

ARTICLE II

PROCEDURES FOR PLAT APPROVAL, SURETY, AND CONSTRUCTION

2-101 General Procedure

2-101.1 Plat Approval Requirements

Before any lot is sold and before any permit for erection of any structure in a proposed subdivision shall be granted, the owner or his authorized agent shall apply for and secure the planning commission's approval of the proposed subdivision in accordance with the procedures of this article.

2-101.2 Classification of Subdivisions

The planning commission shall classify each subdivision proposal as either major or minor as defined herein. (See Article V, for definitions)

2-101.201 Review Procedure

The subdivider shall follow the procedure described below in order to secure plat approval.

a. Minor Subdivision

- (i) Preapplication conference with the Enforcing Officer including submittal of a scale drawing or survey of the proposed subdivision for preliminary discussion and review.
- (ii) Submittal of a final plat, prepared, in accordance with the specifications in Section 4-105, (Final Subdivision Plat) and the design standards contained in Article III for approval by the Planning Commission.
- (iii) When a subdivision plat is presented that involves a minor lot line adjustment to a property line, combining lots or divides a single tract into no more than two lots, or which involves adjusting building lines, easements, or other similar changes and does not involve any street or public utility construction to serve such lot(s), the approval may be endorsed in writing on the plat by the secretary of the planning commission upon certification by the Enforcing Officer that the subdivision complies in all respects with these regulations and all other adopted ordinances and policies of the governing body. No plat may be approved under this provision if such plat involves a request for a deviation from these regulations or of if such plat is not in total compliance with all ordinances or policies of the city.

- (iv) Any person authorized to endorse approval in writing on the final plat, as provided in Subpart (iii), above, may refuse to endorse approval of the plat and request consideration of the plat by the Planning Commission at the next regularly scheduled meeting of the body.

b. Major Subdivision

- (i) Preapplication conference on the subdivision with the Enforcing Officer.
- (ii) At the option of the developer, submittal of a Sketch Plat prepared in accordance with Section 4-101, (Sketch Plat) and Article III herein, for Planning Commission approval.
- (iii) Submittal of a Preliminary Plat prepared in accordance with Section 4-102, (Preliminary Plat) and Article III herein, for planning commission approval.
- (iv) Submittal of construction plans, prepared in accordance with City of Hendersonville Public Works Department Construction Manual and Article III herein, for City Engineer approval.
- (v) Submittal of the final subdivision plat, prepared in accordance with Section 4-105 and Article III, herein, for planning commission approval.

2-101.3 Official Submission Date

For the purpose of these regulations, for both major and minor subdivisions, the date of the regular meeting of the planning commission at which the public hearing on the final subdivision plat, including any adjourned date thereof, is closed, shall constitute the official submittal date of the plat at which the statutory period required in Section 13-4-304, Tennessee Code, for formal approval or disapproval of the plat shall commence.

2-101.4 Special Provisions Governing Unit Ownership (Condominium) Subdivisions (Revised by Resolution 2008-05 Adopted November 18, 2008)

For properties subject to the Horizontal Property Act as specified in Tennessee Code Annotated, the owner shall submit to the City of Hendersonville Planning Department a completed Master Deed with Covenants for review prior to the recording of said deed. The Master Deed must comply with all regulations as specified in the Horizontal Property Act.

2-102 Sketch Plat (Major Subdivisions Only, Optional)

2-102.1 Purpose of Sketch Plat

At the discretion of the applicant, the applicant may submit a sketch plat to the planning commission for approval. The sketch plat is to be a concept plan for design purposes and should be used to discover all factors which may have an impact on the proposed development and to advise the subdivider of various possibilities before substantial amounts of time and money have been invested in a very detail proposal which may contain elements contrary to these regulations.

2-102.2 Sketch Plat Requirements

The sketch plat shall include the information set forth in Section 4-101.

2-102.3 Approval of Sketch Plat

When a sketch plat is submitted for planning commission approval, the number of copies required and timing of the submission shall be as for a preliminary plat.

2-102.4 Reclamation Bond Required for Clearing and Grading

After receiving Sketch Plat approval from the Planning Commission and after posting with the City a reclamation bond in the amount specified by the City Engineer, the developer may be authorized by the City Engineer to proceed with clearing and grading. Erosion control as specified by City regulations shall be provided during such clearing and grading. Any reclamation bond submitted to comply with the City's Land Disturbance Regulations shall satisfy the reclamation bond requirements specified above. A separate reclamation bond shall not be required. No infrastructure shall be constructed or installed at this time. Should the developer abandon the project or otherwise fail to perform according to the terms of this ordinance, the reclamation bond shall be called by the city and used for the purpose of filling trenches, closing off streets, performing drainage work, re-seeding and other actions necessary to make the property safe and to remedy any nuisance to surrounding property owners or to the public in general.

2-103 Preliminary Plat (Major Subdivisions Only)

2-103.1 Application Procedure and Requirements

The applicant shall file with the planning commission a preliminary plat. Failure of the applicant to satisfy the requirements of this section with full and correct information shall be cause for disapproval of such plat. The preliminary plat shall be prepared by individuals licensed to perform the necessary design services and shall be prepared in accordance with Section 4-102 and Article III, and shall:

1. Be presented at the office of the Enforcing Officer on or before the scheduled deadline as established by the City for consideration at a regular (officially opened) meeting of the planning commission.
2. Be accompanied by the number of copies required by the planning commission for review and required application fee.

2-103.2 Preliminary Design Certification

A "Preliminary Design Certification" shall accompany any preliminary conceptual plan submitted under authority of these regulations. Such certification shall indicate that such plat either fully complies with all provisions the city's zoning ordinance and subdivision regulations or that the plat complies with such provisions with specifically noted exceptions. Any deviation(s) requested from these regulations shall conform to the provisions of Subsection 1-112, (Deviations). This certification requirement is meant to provide the city with assurance that the proposed plat can be accomplished within the current ordinances and regulations of the city.

2-103.3 Approval of Preliminary Plat

The Enforcing Officer shall submit the application to the Planning Commission for review, approval, approval with conditions or denial. Said action shall occur within 60 days of submittal to the Planning Commission, or the application shall be considered approved. Approval of the preliminary plat shall constitute authorization to prepare and present detailed construction drawings, plans and specifications for the proposed development. In no event shall the tentative approval of a preliminary plat become final until the construction plans required by Section 2-104 are approved.

2-103.4 Effective Period of Approval

Any subdivision, or the first phase thereof, not receiving final plat approval by the Planning Commission within two (2) years from the date of preliminary approval and any subdivision, the final phase of which has not received final subdivision plat approval by the Planning Commission within five (5) years may proceed only in accordance with one of the three following options:

- (1) The Planning Commission may grant up to three (3) one (1) year extensions to allow the subdivision to be developed under the terms of the Subdivision Regulations in effect at the time of the preliminary approval, or
- (2) The Planning Commission may grant up to three (3) one (1) year extensions under the condition the subdivision be developed and constructed according to any new regulations or standards enacted since preliminary approval, or
- (3) The Planning Commission may declare the preliminary approval null and void and require that a new plat be presented subject to all laws and provisions of the regulations that are in effect at the time such actions is considered.

For subdivisions in excess of 300 lots, the applicant may request that the Planning Commission approve a period of approval in excess of five (5) years to obtain final plat approval on the final phase.

2-103.5 Application of Changes of Zoning Regulations to Approved Preliminary Plats

Every preliminary plat shall conform to all applicable existing zoning provisions and subdivision regulations in effect at the time of approval, except that any final plat for land contained within the bounds of a preliminary plan, the approval of which remains in effect, shall be exempt from any subsequent amendments to such zoning ordinance or these regulations that may render such plan nonconforming as to bulk, use, or development standards. No final plat shall be approved unless the preliminary plat of the development or affected portion thereof is in effect at the time of such approval. (See Subsection 2-103.4, (Effective Period of Approval)).

2-103.6 Changes to Approved Preliminary Plats

As a result of unforeseen conditions associated with a particular site, changes may be required in approved preliminary plats. No change shall be implemented and no construction associated therewith shall be initiated until a revised preliminary plat and construction plans have been submitted to the office of the Enforcing Officer. The Enforcing Officer, upon written recommendation of the city engineer, may approve changes that involve minor revisions including, but not limited to:

1. minor shifts in the location of lot lines, streets, or open space, or
2. minor changes in lot or unit count, or redistribution of less than 10% of the total number of dwelling units among unit types, or
3. other changes which do not significantly alter the overall layout of the plan and its basic development concept.

Major revisions, including those listed below, shall require the approval of the Planning Commission:

1. change in the number of lots or units resulting in an increase (or decrease) of 5% or more in total lot or unit count, or
2. modification(s) to the pattern of streets or street connections, internal and external to the project area, that decrease connectivity or significantly alter traffic patterns, excepting changes that result directly from discovery of topographical or environmental obstacles that could not reasonably have been known at the time of initial subdivision approval, or
3. changes affecting 10% or more of the open space, including but not limited to its area, location, accessibility, or degree of contiguity, or
4. reduction in dedications to the public, or

5. changes to subdivision boundaries that exceed 5% of the area of initial approval, or
6. changes which will increase the area of disturbance of slopes of 25% or greater or increase the area of manipulation of the floodplain.
7. any change that significantly alters the overall layout of the plan and its basic development concept.

2-103.7 Reclamation Bond Required for Clearing and Grading

Subsequent to approval of the preliminary plan, the developer may submit a reclamation bond and proceed with clearing and grading as per 2-102.4.

2-104 Construction Plans (Major Subdivisions Only)

2-104.1 Submittal Procedure and Requirements

Construction plans may be prepared and presented, at any point in time concurrent with or following approval of a preliminary plan. Construction plans shall contain the information required by and be prepared in accordance with the City of Hendersonville Public Works Department Construction Manual, and Article III and shall:

1. be presented at the office of the Enforcing Officer;
2. include the entire subdivision, or, (when phasing has been approved in the preliminary plan), the entire phase or phases for which final approval will be sought.
3. be accompanied by such copies of the construction plans as the city may require.

2-104.2 Construction Plan Preparation and Content

Construction plans shall be prepared and submitted by a Tennessee Licensed Engineer engaged in the practice of civil engineering. As a minimum such plans shall conform to the City of Hendersonville Public Works Department Construction Standards Manual which is hereby made an appendix to these regulations.

2-104.3 Plan Review and Approval

It shall be the responsibility of the City Engineer to assure that the construction plans are in compliance with the provisions of these regulations, and other appropriate city ordinances. The City Engineer shall approve or disapprove the

construction plans. In any case where revisions may be required for plans to receive unconditional approval such revisions shall be accomplished prior to final approval of the preliminary plan. In the event of plan disapproval the City Engineer shall provide notice, thereof, to the submitter in writing. Such notice shall include specific provisions of these regulations and/or other ordinances with which such plans do not comply.

2-104.4 Dispute Resolution

In the event that a dispute should arise concerning interpretation or application of these regulations to the information contained within construction plans, the Public Works Director shall act to resolve such dispute.

2-105 Final Subdivision Plat (Minor and Major Subdivision)

2-105.1 Purpose of Final Plat

The purpose of a final subdivision plat is twofold. First, such plat provides the legal instrument whereby transfer of the ownership of lots may be accomplished. Secondly, final plats constitute a means whereby the person subdividing property may offer streets and other infrastructure for acceptance and maintenance by the public.

2.105.2 Application Procedure and Requirements

A subdivider shall file with the planning commission a final plat. The plat shall be prepared in accordance with Section 4-105 and Article III, and shall:

1. include the entire subdivision, or phase thereof, for which final approval is sought; (Note: In any instance where a final plat involves only a portion of the land contained within an approved preliminary plan such phasing shall have been approved with the preliminary plan and shall have received construction plan approval.)
2. be accompanied by the number of copies required by the planning commission for review and the required application fee.
3. in the case of major subdivisions, substantially conform to the approved preliminary plan;
4. be presented at the office of the Enforcing Officer on or before the scheduled deadline as established by the city for consideration at a regular (officially opened) meeting of the planning commission.
5. include all relevant plat certificates as per 4-105.3 including an owner's certificate which includes the owner's dedication of all easements and all right-of-way, streets, alleys, walks, parks and other open space as noted on the plat. (Improvements within the right-of-way and easements shall not be accepted by the City until completion in accordance with Section 2-117.)

6. be accompanied, if the final plat contains jointly held open space, recreational facilities, or any portion of the site that is held in common ownership, by the following documentation for approval by the planning commission:
 - (a) plans for improvement and maintenance of the open space or facilities located thereon;
 - (b) articles of incorporation and by-laws of the co-owners association or other legal entity (where open space or facilities are to be deeded to a co-owners association or similar organization acting on behalf of the joint owners of said property) charged with improving or maintaining the open space or facilities, and declaration of covenants and restrictions pertaining to each and every property within the subdivision; and
 - (c) declaration of covenants and restrictions pertaining to open space and facilities which assure the continued use of said facilities for the purpose intended, where open space or facilities are to be retained by the developer.
7. construction plans shall be substantially complete, as determined by the City Engineer prior to the granting of final plat approval by the Planning Commission.

2-105.3 Endorsement of Notations

The notations and certifications required by Subsection 4-105.3, (Plat Certificates), of these regulations, to appear upon the final plat shall be endorsed by appropriate officials and other persons prior to application for final subdivision plat approval, except that the certificate of planning commission approval shall be signed at the time specified in Section 2-109, of these regulations.

2-105.4 Hearing and Decision on Final Plat

The planning commission shall hold a hearing as required by Section 13-3-404, Tennessee Code, on each final plat brought before it. The planning commission shall, within sixty (60) days after submission approve, approve with conditions, or disapprove the final subdivision plat. In any instance where special conditions are attached to any plat approval, the commission shall set forth in detail such conditions. If a final plat is disapproved specific reasons for such action shall be noted in the minutes of the meeting where such action is taken.

Failure of the planning commission to act upon a plat within the prescribed time shall be deemed approval of the plat. The applicant, however, may agree to an extension of the time for planning commission review.

2-105.5 Effective Period of Approval

Final approval is effective for two (2) years from the date of approval by the Planning Commission. If the plat has not been recorded within this time period, the applicant may request of the Planning Commission two (2) one (1) year extensions, otherwise, the applicant must re-apply for final approval, or, preliminary approval, if preliminary approval has expired.

2-105.6 Changes to Final Plat

As a result of unforeseen conditions associated with a particular site, changes may be required in approved final plats. No change shall be implemented and no construction associated therewith shall be initiated until a revised final plat and construction plans have been submitted to the office of the Enforcing Officer. The Enforcing Officer, upon written recommendation of the city engineer, may approve changes that involve minor shifts in the location of lot lines, easements, building lines, streets, open space, notes or similar matters. Otherwise, Planning Commission approval of said revised plat shall be required.

2-106 Development Agreement Required Prior to Construction (Amended by Resolution 2010-04, August 3, 2010)

Following final plat and construction plans approval, a completed "Development Agreement" (less the required surety) shall be prepared and executed prior to construction of any infrastructure within any development to which these regulations are applicable. A draft development agreement, substantially conforming to the Development Agreement contained in Appendix "A" hereof, shall be prepared by the Enforcing Officer. The draft agreement shall reference the design incorporated within the approved construction plans and shall be sufficient in form to assure that proposed construction methods and materials meet or exceed minimum standards established by the City. The draft development agreement shall be sent to the applicant for approval. Upon acceptance of the agreement by the applicant, the proposed development agreement shall be forwarded to the Mayor for execution. Said execution shall be completed within ten (10) days. In the event the Mayor does not execute the agreement or reject in writing within said period, it shall be deemed approved. Infrastructure construction may begin upon approval of the agreement. If a reclamation bond has not already been provided as specified in 2-102.4 above, such a reclamation bond shall be provided at this time, however, the final plat shall not be recorded until and unless a surety is provided to guarantee the remaining improvements as specified below.

2-107 Surety Required (Amended by Resolution 2010-04, August 3, 2010)

Prior to recording the final subdivision plat, the applicant shall provide a surety conforming to Section 2-108 guaranteeing construction of the remaining required improvements. The amount and form of such surety shall in all regards be sufficient to guarantee to the governing body or other agency ultimately responsible for acceptance of the facilities, satisfactory construction, installation, and dedication, free and clear of any encumbrances, of the incomplete portion of required improvements. If a development agreement has not already been

provided as specified in 2-106 above, such an agreement shall be provided at this time.

Such surety instruments shall comply with all statutory requirements and shall be satisfactory to legal counsel as to form, sufficiency, and manner of execution, as set forth in these regulations. The planning commission may, upon proof of difficulty extend the completion date set forth in the surety for a maximum time period covered by the development agreement. Each such extended time amendment shall be for a period of at least six (6) months.

2-108 Surety Standards and Requirements (Amended by Resolution 2010-04, August 2, 2010)

2-108.1 General

In order to insure that the work will be completed in accordance with approved plans and specifications, all improvements proposed in conjunction with any subdivision must be covered by adequate surety unless such work is to be totally completed prior to filing of any final plat for any portion of the development site. When the work is to be completed prior to filing of a final plat, the amount of such surety shall be sufficient to insure that the building site may be stabilized in the event of the failure of the applicant to complete the work.

2-108.2 Amount of Surety

The subdivider shall post good and sufficient surety with the planning commission in the amount of one hundred ten (110%) percent of the City Engineers estimate of cost to assure completion of the work. Good and sufficient surety shall include the types specified in subsection 2-108.3. Each surety shall be accompanied by a "Development Agreement", as per-Section 2-106 and Appendix "A" whereby the subdivider agrees to make and install the improvements in accordance with the approved plans and specifications.

2-108.3 Types of Surety

Subject to the standards and requirements of this Article and acceptance by the Planning Commission, the following types of surety may be accepted for purposes of guaranteeing completion of improvements required by the regulations. Each surety must remain effective for at least one (1) year unless the Enforcing Officer approves a lesser period.

- **Irrevocable Standby Letter of Credit**
- **Cash Escrow or bank assignment of certificates of deposit with a federally insured bank having assets of at least \$50 million**

2-108.301 Irrevocable Standby Letters of Credit

An irrevocable standby letter of credit may be utilized as the means of providing surety for improvements required under the various provisions of these Regulations. Any letter of credit shall be drafted so as to represent an obligation of the financial institution to the City and not an obligation to the permittee. All letters of credit, and each provision thereof, should be governed and construed in accordance with International Standby

Practices/ISP 98, International Chamber of Commerce Publication No. 590 and Sections 47-5-101 through 47-5-118, Tennessee Code Annotated. Such letters shall be for one (1) year and shall be automatically renewable for successive one (1) year periods without any effort on the part of the City. They shall be renewed until released by the City. However, said letters may be revoked after giving the City written notice with 90 days opportunity to cash the letter. Such notice shall be by certified mail, return receipt requested. All such letters of credit shall be substantially in the form as shown in Appendix "B". An office of the financial institution issuing the letter of credit shall be physically located no more than 75 miles driving distance from Hendersonville City Hall, such that the City may present the surety for collection at said location.

2-108.302 Escrow Deposits for Improvements

a. Acceptance of Escrow Funds

The term "Cash Escrow" as used in these regulations refers to two types of performance guarantees, cash escrows and bank assignment of funds. In the case of either cash or other near cash (i.e. certificates of deposit) guarantees, all funds shall be maintained in accounts that are beyond the reach of the developer and subject to an escrow agreement.

b. Procedures on Escrow Fund

All escrows shall be held by the City, kept in its bank accounts, and be totally under control of the City. A detailed "Escrow Agreement" shall be prepared and appropriately endorsed by all parties to such agreement at the time of creation of any escrow account. The developer's tax identification shall be used for the escrow and the developer shall be responsible for paying tax on any interest credited to the escrow account.

2-109 Signing and Recording of Subdivision Plat

2.109.1 Signing of Plat

Upon posting of a bond as per 2-107, or, upon completion and acceptance of all required improvements and the posting of a maintenance bond, the secretary of the planning commission shall endorse approval on the final plat.

2.109.2 Recording of Plat

It shall be the responsibility of the Enforcing Officer to file all approved final plats with the county register's office within ten (10) working days following the date of submission of the final plats conforming to all requirements for recording. The owner of the property or his authorized agent shall pay the appropriate filing fee. Upon recording the plat in the office of the Sumner County Register, lots may be sold.

2-110 Issuances of Building Permits and Use and Occupancy Permits

Upon recording the plat, lots may be sold and building permits issued.

The extent of public way improvements shall be adequate for vehicular access by the prospective occupant and by police, fire and emergency equipment prior to the issuance of a building permit. Before a use and occupancy permit will be granted, water, sewer, street name signs and traffic signs must be completed.

2-111 Reduction of Surety (Amended by Resolution 2010-04, August 2, 2010)

The surety instruments guaranteeing installation of improvements may be reduced upon completion of the base asphalt and again upon completion, dedication and acceptance of such improvements and then only to the ratio that the cost of public improvements dedicated bears to the total cost of public improvements included in said plat. As a general rule a surety will not be reduced below fifteen (15) percent of the total estimated cost of the required improvements.

2-112 Completion of Improvements

All required improvements shall be completed in accordance with these regulations, the Development Agreement and the approved construction plans. As a general rule, final asphalt shall be completed after 75% of the houses are completed and prior to 90% completion. Likewise, all other remaining required improvements, except sidewalks shall be completed prior to 90% completion. Building permits may be withheld on the final 10% of the houses if said improvements are not complete. The City Engineer may specify that the final asphalt be completed before 75% of the houses are complete if housing construction has been slow and the lack of final asphalt is presenting maintenance or safety problems. Likewise, the City Engineer may specify that the final asphalt be completed after 90% of the houses are complete if said street(s) are used as a construction entrance.

2-113 Failure to Complete Improvements (Amended by Resolution 2010 04, August 2, 2010)

In those cases where required improvements have not been installed within the terms of the Development Agreement, the City Engineer thereupon may declare the surety to be in default and require that all the improvements be installed regardless of the extent of the building development at the time the bond is declared to be in default. If the improvements are not completed within the time period specified, (including any extension thereof approved), no additional building permits shall be issued for any lot or portion of such property until such facilities are completed.

2-114 Deferral or Waiver of Required Improvements (Amended by Resolution 2010-04, August 2, 2010)

The planning commission may defer or waive at the time of final plat approval, subject to appropriate conditions, the provision of any or all such improvements as, in its judgment, are not requisite in the interest of the public health, safety, and general welfare, or which are inappropriate, because of inadequacy or lack of connecting facilities.

Whenever it is deemed necessary by the planning commission to defer construction of any improvement required herein because of incompatible grades, future planning, inadequate or lack of connecting facilities, or other reasons, the developer shall either pay his share of the costs of the future improvements to the governing body prior to signing of the final subdivision plat or post a surety ensuring completion of said improvements.

2-115 Inspection of Improvements

The city may provide for inspection of required improvements during construction. If the appropriate governmental representative finds upon inspection that any of the required improvements have not been constructed in accordance with the accepting body's construction standards and specifications, the applicant shall be responsible for completing such improvements to the required standards. The fact that the city inspects the facilities in no way relieves the developer from designing or installing such facilities in accordance with the provisions of these regulations and the established development agreement.

2-116 Certificate of Satisfactory Completion

Prior to acceptance of required improvements, the developer's engineer in charge of construction of such improvements shall be required to certify that such improvements have been installed in accordance with provisions of these regulations, the completed development agreement and the approved plans and specifications. Upon receipt of such certification and recommendations from the public works committee and planning commission, the governing body may accept the streets and other improvements in accordance with the procedures set forth in Section 2-117, of these regulations.

2-117 Acceptance of Streets and Other Improvements

Acceptance of streets and other public improvements for public maintenance (except utilities) shall be by action of the governing body. Such action shall be in the form of a resolution recommended by the planning commission to the accepting body. Approval by the planning commission of a subdivision plat shall not be deemed to constitute or imply an acceptance by the local government or other agency ultimately responsible for acceptance of the facilities, of any public way, easement, or other ground shown on the plat. The planning commission may require the plat to be endorsed with appropriate notes to this effect.

2-118 Maintenance of Improvements (Amended by Resolution 2010-04, August 2, 2010)

The applicant shall be required to maintain all improvements for one (1) year after acceptance of the public improvements by the governing authority. A portion of the developer's surety shall be retained to guarantee said maintenance. The amount retained shall be set by the City Engineer.

2-119 Release of Surety (Amended by Resolution 2010-14, August 2, 2010)

Upon completion of the one (1) year maintenance/warranty period and upon correction of any and all defects in the required improvements, the remaining surety shall be released by the City Engineer.