriate notation indicating the manner in which such open space is reserved and that such reservation shall be for the benefit of all future purchasers of property within the subdivisions for a period of 21 years, subject to renewal as provided in I.C. § 614.24.

b. If the open space is to become an open space for all property owners within the cluster subdivision, its ownership and maintenance shall be by an undivided interest of all owners of property located within the cluster subdivision or by a homeowners' association that is a legal entity.

1. If the ownership and maintenance of the common open space is to be by private homeowners' association, the following shall be filed with the city: proposed bylaws of the homeowners' association fully defining the functions, responsibilities and operating procedures of the association. The proposed bylaws shall include and not be limited to the following:

i. Automatically extending membership in the association to all owners of dwelling units within the subdivision.

ii. Granting to each owner of a dwelling within the subdivision the right to use and enjoy the open space.

iii. Place any responsibility for operating and maintenance in the association.

iv. Giving every owner of a dwelling unit voting rights in the association.

v. If the subdivision will combine rental and for sale dwelling units, stating the relationship between the renters and the homeowners' association and the right that renters shall have to the use of the open space.

2. If the owners of property within the cluster subdivision are to have an undivided interest in the area designated as open space, there shall be filed with the city permit and development center documentation evidencing such ownership interest, including adequate provisions for maintenance of such open space by such owners.

c. If the open space is not to become an open space for all property owners within the cluster subdivision, the following notations shall be set forth on the final subdivision plat and shall be included in appropriate deed restrictions to future purchasers for those lots or parts thereof included within the boundaries of such open spaces:

1. No structures, permanent or temporary, other than yard recreational equipment, arbors, trellises, flagpoles, statuary or similar decorative items, shall be constructed, erected or placed upon or within the area designated as open space, nor shall the grade, elevation or contours of any part of such area be changed or altered in any manner whatsoever.

2. To the extent that a lot or part thereof is included within that area designated as open space, it shall be the responsibility of the owner of such lot or part thereof to maintain such designated open space area.

(2) *Public open space.*



- a. If any of the open spaces are to be publicly owned, such areas shall be at least ten percent of the gross area of the cluster subdivision but in no case shall it be less than one acre in size.
- b. The proposed dedication of land to the city shall be referred to the park and recreation department for report and recommendation prior to action on the final plat by the city council.

(C75, § 24-44; O.9305; C79, C85, § 24-44; O.11,611; C91, § 24-44)

Secs. 106-140--106-165. Reserved.

## **DIVISION 2. ASSURANCE FOR COMPLETION AND MAINTENANCE**

### **Sec. 106-166. Improvement and subdivision bonds.**

(a) *Completion of improvements.* All applicants shall be required to complete all street, sanitary sewer and other improvements as required in this chapter and as specified in the construction plans approved by the city engineer and in the proposed final subdivision plat approved by the permit and development center coordinator and to dedicate the improvements to the city, free and clear of all liens and encumbrances on the property and the dedicated improvements.

(b) *Performance bonds.* The following performance bonds shall be given:

(1) *Contractor's bond.* After approval of the preliminary plat, the applicant may submit to the city permit and development center a written request to commence construction of any required improvement. Such request shall include satisfactory documentation that all conditions to the preliminary plat approval have been resolved, two sets of construction plans required by this chapter for such improvement and four copies of all contracts required under subsection (d) of this section. If the city engineer approves the request to commence construction, the contractor whose name appears on the improvement contracts shall post a contractor's bond estimated by the city engineer as sufficient to secure to the city the satisfactory construction, installation and acceptance of the required improvement. Such bond shall comply with all requirements of state law.

(2) *Subdivision bond.* If the city council has not acknowledged completion or accepted all of the improvements required to be installed in such subdivision pursuant to subsection 106-167(c) of this division at the time of submission of the plat for final approval by the city council, the applicant shall post a subdivision bond estimated by the city engineer as sufficient to secure to the city the satisfactory construction, installation and acceptance of all such required improvements remaining to be constructed, installed, accepted and/or dedicated to the city. Such subdivision bond shall not be required to secure those improvements that are secured by a contractor's bond approved pursuant to subsection (b)(1) of this section.

(3) *Compliance; time periods.* All bonds shall comply with all statutory requirements and shall be satisfactory to the city legal department as to form, sufficiency, and manner of execution as set forth in this chapter. The planning director shall recommend a time period on each bond, and the required improvements shall be completed within the time period specified on each bond. The time period on each bond shall not exceed three years

from the date of final plat approval by the city council, unless an extension of the completion date for sidewalk improvements is granted by the city council in accordance with section 106-168 of this division.

(4) *Approval.* All bonds shall be approved by the city council as to amount, surety and conditions. The council, upon recommendation of the planning director at any time during the period of a bond, may accept a substitution of principal or surety on the bond.

(5) *Street trees.* No bond shall be required for street trees. Upon construction of a building on a lot in the subdivision, the street trees required for that lot shall be installed before a certificate of occupancy may be issued.

(c) *Costs of improvement.* All required improvements shall be constructed by the applicant, at his or her sole expense, without reimbursement from the city in any manner.

(d) *Required contracts.* Contracts for construction of improvements shall be required as follows:

(1) Prior to commencement of construction of any required improvement, the applicant shall submit to the city engineer copies of all contracts entered into by the applicant for the construction of such improvement. The form of such contract shall be substantially that as set forth in the design standards and standard specifications.

(2) The city engineer shall thereafter recommend approval or rejection of each such contract, taking into consideration the following:

- a. Financial responsibility of the contractor.
- b. Past record of transactions and experience with the contractor, including quality of workmanship; the number of liens, claims or complaints filed; and the number of repairs made.
- c. Adequacy of the contractor's equipment and materials.
- d. The contractor's demonstrated ability to complete performance.
- e. Conformity of the proposed contract with the requirements of this section.

(3) If the city engineer recommends approval of a contract, the contract shall be submitted to the city council for its approval and execution. If the city engineer recommends rejection of a contract, the applicant may appeal such decision to the city council which, if it deems the city engineer's recommendation incorrect on the basis of the criteria in this subsection, may approve and execute such contract.

(e) *Failure to complete improvements.* Where a bond has been posted and required bonded improvements have not been constructed or installed as set forth by the terms of the bond, the city council may thereupon declare such bond to be due and shall draw upon the bond funds in an amount sufficient to cover the costs of completion of the improvements. The principals and sureties shall be severally and jointly liable as their obligations may appear on the bond for completing all required improvements.

(C42, § 3A-4; O.4972, 5105; C54, § 55-4; O.6642; C62, § 55-4; O.7585, 7716; C62, § 55-5; O.8400, 8542; C75, § 24-22; O.9305; C75, C79, § 24-31; O.9726, 10,561; C85, § 24-31; O.11,079, 11,611; C91, § 24-31; O.13,289)

**Sec. 106-167. Inspection of improvements.**

(a) *General procedure.* The city engineer shall provide for inspection of required subdivision improvements during construction to ensure their satisfactory completion. Such inspection during construction shall be conducted by city personnel under the direct supervision of the city engineer or, if approved in writing by the city engineer, by technically qualified personnel under the supervision of the applicant's engineer. If the applicant's engineer supervises inspection, such inspection shall be conducted in accordance with the requirements of the city engineer and as outlined in the design standards and standard specifications.

(b) *Fees for construction inspection.* Prior to the acceptance of an improvement by the city, the applicant shall pay the city the actual costs incurred by the city for inspection during the construction. These costs shall include but are not limited to the cost of contract preparation, printing, administration, field inspection, materials testing, as-built surveys, preparation of plans of record, and engineering review for compliance.

(c) *Certificate of satisfactory completion.* The applicant shall notify the city engineer in writing upon final completion of any required improvement. If such improvement has been satisfactorily completed in accordance with the design standards and standard specifications and the approved construction plans, the city engineer shall cause to be issued a certificate of satisfactory completion as to such improvement. Upon submission of such certificate, the city council shall acknowledge completion and acceptance of such improvement, in accordance with established procedure at the point of completion of some or all of the improvements therein.

(d) *Reduction of bond.* Upon completion of 50 percent or more of the required bonded improvements in a subdivision and upon written request by the contractor or applicant, as applicable, the city council may reduce a subdivision bond in an amount recommended by the city engineer that is sufficient to cover the costs of completion of the required improvements. No subdivision bond shall be reduced below 25 percent of the original principal amount.

(C75, § 24-32; O.9305; C79, C85, § 24-32; O.11,611; C91, § 24-32)

**Sec. 106-168. Waiver of improvements or extensions of completion date for sidewalk improvements.**

(a) At any time after final subdivision plat approval, the city council, after recommendation by the planning director and subject to appropriate conditions, may waive the requirement for construction of any improvement or, with regard only to sidewalk improvements, may extend the completion date set forth in the bond. Such waiver or extension may be granted only upon a determination by the council that it is justified because of incompatible grades, future planning or inadequate or nonexistent connection facilities, and that it will not adversely affect the public health, safety or general welfare.

(b) No such extension of the completion date for sidewalk improvements shall be granted if 70 percent or more of the lots in the subdivision are developed with buildings. If 45 percent or more, but less than 70 percent, of the lots are so developed, such extension shall not exceed one year. If 20 percent or more, but less than 45 percent, of the lots are so developed, such extension shall not exceed two years. If less than 20 percent of the lots are so developed, such extension shall not exceed three years. Only one extension may be granted.

(c) With regard to any extension granted pursuant to this section, the applicant shall have the option of discharging his or her obligation under the bond to complete the sidewalk improvements by payment in cash to the city of an amount estimated by the city engineer as sufficient to cover the costs of completion of the improvements.

(C42, § 3A-4; O.4972, 5105; C54, § 55-4; O.6642; C62, § 55-4; O.7585, 7716; C62, § 55-5; O.8400, 8542; C75, § 24-21; O.9305; C75, C79, § 24-33; O.9726; C85, § 24-33; O.11,079, 11,611; C91, § 24-33)

### **Sec. 106-169. Issuance of building permits and certificates of occupancy.**

(a) Except as set forth in subsection (b) of this section, no certificate of occupancy for any building in the subdivision shall be issued prior to the completion of street, water, and sanitary sewer improvements and dedication of such to and acceptance by the city or the entity responsible for the operation and maintenance of such improvement, as specified in the approved construction plans and in the official plat for the subdivision.

(b) No certificate of occupancy shall be issued for the final ten percent of lots in a subdivision or, if ten percent is less than two lots, for the final two lots of a subdivision, until all required improvements required for the plat have been fully completed, dedicated to and accepted by the city.

(C75, § 24-34; O.9305; C79, C85, § 24-34, O.11,079, 11,611; C91, § 24-34)

### **Sec. 106-170. Maintenance of improvements.**

(a) After acceptance of required subdivision improvements by the city council, the applicant shall maintain all such improvements free of defects for the time period established in the contract for the improvements.

(b) The applicant shall post a maintenance bond estimated by the city engineer as sufficient to secure to the city the satisfactory maintenance and condition of all required improvements. Such maintenance bond shall be in a form satisfactory to the city legal department and shall be in effect for the entire maintenance period established in the contract for the improvements.

(C75, § 24-35; O.9305; C79, § 24-35; O.9847; C85, § 24-35; O.11,611; C91, § 24-35)

Secs. 106-171--106-195. Reserved.

## **ARTICLE IV. SUBDIVISION BY PLAT OF SURVEY**

### **Sec. 106-196. General procedure and limitations.**

Whenever a subdivision of land is proposed by a plat of survey, the subdividing owner or the owner's authorized agent shall apply for and secure approval of such proposed plat of survey in accordance with the procedure set forth in this article.

(C91, § 24-45; O.13,004)

### **Sec. 106-197. Preapplication conference.**

Whenever a subdivision of land is proposed by a plat of survey, the applicant shall submit to the city permit and development center a request for a preapplication conference. The conference shall include the applicant and appropriate city staff. The purpose of the conference is to acquaint city staff with the proposed subdivision and acquaint the applicant with the regulations and policies that might relate to the subdivision. The applicant shall furnish a legal description of the property to be subdivided at the time of submission of the request for a preapplication conference, and the conference shall be held within 15 days of such request.

(C91, § 24-46; O.13,004)

### **Sec. 106-198. Approval of plat.**

(a) After completion of the preapplication conference required in section 102-197 of this article and if the applicant wishes to proceed to divide the property that was the subject of such preapplication conference, the applicant shall cause to be prepared a plat of survey of the tract to be divided and shall submit four copies of such plat and such other information as is required in this section to the city permit and development center for its study and determination and shall deposit with the city the plat of survey approval fee in the amount set in the schedule of fees adopted by the city council by resolution.

(b) The plat of survey shall be drawn to a scale of not less than one inch to 100 feet, shall be certified by a registered land surveyor and, together with any necessary attachments, shall show the following:

(1) All surveying dimensions and requirements set forth in subsection 106-132(4) of this chapter.

(2) All parcel boundary lines, with applicable addresses and all easements, accurately established by sufficient information, including dimensions and angles or bearings.

(3) A complete legal description and list of proprietors of the property to be divided, showing the location and extent, points of compass, scale of plat, and certification and name of the surveyor responsible for staking the parcels. All adjoining properties shall be identified, and where such adjoining properties are a part of an official plat, the name of that plat shall be shown.

(4) Copies of proposed easements for the extension of water; sanitary and storm sewer; gas, electrical, cable television and telephone service to the parcels.

(5) If any parcel created by the plat of survey is not individually developable under the applicable zoning and land use regulations, such parcel shall be identified as an "outlot." The permit and development coordinator may require the plat to also show the adjoining parcel with which the outlot is to be assembled for development.

(6) The location of each existing structure and the setback of each such structure from the boundary lines.

(c) Upon submission of four copies of such plat and all required attachments, the permit and development center coordinator shall forward copies to city departments as appropriate. The permit and development center coordinator shall instruct the city departments to complete their review of the plat and forward their comments concerning the plat to the city permit and development center within 15 days after the date of submission of such plat to the city permit and development center.

(d) Upon receipt of comments from the appropriate city departments, the permit and development center coordinator shall, with the concurrence of the planning director and city engineer, determine if the proposed plat of survey conforms to the standards and requirements outlined in section 106-132 of this chapter, excluding subsection (7), and in subsection (b) of this section and shall approve, conditionally approve or reject such plat of survey within 30 days after the date of submission thereof to the permit and development center. No plat of survey shall be approved except upon an express finding that each parcel has access to all necessary public utilities and that all necessary public improvements are in place. The permit and development center coordinator shall promptly notify the applicant of the determination.

(e) The permit and development center coordinator, with the concurrence of the planning director and city engineer, may waive the requirement for construction of any improvement or may approve a plat of survey subject to the restriction that no certificate of occupancy will be granted for the property until the improvement is completed, when they determine that such waiver is justified because of incompatible grades, future planning or inadequate or nonexistent connection facilities, and that such waiver will not adversely affect the public health, safety or general welfare.

(C91, § 24-47; O.13,004, 14,169)

### **Sec. 106-199. Appeals.**

(a) Under this article, the applicant may appeal the determination of the permit and development coordinator to the plan and zoning commission. Appeal shall be made, without cost, by written notification received by the department of community development within 30 days after the date of the determination by the permit and development center coordinator.

(b) The commission shall decide all appeals within 30 days after the written notification has been received by the department of community development, provided the appellant may agree to a longer time period not to exceed 60 days after receipt of the written notification. Failure to decide the appeal within such period shall have the effect of overturning the coordinator's action and approving the plat of survey as appealed. Except as provided in this section, the affirmative

vote of at least eight commission members shall be necessary to overturn or modify the action of the coordinator. At the commission meeting, the appealing party shall be presented a reasonable opportunity to present his or her views.

(c) Decisions of the commission may be appealed to the city council in the same manner as appeals from the action of the coordinator, provided a majority vote of the city council shall be necessary to overturn or modify the action of the commission.

(d) In making its decision on an appeal, an appellate body shall determine whether the coordinator's decision is in conformity with the requirements of this article. Each decision of an appellate body shall be in writing and shall be filed in the office of the department of community development, and notice of such decision shall be mailed by the department of community development, within two business days after its filing, to all parties to the appeal.

(C91, § 24-48; O.13,004, 13,289)

#### **Sec. 106-200. Enforcement.**

No building permit and no certificate of occupancy shall be issued for any structure located on a subdivision created by a plat of survey unless such plat of survey has been approved as set forth in this article and the plat of survey and all required easements have been filed of record.

(C91, § 24-49; O.13,004)

#### **Sec. 106-201. Stormwater management facilities enforcement.**

(a) The department of public works or city engineer may enter at all reasonable times and as often as necessary in or upon any private property for the purpose of investigating stormwater management facilities which may be maintained in violation of this section and to determine compliance with section 106-136; including the right to take samples and examine and copy records and the performance of additional duties defined by state and federal laws. The requirements of this section shall be enforced by the department of public works or the city engineer. The director of public works or city engineer shall have full authority to declare a violation and issue notices provided for in this division and to take action as required and permitted by this division. The director of public works or city engineer shall have all powers and authority necessary to cause the abatement of violations under this article. The director shall have the authority to terminate access to the municipal storm water system of a person violating this division if such termination would abate a violation pursuant to subsection (d).

(b) The city engineer or public works director or his designee is authorized to issue a notice of violation imposing an administrative penalty upon any person or responsible party who fails to perform an act required by section 106-136.

(1) The administrative penalty for such violations shall be as provided in the schedule of administrative penalties adopted by the city council by resolution.

(2) Notice of violation, with the applicable penalty for such violation noted thereon, shall be issued to the violator by the director. Service of the notice may be by regular mail or delivery in person. Penalties shall be paid in full within 30 days of the issuance of the notice.

(3) The administrative penalties set out in the schedule of administrative penalties shall be charged in lieu of the fines and penalties provided for in subsection 106-201, unless the violator refuses to correct the violation and pay the scheduled administrative penalty, or the director determines that immediate prosecution pursuant to misdemeanor or municipal infraction prosecution pursuant to section 1-15 is, in view of the particular circumstances of the case, necessary to achieve compliance with the requirements of this division.

(c) Failure to maintain stormwater management facilities in violation of section 106-136 or the stormwater facility maintenance agreement are deemed to constitute a public nuisance.

(d) If the public works director determines that a violation of section 106-136 or the covenant and easement agreement has occurred or is occurring, the director shall give notice of the existence of the nuisance pursuant to subsection (d)(5) and order abatement of such nuisance. The city may correct a violation by performing all necessary work to place the stormwater management facilities in proper working condition after providing the responsible party with notice of the need to abate such nuisance, that if not abated the city will cause such abatement, the costs of abatement and that the city will assess the costs for such abatement. Service of the abatement notice shall be by certified mail, addressed to the responsible party and/or owner of the benefited property, or by posting on the property if the address of the owner is unknown. The notice shall provide at least a 24-hour period for abatement of the nuisance prior to the city's abatement action and notice of the right to a hearing on the finding of a public nuisance and the costs of abatement pursuant to subsection (b)(5).

(1) Provided, however, that the city may cause such abatement without prior notice in the event that such failure to repair presents an imminent risk of harm to person or property, and the director declares an emergency on account thereof.

(2) When the city abates a nuisance pursuant to subsection (d), the city may assess the actual costs of abatement to the benefited property owner(s) or the property owners or parties responsible for the maintenance in accordance with the stormwater facility maintenance agreement for the cost of repair work, in addition to taking any other action provided for in this division.

(3) Upon adoption by the city council, the schedule of assessments for the abatement and the resolution approving such shall be certified by the city clerk to the county auditor for collection in the manner provided by law.

(4) The cost of abating a violation under this chapter shall be paid from the proper fund and when collected shall be credited to that fund.

(5) When the city makes a finding of a public nuisance pursuant to (d), notice shall be given to the owner of the property subject to assessment of the right to an administrative hearing



regarding the existence of and responsibility for the public nuisance, and regarding the costs of the abatement. The notice shall contain the following information:

- a. A description, to the extent possible, of the public nuisance;
- b. A description of the location where the nuisance was abated;
- c. An indication of the date and time that the city caused the abatement, and that the costs of the abatement have been or will be assessed against the real estate from which the abatement occurred;
- d. An itemization of the costs incurred by the city in the abatement of the nuisance;
- e. That the person notified, or the person's duly authorized agent, may file a written request for hearing as set forth in this section; and
- f. That failure to make a written request for a hearing to the city clerk within ten days the date of the notice shall be considered a waiver of the right to a hearing and it will be thereafter conclusively presumed that the nuisance and abatement occurred and costs will be assessed against the real estate without further notice.
- g. Service of the notice provided for in subsection (a) shall be by certified mail, addressed to the benefited property owner(s) or the property owners or parties responsible for the maintenance in accordance with the stormwater facility maintenance agreement for the cost of repair work, or shall be by posting upon such property on which the stormwater runoff control facilities are located if the address of any of the above are unknown.
- h. Any person in receipt of such notice may have, upon written request made in writing and filed with the city clerk within ten days of the date of issuance of the notice, an administrative hearing before the city manager, or before a hearing officer appointed by the city manager, to determine if a public nuisance has occurred, to determine if the amount to be assessed is reasonable and if the assessment shall be placed against the subject property.
- i. A request for hearing shall:
  1. Contain the address of the person requesting the hearing and to which all further notices shall be mailed or served; and
  2. Shall state the basis for the appeal.
- j. The hearing shall be scheduled to be held as soon as practicable and no later than 14 days after the request for hearing was filed with the city clerk. The person requesting the hearing shall be notified in writing or by telephone of the date and place of such hearing at least three days in advance thereof.
- k. At such hearing the department and the person requesting the hearing may be represented by counsel, examine witnesses, and present evidence as necessary.
- l. The city manager or hearing officer may determine whether or not a public nuisance occurred, who is responsible for the nuisance, whether the city caused the abatement of the nuisance in accordance with this chapter, and whether the assessment for costs of abatement is reasonable or should be reduced or waived, as appropriate.
- m. The determination of the hearing officer is a final administrative decision.

n. Failure to request a hearing within ten days of the date of issuance of the notice shall be considered a waiver of the right to a hearing and it will be thereafter conclusively presumed that the property owner is responsible for the public nuisance.

(e) Any person who fails to perform an act required by this chapter or who commits an act prohibited by section 106-136 or who resists the enforcement of any section of this division shall be guilty of a misdemeanor punishable by a fine or imprisonment as provided in section 1-15. The director or any police officer is authorized to issue a criminal citation to anyone violating this division.

(f) Any person who fails to perform an act required by this division or who commits an act prohibited by this division or who resists the enforcement of any section of this division shall be deemed to have committed a municipal infraction. The first violation of this chapter within a calendar year shall be deemed the first offense, punishable by a civil penalty not to exceed \$500.00. The second and subsequent violation within a calendar year shall be a repeat offense, punishable by a civil penalty not to exceed \$750.00. The director or any police officer is authorized to issue a civil citation for a municipal infraction pursuant to I.C. § 364.22(4) to anyone violating this division indicating such person is in violation of this chapter.

(g) The city engineer may enter at all reasonable times in or upon any or public private property to inspect and investigate work being done which is not in compliance with the requirements of this section and to inspect and investigate conditions and practices which may be a violation of this section. The city engineer shall have the authority to issue an order in writing to the owner of the property and/or any person engaged in such activities on the property, ordering such person or persons to cease and desist from construction activities due to failure to implement or maintain the stormwater runoff control plan or to maintain any stormwater runoff control facilities therein identified. The order shall be delivered by personal service unless any of the above cannot be found within the city, in which event notice shall be by ordinary mail addressed to the person's last known address and by posting a copy of the notice in a conspicuous place at the construction site.

(1) Construction activities shall cease on the date stated in the city engineer's order and shall not recommence without the prior written approval of the city engineer.

(2) The person to whom the notice is directed may make a written request to the city engineer for a reconsideration and hearing on the cease and desist order and/or abatement order within ten days from the issuance of the order, provided, however, that work on such property shall cease pending the outcome of the hearing.

(3) The request for hearing shall: (1) contain the address of the person requesting the hearing and to which all further notices shall be mailed or served, and (2) shall state the basis for the appeal.

(4) The hearing shall be scheduled to be held as soon as practicable and no later than 14 days after the request for hearing was filed with the city engineer. The person requesting the hearing shall be notified in writing or by telephone of the date and place of such hearing at least three

days in advance thereof. At such hearing the city engineer and the person requesting the hearing may be represented by counsel, examine witnesses, and present evidence as necessary.

(5) If the city engineer determines that the violation has created a public nuisance, the city engineer may order abatement of the nuisance by whatever means the city engineer may determine appropriate.

(6) The determination of the city engineer shall be a final administrative decision.

(7) In the event that the abatement as ordered by the city engineer is not performed, the city engineer may cause the abatement of the nuisance and assess the costs of abatement to the property.

(h) The city is not precluded from seeking alternative relief from the court, including an order for abatement or injunctive relief, in the event that the city files a misdemeanor citation, notice of administrative penalty, and/or files a municipal infraction for the same violation of this chapter.

(O.14,708)