

**CITY OF NIEDERWALD**

ORDINANCE No. 20190701-B

**SITE DEVELOPMENT ORDINANCE**

**AN ORDINANCE OF THE CITY OF NIEDERWALD, TEXAS ESTABLISHING REGULATIONS FOR CONCEPT PLANS AND SITE DEVELOPMENT PLANS AND PERMITS; PROVIDING FOR THE FOLLOWING: RULES; STANDARDS; PROCEDURES; CRIMINAL PENALTIES; AND, SEVERABILITY**

**WHEREAS**, the City Council of the City of Niederwald ("City Council") seeks to promote the responsible and compatible development of land within its incorporated municipal boundaries ("city limits"); and

**WHEREAS**, the purpose of this Ordinance is to provide for the orderly, safe, and healthful development of the area within the City, and to promote the health, safety, and general welfare of the community; and

**WHEREAS**, the City Council of the City of Niederwald finds that the citizens of Niederwald prefer a set of development standards and procedures which effectively manage the impacts of new development, and ensure the compatibility of new and existing development in the region; and

**WHEREAS**, the City Council desires to protect the creeks and waterways in the City of Niederwald and limit flooding of adjacent property; and

**WHEREAS**, the City Council finds the attached regulations serve a valid public purpose; and

**WHEREAS**, pursuant to Texas Local Government Code Section 51.001, the City has general authority to adopt an ordinance or police regulation that is for the good government, peace or order of the City and is necessary or proper for carrying out a power granted by law to the City; and

**WHEREAS**, pursuant to Chapters 211 and 212 of the Texas Local Government Code, the City has the authority to regulate land development and construction; and

**WHEREAS**, the City Council finds that it is necessary and proper for the good government, peace or order of the City of Niederwald to adopt a revised ordinance regulating site development activities.

**NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Niederwald:**

**1. FINDINGS OF FACT**

The foregoing recitals are incorporated into this Ordinance by reference as findings of fact as if expressly set forth herein.

**2. ENACTMENT**

Ordinance No. 071706 is hereby repealed in its entirety and replaced by this Ordinance. This Ordinance is hereby established so to, and after such enactment, shall read in

accordance with *Attachment A*, which is attached hereto and incorporated into this Ordinance for all intents and purposes.

### 3. REPEALER

All ordinances, or parts thereof, that are in conflict or inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matters regulated, herein.

### 4. SEVERABILITY

Should any of the clauses, sentences, paragraphs, sections or parts of this Ordinance be deemed invalid, unconstitutional, or unenforceable by a court of law or administrative agency with jurisdiction over the matter, such action shall not be construed to affect any other valid portion of this Ordinance.

### 5. EFFECTIVE DATE

This Ordinance shall be effective immediately upon passage and publication as required by law.

### 6. PROPER NOTICE AND MEETING

It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public, and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Texas Government Code, Chapter 551. Notice was also provided as required by Chapter 52 of the Texas Local Government Code.

PASSED AND APPROVED on this 1<sup>st</sup> day of July, 2019.

CITY OF NIEDERWALD, TEXAS

*Reynell Smith*

Hon. Reynell Smith, Mayor

ATTEST:

*Richard Crandal*  
Richard Crandal  
City Administrator/Secretary



## **Attachment “A”**

### **1.1. Popular Name**

This Ordinance shall be commonly cited as the “Site Development Ordinance.”

### **1.2. Purpose**

This Ordinance establishes a site plan review process for all proposed non-residential and certain residential developments. Generally, this Ordinance applies to horizontal improvements necessary to develop a site, rather than the vertical improvements involved with erecting buildings. The purpose of the review is to ensure efficient and safe land development, harmonious use of land, compliance with the Comprehensive Plan appropriate design standards, safe and efficient vehicular and pedestrian circulation, parking and loading, and adequate water supply, drainage and storm water management, sanitary facilities, coverage, and other utilities and services.

### **1.3. Scope**

This Ordinance applies to all property within the incorporated municipal boundaries (i.e., “city limits”).

### **1.4. Prohibition**

No development shall be undertaken on any land, tract, parcel, or lot within the corporate limits until a site development permit for said development has been obtained from the City. Exceptions to this prohibition are enumerated in section 3.2, below.

### **1.5. Construction Plans**

This Ordinance does not apply to development authorized by the City pursuant to subdivision final plat and approved Construction Plan.

## **SECTION 2. DEFINITIONS**

### **2.1. General**

Words and phrases used in this Ordinance shall have the meanings set forth in this section. Terms that are not defined below, but are defined elsewhere in the City’s ordinances, shall be given the meanings set forth in said ordinances. Words and phrases not defined in the City’s ordinances shall be given their common, ordinary meaning unless the context clearly requires otherwise. When not inconsistent with the context, words used in the present tense shall include the future tense; words in the plural number shall include the singular number (and vice versa); and words in the masculine gender shall include the feminine gender (and vice versa). The word “shall” is always mandatory, while the word “may” is merely directory. Headings and captions are for reference purposes only.

### **2.2. Specific**

***Applicant:*** A person or entity who submits to the City an application for an approval required by this Ordinance. To be qualified as an Applicant under this Ordinance, the person or entity must have sufficiently documented legal authority or proprietary interests in the land to commence and maintain proceedings under this Ordinance. The term shall be restricted to include only the Property Owner(s), or a duly authorized agent and

representative of the Property Owner. In other jurisdictions, the term is sometimes referred to as the “developer”, “subdivider”, “builder,” or other similar title.

***Board of Adjustment:*** The body appointed by the City Council to grant variances, waivers, or special exceptions, as allowed by ordinance. In the event that such a body has not been appointed, the City Council shall serve as the Board of Adjustment.

***City:*** The City of Niederwald, an incorporated municipality located in Caldwell and Hays Counties, Texas.

***City Administrator:*** The City’s chief administrative officer, as appointed by the City Council, or the person appointed by the City Council to perform the powers and duties of the City Administrator as established by this Ordinance. The term also includes the Deputy City Administrator, or the City Administrator’s designee.

***City Limits:*** The incorporated municipal boundary of the City of Niederwald.

***Construction Plan:*** Design drawings, suitable for construction of improvements, signed and sealed by an Engineer, and in accordance with this Ordinance including Section 9 and the City’s list of requirements for site plan review applications as noted in Section 9.4 of this Ordinance.

***Critical Water Quality Zone:*** A critical Water Quality Zone (CWQZ) Is established as the 100-year frequency flood plain of all waterways with a drainage basin of 64 acres or more, however, the minimum CWQZ shall be 100 feet on either side of the centerline of the waterways that drain 64 to 128 acres, 200 feet on either side of the centerline of the waterways that drain 128 – 320 acres, and 300 feet on either side of the centerline of the waterways that drain over 320 acres.

***Development:*** The erection of buildings, roads, utilities, drainage improvements, or other structures or improvements. The term includes construction, excavation, dredging, grading, filling, and clearing or removing vegetation. Pruning, or other forms of general or regular maintenance of vegetation on developed property, shall not be considered development for purposes of this Ordinance.

***Engineer:*** A person duly authorized under the provisions of the Texas Engineering Practice Act, as heretofore or hereafter amended, to practice the profession of engineering.

***ETJ:*** The extraterritorial jurisdiction of the City of Niederwald, Texas, being that land not within the city limits of the City of Niederwald, Texas, but land over which the City has jurisdiction by virtue of Chapter 42 of the Local Government Code, as amended, and other applicable law.

***Impervious Cover:*** Includes all roads, driveways, parking areas, buildings, decking, rooftop landscapes and other impermeable construction covering the natural land surface.

Swimming pool surface water area for pools which discharge to the storm drainage system shall also be included. Water quality and detention basins, swales, and other conveyances for drainage purposes only shall not be calculated as impervious cover.

**Lot:** An undivided tract or parcel of land having frontage on a street and which is, or in the future may be, sold, conveyed, transferred, or improved; which is designated as a distinct and separate tract or parcel; and which is identified by a tract or lot number or symbol, or by metes and bounds.

**Owner:** Any person, firm, association, syndicate, general or limited partnership, corporation, trust or other legal entity, or any agent thereof, that has sufficient proprietary interest in the land sought to be developed to commence and maintain proceedings to develop the same under this Ordinance. In any event, the term "property owner" shall be restricted to include only the owner(s) or authorized agent(s) of such owner(s), such as a developer, of land sought to be developed.

**Person:** Any human individual, association, firm, corporation, governmental agency, or political subdivision.

**Plan:** For purposes of compliance with this Ordinance, the term refers to a concept plan or site plan, as may be applicable.

**Planned Development Districts (PDs):** Planned associations of uses developed as integral land use units, such as industrial parks or industrial districts, offices, commercial or service centers, shopping centers, residential developments of multiple or mixed housing, including attached single-family dwellings or any appropriate combination of uses which may be planned, developed or operated as integral land use units either by a single owner or by a combination of owners.

**Right-of-Way:** Any travel-way open to the general public for travel or land dedicated for eventual travel by the public. Dedicated right-of-way may, in addition to travel by the public, be used for installation of utilities or other public purposes.

**Site:** An area of ground occupied or to be occupied by a structure.

**Site Plan:** Detailed line drawings and accompanying text clearly describing the development.

**Soil Tests:** Percolation tests, soil boring profiles, geotechnical and geological tests and profiles, groundwater table tests, and any other tests which may be required by Hays County, Caldwell County, and/or the City.

**Street:** An area open to the use of the public, serving as a pathway for vehicular traffic within a business or residential area and serving more than one tract or parcel of land.

**Structure:** Anything constructed or erected, the use of which requires location on or in the ground or attachment to something having location on the ground.

**Subdivider:** Any person or any agent thereof dividing or proposing to divide land so as to constitute a subdivision as that term is defined herein. In any event, the term "subdivider" shall be restricted to include only the owner, equitable owner or authorized agent of such owner or equitable owner, of land sought to be subdivided.

**Subdivision:** Shall be defined as is set forth in City of Niederwald Subdivision Ordinance, as may be amended.

**Surveyor:** A Registered State Land Surveyor or a Registered Professional Land Surveyor, as authorized by the State statutes, to practice the profession of surveying.

**Tract:** A defined area of land.

**Utility Easement:** An interest in land granted to the City, County, to the public generally, and/or to a private utility corporation, which authorizes the installation or maintenance of a utility across, over, or under land, and which authorizes ingress and egress thereon with machinery and vehicles necessary for the maintenance of said utilities.

## **SECTION 3. APPLICABILITY**

### **3.1. When Required:**

3.1.1. Site Plan review and approval shall be required for all non-residential and specified residential projects and any Planned Development District (PD) or Conditional Use Permit (CUP) public hearings may also be required, as set forth in these regulations.

3.1.2. No building permit shall be issued for any of the above developments until a site plan and all other required engineering or construction plans are first approved by the City. No certificate of occupancy shall be issued until all construction and development conforms to the site plan and engineering/construction plans, as approved by the City. The site plan review process shall include four (4) steps:

- (a) Pre-Application Conference;
- (b) Concept Plan Review;
- (c) Site Plan Review; and,
- (d) Construction of project after City approval of required site plan and other associated plans, including engineering plans.

3.1.3. Although the Concept Plan and Site Plan review steps are listed as separate steps in the approval process herein, these two steps can be combined if the applicant so chooses by submission of a Site Plan. This step can be achieved through the submission of one unified plan.

### **3.2. Exemptions:**

Site plan review shall not be required for the following:

- (a) The cultivation of land for agricultural purposes, fence building or rebuilding.

- (b) Street construction and maintenance projects that do not increase the impervious cover beyond that of the original street.
- (c) Construction or reconstruction of duplex residential housing and associated buildings, drives, and other appurtenances provided:
  - (1) No more than one structure is constructed per legal lot; and
  - (2) No proposed improvement is located in the 100 year floodplain; and
  - (3) The City Engineer has determined that the proposed improvement would not have an effect on the waterway; and
  - (4) City erosion and sedimentation control regulations are complied with.
- (d) Structural repairs or replacements to existing structures.
- (e) Construction or reconstruction of barns, silos, livestock, pens, sheds, and other agriculturally related structures.
- (f) Selective clearing of vegetation performed in conjunction with subdivision development, and in compliance with the permitting and platting requirements of the Subdivision Ordinance of the City.
- (g) Any site fully developed prior to the effective date of this Ordinance.
- (h) Any site for which a permit was issued under a previous version of this Ordinance.
- (i) Construction of a new public primary or secondary educational facility, or expansion thereof, located within the City's municipal boundaries. This exception shall apply only if the Hays Consolidated Independent School District or Lockhart Independent School District submits plans and specifications to the City Engineer, and the City Engineer concludes the proposed construction and use of the facility will comply with all applicable requirements of this Ordinance. HCISD and LISD are hereby requested to voluntarily comply with all site development rules and regulations promulgated by the City, to the extent reasonably necessary.
- (j) Above ground utility installations that are not located within Critical Water Quality Zones, buffer zones or Edwards Aquifer recharge zone.
- (k) Single-family detached residential developments, unless the proposed developments will include a private amenity or facility comprised of one or more buildings, such as a private recreation or swimming facility or clubhouse or a golf course. Also, this exemption shall not apply if the proposed development will have private (not public) streets. In these instances, site plan submission and approval is required for the private amenity or facility, the golf course clubhouse/hospitality area, and the gated entrances.

#### **SECTION 4. SUBMISSIONS**

**4.1.** Plan submission shall be comprised of the items set forth below:

- (a) An application form, in the format provided by the City, with notarized signatures of the owner.
- (b) Filing fee.
- (c) Verification that all taxes and assessments on the subject property have been paid.
- (d) Copies of the plan, on 24" x 36" sheet and drawn to a known engineering scale that is large enough to be clearly legible, and other required information, the quantity of which shall be determined by the City Administrator.
- (e) General layout for the required public improvements, including water, wastewater, grading and storm drainage, streets, water quality, alleys, fire lanes and hydrants, the quantity of which shall be determined by the City Administrator.

- (f) Reduced copies (11" x 17" or smaller) of the site plan as required by the City Administrator.
- (g) Landscaping and irrigation plans, the quantity of which shall be determined by the City Administrator, and requests for any variances from the City's landscaping regulations.
- (h) Building facade (elevation) plans drawn to scale, the quantity of which shall be determined by the City Administrator.
- (i) Any additional information/materials, such as plans, maps, exhibits, legal description of property, information about proposed uses, as deemed necessary by the City Administrator, in order to ensure that the written request is understood.
- (j) Sign plan and requests for any variances from the City's Sign Ordinance.
- (k) Lighting (illumination) plan and requests for any variances from the City's lighting regulations.
- (l) Exterior design plan and explanation of how the project complies with the City's exterior design standards.
- (m) A statement listing the utilities that will service the project including verification from the utility that will serve the project.
- (n) Any variances requested for development of the project.

**4.2.** All required items and information must be received by the City Administrator in order for a concept plan or site plan submission and zoning change request to be considered complete. Incomplete submissions will not be reviewed until all deficient items or information has been received.

**4.3. Waivers:** Upon request by the applicant, the City Administrator may waive requirements for certain information or tests if submittal of such information or test results is not necessary for the City determination that the issuance of the site development permit for the intended purpose of the applicant would meet the standards and objectives of this Ordinance. Prior to making this determination the City Administrator may consult with the City Engineer.

**4.4. Application Submission & Completeness:**

4.4.1. For the purpose of these regulations, the "official submission date" shall be the date upon which a complete application for approval of a concept plan or site plan, that contains all elements and information required by this Chapter, including all related administrative fees, is first submitted to the City Administrator.

4.4.2. No application shall be deemed officially submitted until the City Administrator determines that the application is administratively complete and a fee receipt is issued by the City. Failure by the City Administrator to make a Certification of Incompleteness within fifteen (15) calendar days following the date on which the application was first received by the City, shall result in the application being deemed complete, and the "official submission date" shall become the fifteenth (15<sup>th</sup>) calendar day following initial receipt of the application by the City.

4.4.3. Concept plan and site plan applications that do not include all required information and materials designated under this Ordinance will be considered incomplete. Such incomplete plans shall not be accepted for official submission by the City, and shall not be scheduled for any action by the City until the proper information is provided to City staff.

**4.5. Notice of Submittal:** An applicant must provide written notification in accordance with this subsection. Notice must be distributed no more than thirty (30) nor less than fifteen (15) days after a completed application has been submitted to the City. This notice shall be distributed as follows:

(a) Delivery to all property owners within three hundred feet (300') of the periphery of the land subject to site development permit application.

(b) Erections of a weather resistant signs on the property under application for the purposes of advertising said permit.

(1) The signs shall be provided by the City.

(2) Signs placed on the property involved must be within ten (10) feet of any property line paralleling any established or proposed street, and must be visible from that street.

(3) All required signs shall remain on the property until final disposition of the permit request is determined. Signs shall be returned to the City within 3 days of the final disposition of the permit request. The applicant shall pay \$25.00 for each sign not returned to the City.

**4.6. Notice of Hearing:** An applicant must provide written notification in accordance with this subsection if the application is scheduled for a public hearing. Notice of the hearing must be published in the City's official newspaper no more than thirty (30) nor less than fifteen (15) days before the first hearing at City Council.

**4.7. Notice to Council:** Notice of all site development permit applications shall be provided in writing by the City to all members of the City Council.

**4.8. Additional Information**

The City's staff and or City Engineer may require information and data other than that set out in this Section for specific concept plans and site plans. This information data may include but is not limited to: geologic information, water yields, flood data and hydrological studies, environmental information, traffic impact analysis, road capacities, market information, historic structure(s) and/or land, economic data for the proposed development, hours of operation, elevations and perspective drawings, lighting, and similar information.

Approval of a concept plan or site plan may establish conditions for construction based upon such information.

**SECTION 5. EVALUATION STANDARDS**

**5.1.** The following criteria have been set forth as a guide for evaluating the adequacy of proposed development within the City, and to ensure that all developments are, to the best extent possible, constructed according to the City's codes and ordinances.

**5.2.** The City Administrator shall review the concept plan or site plan for compliance with all applicable City ordinances and with the Comprehensive Plan; for harmony with surrounding uses and with long-range plans for the future development of Niederwald for the promotion of the health, safety, order, efficiency, and economy of the City; and for the maintenance of property values and the general welfare.

**5.3.** Concept plan or site plan review and evaluation by the City Administrator shall be performed with respect to the following:

- (a) The plan's compliance with all provisions of the Zoning Ordinance and other ordinances of the City of Niederwald.
- (b) The impact of the development relating to the preservation of existing natural resources on the site and the impact on the natural resources of the surrounding properties and neighborhood.
- (c) The relationship of the development to adjacent uses in terms of harmonious design, facade treatment, setbacks, building materials, maintenance of property values, and any possible negative impacts.
- (d) The provision of a safe and efficient vehicular and pedestrian circulation system.
- (e) The design and location of off-street parking and loading facilities to ensure that all such spaces are usable and are safely and conveniently arranged.
- (f) The sufficient width and suitable grade and location of streets designed to accommodate prospective traffic and to provide access for fire fighting and emergency equipment to buildings.
- (g) The coordination of streets so as to arrange a convenient system consistent with the Transportation Plan of the City of Niederwald.
- (h) The use of landscaping and screening to provide adequate buffers to shield lights, noise, movement, or activities from adjacent properties when necessary, and to complement and integrate the design and location of buildings into the overall site design.
- (i) Exterior lighting to ensure safe movement and for security purposes, which shall be arranged so as to minimize glare and reflection upon adjacent properties.
- (j) The location, size, accessibility, and configuration of open space areas to ensure that such areas are suitable for intended recreation and conservation uses.
- (k) Protection and conservation of soils from erosion by wind or water or from excavation or grading.
- (l) Protection and conservation of watercourses and areas subject to flooding.
- (m) The adequacy of water, drainage, sewerage facilities, solid waste disposal, and other utilities necessary for essential services to residents and occupants.
- (n) Consistency with the Comprehensive Plan.

## **SECTION 6. APPROVAL PROCESS**

**6.1. Informal Consultation:** The applicant(s) shall consult with the City Administrator, the City Engineer, and/or other designated administrative officers before preparing a concept plan or a site plan in order to save time, money and to avoid potential unnecessary delays.

**6.2. Pre-application Conference** Prior to formal application for approval of any concept plan or site plan, the applicant(s) shall request and attend a pre-application conference with the City Administrator, the City Engineer, and any other pertinent City official(s) in order to become familiar with the City's development regulations and the development process. At the pre-application conference, the developer may be represented by its land planner, engineer and surveyor.

### **6.3. City Staff Review**

Upon official submission of a complete application for concept plan or site plan approval, the City shall commence technical review of the development proposal by forwarding a copy of the application to development review team members, such as the City Administrator, City Engineer, and any other pertinent City official(s). Development review

team members shall review the application and shall ascertain its compliance with these and other applicable City regulations. Following City staff review of the plan and supporting documents, and following discussions with the applicant on any revisions deemed advisable and the kind and extent of improvements to be installed, the applicant shall resubmit additional copies of the corrected plan to the City Administrator within sixty (60) calendar days following the date on which the applicant received official notification of the completion of the review by the City Administrator.

#### **6.4. Approval by City Administrator**

6.4.1. The City Administrator may:

- (a) Deem the site plan approved; or
- (b) Deem the site plan denied; or
- (c) Make an initial determination and refer the matter to City Council.

6.4.2. If the City Administrator approves the plan, no approval by the City Council is required. Any concept plan or site plan that includes property that is within the Historic District may not be approved or denied by the City Administrator; such a plan shall be reviewed by the City Administrator and shall then be reviewed by the City Council through the review process outlined herein. Plans that include variance requests, PDs, or CUPs must be reviewed by the City Council after initial determination by the Administrator.

6.4.3. The City Administrator may approve applications for small projects, being those consisting of 3,500 square feet, cumulative. Applications reviewed under this subsection shall be exempt from all public notice requirements stated in section 4, above. At the City Administrator's discretion, small projects may be referred to the City Council for approval or denial. In making the decision to refer a small project application to the City Council, the Administrator may consider the following factors:

- (a) Amount of impervious cover proposed;
- (b) Proximity to nearby developed properties; and
- (c) Anticipated impact of project on neighbors.

#### **6.5. Denial by City Administrator**

The City Administrator's denial of a plan shall then be reviewed by the City Council through the review process outlined herein. The plan that was denied shall be submitted to the City Administrator no later than seven (7) calendar days prior to the City Council meeting. Copies of the plan resubmitted to the City less than seven (7) days prior to the meeting date shall not be accepted or forwarded to the City Council. If the City Administrator determines that the application is still incomplete or not correct, the plan application shall be subject to denial.

#### **6.6. Action by City Council**

6.6.1. Without regard to the final action by the City Administrator, the City Council shall review an application upon receipt of written request from:

- (a) The Mayor;
- (b) two (2) City Council members.

6.6.2. The City Council shall consider an application for a site development permit that involves a variance, PD, or CUP, at a public meeting no later than thirty (30) calendar days after the completed application was filed with the City.

6.6.3. All plan applications that were denied by the City Administrator or that include property that is within the Historic District shall be submitted to and reviewed by the City Council, and if in conformance with the provisions of this Ordinance and all other

applicable regulations and codes of the City, they shall then be considered for approval by the City Council. It should be noted also that additional action with regard to permitting procedures applies within the Historic District.

6.6.4. The City Administrator shall schedule consideration of the concept plan or site plan on the regular agenda of the City Council, within thirty (30) days after the submission is received, or, in the case of an incomplete submission, after the submission is deemed complete. The City Council shall review the concept plan or site plan and approve the application, approve subject to certain conditions, or disapprove of the concept plan or site plan and state such disapproval and the reasons thereof.

6.6.5 – All decisions of the City Council shall be final.

#### **6.7. Revisions to the Plan**

Revisions to an approved concept plan or site plan shall be processed in accordance with the above.

#### **6.8. Revisions to Site Development Permits:**

6.8.1. Minor deviations or design modifications requiring changes in a site development permit may be approved by the City Administrator without formal application or public hearing. For purposes of this subsection, minor deviations or design modifications are determined by the City Engineer to have no significant impact on neighboring properties, the public, or persons who will occupy or use the proposed development. An applicant requesting changes to a released site plan shall submit a written request identifying the requested changes to the City Engineer. Any changes approved by the City Engineer shall be in writing.

6.8.2. All other requests for modifications to a Site Development Permit shall be processed as a new application. If the City Council acts on the request, new conditions may be imposed, but the applicant may reject the additional conditions by withdrawing the request for an amendment and proceeding in accordance with the previously released Site Development Permit.

### **SECTION 7. PLAN DURATION**

7.1. The approval of a concept plan or site plan shall be effective for the periods indicated below. If this is not accomplished, then the approved plan shall be deemed to have expired and shall become *null and void*. Plans expire if the applicant has not achieved the benchmark by the timeline listed below. For concept plans, the benchmark is submitting to the City a completed application for the next required authorization. For site plans, the benchmark is the commencement of construction.

Table 1: Duration of Concept Plans & Site Development Plans

#### **Approved Plan Progress Benchmark Expires\*\***

**Concept Plan** Plat - One Year

Site Plan - One Year

Planned Development - Two Years

Conditional Use Permit - 6 Months

Development Agreement - One Year

**Site Plan** Construction Commences - 2 Years

7.2. A year shall mean a period of three hundred sixty-five (365) calendar days. A year ceases on 12:01 a.m. on the 365<sup>th</sup> day following City approval of the plan

#### **7.3. Extensions**

7.3.1. Extension of Plan Approval: Prior to the lapse of approval for a plan, the applicant may petition the City, in writing, to extend the plan approval. Such petition shall be considered at a public meeting before the City Council, and an extension may be granted by City Council at such meeting. Two (2) extensions of six (6) months each in length may be granted, unless otherwise specified by ordinance. If no petition for extension of plan approval is submitted, then the plan shall be deemed to have expired and shall become null and void.

7.3.2. Determination of Extension: In determining whether to grant a request for extension, the City Council shall take into account the reasons for the lapse, the ability of the property owner to comply with any conditions attached to the original approval, and the extent to which development regulations would apply to the plan at that point in time. The City Council shall either extend the concept plan or site plan or deny the request, in which instance the originally approved plan shall be deemed null and void.

The property owner must thereafter submit a new plan application for approval, and shall conform to the regulations then in effect.

## **SECTION 8. CONCEPT PLAN**

### **8.1. Applicability:**

Submission and approval of a concept plan is required for development necessitating a site development permit, Planned Developments, and Conditional Use zoning requests.

When required by the City, the concept plan is the first step in the approval process for a development project. No development rights (if any) shall vest when a concept plan is voluntarily submitted by an applicant.

### **8.2. Benefits:**

City review and approval of a concept plan has many benefits for both the City and the applicant.

**8.2.1. Applicant.** The applicant benefits by gaining preliminary review and scrutiny, as well as input and suggestions, on the overall conceptual layout of the proposed development from the City's development review team. Approval of a concept plan may offer the applicant some level of confidence that subsequent plan submissions will be favorably received and approved with few major changes to the project's design and layout provided that the project complies with City regulations. For example, once the site plan, and corresponding engineering plans are submitted for a non-residential project, unforeseen changes in site layout can prove to be expensive in terms of design and engineering costs and time lost during major plan revisions.

**8.2.2. City.** The City benefits in that it is allowed to become familiar with and involved in the project early in the development process, which is particularly important for large-scale developments and subdivisions. This allows the City to plan for and closely coordinate the provision of public facilities and services, thereby potentially avoiding future problems such as undersized utility lines, inadequate roadway capacities, unanticipated shortfalls in public services, and fiscal inefficiencies resulting from lack of planning and coordination.

### **8.3. Purpose:**

The purpose of a concept plan is to allow opportunity for the City to preview various development related aspects of the project, including proposed major thoroughfare and collector street patterns; land use patterns and trends; historic structure(s) and/or land; environmental issues and constraints; building orientation and massing; conformance to

the Comprehensive Plan, Zoning Ordinance, Future Land Use Plan, Transportation Plan and other applicable plans and guidelines; and the property's relationship to adjoining subdivisions or properties. Review of a concept plan would also assist the City in evaluating the possible impacts of the proposed development in terms of provision of essential public facilities and services, respecting and preserving important natural features and the environment, provision of open space and recreational opportunities, and protecting the general health, safety and welfare of the community.

#### **8.4. Area in Concept Plan:**

When the overall development project is to be developed in phases, the concept plan area shall include the entire zoned property from which the phases are being developed and an approximate development schedule. Where significant natural or man-made features, such as thoroughfares or creeks, make inclusion of the entire property in the concept plan unnecessary to adequately review the items to be shown on a concept plan, the plan may include a smaller study area. Boundaries such as major thoroughfares, whether existing or proposed, creeks, political subdivisions, or other such natural or man-made features may be used to delineate the smaller study area.

#### **8.5. Procedures & Requirements**

Submission of an application for concept plan approval shall be preceded by a preapplication conference with the City. The concept plan shall be prepared at a scale no smaller than one inch equals two hundred feet (1" = 200') and on sheets twenty-four inches by thirty-six inches (24" x 36"), and it shall show the following:

(a) A title block within the lower right hand corner of the concept plan with the proposed name of the project or subdivision, the name and address of the owner and the land planner, engineer architect or surveyor responsible for the design or survey, the scale of the drawing, both written and graphic scale, the date the drawing was prepared, total site acreage, and the location of the property according to the abstract and survey records of Caldwell and/or Hays County, Texas;

(b) A vicinity or location map that shows the location of the proposed development within the City and in relationship to existing roadways;

(c) The boundary survey limits of the tract and scale distances with north clearly indicated;

(d) The names of adjacent additions or subdivisions, or the name of the owners of record and recording information for adjacent parcels of unplatted land, including parcels on the other sides of roads and creeks. The concept plan shall include a depiction of all contiguous holdings of the property owners, the existing and proposed uses of the subject property, a general arrangement of future land uses, including the approximate number of lots and any residential uses anticipated, and a generalized circulation plan for the subject property;

(e) The existing zoning and existing and proposed uses on adjacent land; the location, width and names of all existing or platted streets or other public ways within or adjacent to the tract; any existing easements with recording information; existing buildings; railroad rights-of-way; topography, including contours at two-foot intervals with existing drainage channels or creeks, including the 100-year flood plain, if applicable; any other important natural features (such as rock outcroppings, wildlife habitats, etc.); all substantial natural vegetation; and adjacent political subdivisions, corporate limits, and/or school district boundaries;

(f) Proposed strategies for tree preservation showing individual trees or tree masses that will be preserved, and the techniques that will be used to protect them during construction;

(g) The layout and width, including right-of-way lines and curb lines, of existing and proposed thoroughfares, collector streets and/or intersections, and a general configuration of proposed streets, lots and blocks, including proposed median openings and left turn lanes on future divided roadways. Existing and planned driveways on the opposite side of divided roadways must also be shown for coordination and sharing of future median openings;

(h) A general arrangement of land uses and buildings, including but not limited to proposed non-residential and residential densities; building heights, square footages, massing, orientation, loading and service areas, recycling containers, compactors and dumpster enclosures, pedestrian walkways, and parking areas; any proposed sites for parks, schools, public facilities, public or private open space; flood plains and drainage ways; and other pertinent development related features; and

(i) The phasing of development.

#### **8.6. Effect of Review**

The concept plan shall be used only as an aid to show the anticipated layout of the proposed development, and to assess the adequacy of public facilities or services that will be needed to serve the proposed development. Any proposed use or development depicted on the concept plan shall not be deemed formal authorization or approval by the City until a final site plan is approved for the development. The concept plan approval is to be thought of as a general acknowledgment by the City that the proposed layout generally conforms to the City's regulations, and that the proposed development can be adequately served by required public facilities or services. If the applicant chooses to construct only the initial phase or phases of a multi-phase project designated in the concept plan, a new concept plan may be required for site plan approval of subsequent phases, if the proposed development layout, character, or other conditions affecting the development substantially change from one phase to the next.

### **SECTION 9. SITE PLANS**

**9.1. Applicability & Purpose:** Submission of a site plan and City approval of a site development permit is required as stated above. The purpose of the site plan approval is to ensure that a development project is in compliance with all applicable City ordinances and guidelines prior to commencement of construction. Approval of the site plan, landscape plan, building facade plan, and engineering plans are required prior to site construction.

**9.2. Area in Site Plan:** When the overall development project is to be developed in phases, the site plan area shall include only the portion of the overall property that is to be developed or constructed.

**9.3. Submission Requirements:** Submission of an application for a site development permit approval shall be preceded by a pre-application conference with the City. The site plan shall be prepared at a scale no smaller than one inch equals one hundred feet (1" = 100') and on sheets twenty-four inches by thirty-six inches (24" x 36"), and it shall clearly show in detail how the site will be constructed such as paving, buildings, landscaped areas, and utilities. The site plan shall include, but not be limited to, the following:

(a) A title block within the lower right hand corner of the concept plan with the proposed name of the project or subdivision, the name and address of the owner and the land planner, engineer, architect or surveyor responsible for the plan, the scale of the drawing, both written and graphic scale, the date the drawing was prepared, total site acreage, and the

location of the property according to the abstract and survey records of Caldwell and/or Hays County, Texas;

(b) A vicinity or location map that shows the location of the proposed development within the City and in relationship to existing roadways;

(c) The boundary survey limits of the tract and each proposed lot, and scale distances with north clearly indicated;

(d) The names of adjacent additions or subdivisions, or the name of the owners of record and recording information for adjacent parcels of unplatted land, including parcels on the other sides of roads and creeks;

(e) The existing zoning and existing and proposed uses on adjacent land; the location, width and names of all existing or platted streets or other public ways within or adjacent to the tract; any existing easements, with recording information; existing buildings; railroad rights-of-way; topography with contours at two-foot intervals with existing drainage channels or creeks, including the 100-year flood plain, if applicable; any other important natural features such as rock outcroppings, caves and wildlife habitats; and all substantial natural vegetation;

(f) Proposed strategies for tree preservation, showing individual trees or tree masses that will be preserved, and the techniques that will be used to protect them during construction;

(g) The layout and width, including right-of-way lines and curb lines, of existing and proposed thoroughfares, collector streets and intersections, and specific configuration of proposed streets, lots and blocks, proposed driveways, show driveway widths and distances between driveways, and proposed median openings and left turn lanes on future divided roadways. Existing and planned driveways on the opposite side of divided roadways must also be shown for coordination and sharing of future median openings;

(h) Specific locations and footprints of buildings, including but not limited to proposed non-residential and residential densities; building heights, square footages which for multi-tenant or multi-purpose buildings must show square footage for each intended use, massing, orientation, loading and service areas, including proposed screening, recycling containers, compactors and dumpster enclosures, including proposed screening, pedestrian walkways, and parking areas including parking ratio calculations; any proposed sites for parks, schools, public facilities, public or private open space; flood plains and drainage ways; all proposed and existing utilities and easements; drainage structures; retention/detention ponds with proposed aesthetic treatments; screening walls; fences; signage; fire lanes and fire hydrants; lighting; visibility easements; and other pertinent development related features;

(i) A landscape plan showing turf areas, tree types and sizes, screening walls, ornamental plantings, planting schedule, including species, planted height, spacing, container and caliper size, numbers of each plant material, any existing wooded areas, trees to be planted, and irrigation plans, if required; and

(j) Building facade (elevation) plans showing elevations with any wall-mounted signage to be used, as determined appropriate by the City Administrator.

#### **9.4. Conformance**

Provision of the above items shall conform to the principles and standards of this Ordinance and the Comprehensive Plan. To ensure the submission of adequate information, the City is hereby empowered to maintain and distribute a separate list of specific requirements for site plan review applications. Upon periodic review, the City Administrator shall have the

authority to update such requirements for site plan and development review application forms. It is the applicant's responsibility to be familiar with, and to comply with, these requirements.

#### **9.5. Effect of Review**

Approval of the site plan shall result in the issuance of a site development permit. The permit shall be considered authorization to proceed with construction of the site provided all other required City approvals are obtained, such as engineering plans, landscape plan, building facade plans, building permits.

#### **9.6. Validity**

The approved site plan shall be valid for a period of one (1) year from the date of approval by the City Council.

### **SECTION 10. VARIANCES**

#### **10.1. Presumption:**

There shall be a presumption against variances. However, if the applicant requests a variance in writing, the Board of Adjustment may authorize a variance from these regulations when, in its opinion, undue hardship will result from requiring strict compliance.

#### **10.2. Identification:**

All variances requested for a project must be identified during the site plan approval process.

#### **10.3. Conditions:**

In granting a variance, the Board of Adjustment shall prescribe upon the applicant only conditions that it deems necessary to or desirable in the public interest.

#### **10.4. Findings:**

In making the findings required below, the Board of Adjustment shall take into account the nature of the proposed use of the land involved, existing uses of land in the vicinity, the number of persons who will reside or work in the proposed development, and the probable effect of such variance upon traffic conditions and upon the public health, safety, convenience and welfare in the vicinity.

#### **10.5. Findings:**

No variance shall be granted unless the Board of Adjustment finds that all of the following provisions are met, and the burden shall be on the developer to show that the following provisions are met:

- (a) That there are special circumstances or conditions affecting the land involved, such that the strict application of the provisions of this Ordinance would deprive the applicant of the reasonable use of this land;
- (b) That the variance is necessary for the preservation and enjoyment of a substantial property right of the applicant;
- (c) That the granting of the variance will not be detrimental to the public health, safety or welfare, or injurious to other property in the area; and
- (d) That the granting of the variance will not have the effect of preventing the orderly development of other land in the area in accordance with the provisions of this Ordinance.

**10.6.** Pecuniary hardship to the applicant, property owner or developer, standing alone, shall not be deemed sufficient to constitute undue hardship.

**10.7.** When the Board of Adjustment determines that a variance is warranted, the variance permitted shall be the minimum departure from the terms of this Chapter necessary to avoid such deprivation of privileges enjoyed by such other property to facilitate a reasonable use, and which will not create significant probabilities of harmful environmental consequences.

**10.8.** It shall be an adequate basis for granting a variance that doing so will enable the applicant to create additional open space, reduce impervious cover, preserve trees, maintain critical environmental features, ensure more wildlife preservation, or bring nonconforming structures (including signs) into compliance with current regulations.

This section is designed to achieve a more favorable outcome for the general public than would be possible complying with the strict mandates of this Chapter.

**10.9.** The Board of Adjustment shall seek the recommendation of the City Engineer prior to taking any action on a proposed variance.

**10.10.** Such findings of the Board of Adjustment, together with the recommendation of the City Engineer, and the specific facts upon which such findings are based, shall be incorporated into the official minutes of the Board of Adjustment meeting at which such variance is granted. Variances may be granted only when in harmony with the general purpose and intent of this Ordinance so that the public health, safety, and welfare may be secured and substantial justice is done.

## **SECTION 11. EROSION CONTROL**

**11.1.** The purposes of controlling erosion and sedimentation during the construction stages in a site development are to minimize nuisances on adjacent properties, avoid siltation and water quality degradation of streams, and preserve the natural and traditional character of watercourses running through the area.

**11.2.** The developer shall submit as a part of the final construction plans a complete erosions and sedimentation control plan specifying the type, physical details, installation procedures, and location of controls to be used, the timing in relation to each state of the construction sequence, maintenance of controls, and plans and techniques to be used for re-vegetation and slop stabilization, as specified in this Ordinance.

**11.3.** The accepted guides for preparing control plans are the City of Austin, Erosion and Sedimentation Control Manual, and U.S. Department of Agriculture, Erosion and Sediment Control Guidelines for Developing Areas in Texas.

## **SECTION 12. CLEARING & ROUGH-CUTTING**

### **12.1. Prohibition:**

No right-of-way clearing or rough-cutting shall be permitted prior to the issuance of a site development permit. Limited clearing for soil testing and surveying shall be allowed.

### **12.2. Inclusion in Plan:**

Clearing for the temporary storage of spoil or construction equipment, or for permanent disposal of fill material or spoils, shall be so designated on the site plan. The developer must provide erosion and sedimentation controls and the continuing maintenance thereof acceptable to the City Engineer.

### **12.3. Initial Brush Removal:**

**12.3.1.** Applicants may mechanically remove brush without material soil surface disruption prior to receiving approval of plats in order to determine the location of roads, lots, utilities and drainage areas with regard to preservation of environmental features.

**12.3.2.** Prior to site plan approval, owners may neither remove any tree (other than cedar, mesquite and hackberry trees) with a trunk having a diameter greater than six (6) inches measured four and a half feet (4.5') above the base (ground elevation) of the tree, nor materially alter the existing drainage patterns prior to receiving City approval for site plans. Owners shall ensure that as much area as possible is left undisturbed for as long as reasonably possible.

**12.3.3.** Agricultural and farming operations on land subject to the Ag Exemption for tax purposes are exempt from the restrictions of this section.

**12.4. Time Period:**

The length of time between rough-cutting and final surfacing shall not exceed twelve (12) months.

**12.5. Water Zones:**

Vegetation within the Critical Water Quality Zone shall not be disturbed except for purposes consistent with development activity permitted by this Ordinance.

**SECTION 13. CUT & FILLS**

**13.1.** No fill on any building site shall exceed a maximum of four (4) feet of depth, except as approved by the City Engineer, in the areas designated as permanent on-site spoils disposal sites; provided, however, that fill placed under foundations with sides perpendicular to the ground, or with pier and beam construction, need not comply with this requirement.

**13.2.** No cut on any building site shall be greater than four (4) feet, unless approved by the City Council, except for structural excavation.

**13.3.** All new drainage channels on the site shall be designed to minimize potential erosion. All constructed and altered drainage channels shall be stabilized and vegetated immediately after final grading.

**SECTION 14. POST-CONSTRUCTION RESTORATION PLAN**

The plan and report must describe the developers' proposed measures for post-construction restoration, including restoring cuts and fills, spoil disposal and equipment storage sites and other land disturbances.

**SECTION 15. INSPECTIONS**

**15.1. Consent**

Any person or successor and assigns who has filed a site development plan for approval pursuant to this Ordinance agrees to allow entry on the tract or premises which is the subject of such applications for the purpose of inspection of conditions during the approval stage and during developments and construction by duly authorized inspectors of the City.

**15.2. Costs**

Inspections mandated under this section shall be at the applicant's expense, or at the expense of the owner at the time the inspection is performed, in accordance with the Fee Schedule adopted by the City Council.

**15.3. Construction Phase**

The City shall cause such inspection to be made of the land or premises during development and construction so as to assure full compliance with all terms, conditions, requirements,

and agreements to which the person obtaining approval of a site development plan under this Ordinance is bound.

#### **15.4. Notice**

The applicant shall designate one person or legal entity, with a current address, to which any notice of noncompliance shall be given pursuant to this section.

### **SECTION 16. CONSTRUCTION PERFORMANCE**

#### **16.1. Review by City Engineer**

**16.1.1.** All plans and actual construction of improvements required under this Ordinance shall be inspected by the City Engineer.

**16.1.2.** No plans or completed construction will be considered for approval or acceptance by the City Council without certification from the applicant that such plans and calculations and such construction is complete, and that they are in accordance with specifications and standards contained or referenced herein, and/or with plans previously approved for the subject site development permit.

**16.1.3.** The City Engineer shall make field inspections during the construction period and arrange for testing in accordance with standard civil engineering practice.

**16.1.4.** If the City Engineer rejects such construction, the City Attorney shall, on direction of the City Council, proceed to enforce the guarantees provided in this Ordinance.

**16.1.5.** The City Engineer shall submit written progress reports to the City Council during construction periods. These reports shall be made available for public review upon submission to the City Council.

**16.1.6.** The final responsibility for adequacy and acceptability of all construction shall rest with the developer.

#### **16.2. Right of Entry**

**16.2.1.** Whenever necessary for the purpose of investigating or enforcing the provisions of this Ordinance, or whenever any authorized City representative has reasonable cause to believe that there exists in any structure or upon any premises, any condition which constitutes a violation of this Ordinance, the City representative may enter such structure or premises at all reasonable times to inspect the same, or to perform any duty imposed or power conferred upon any said City representative by law or ordinance.

**16.2.2.** Any permit holder shall agree to allow entry on the land or premises which is the subject of the permit for the purpose of inspection by City officials.

### **SECTION 17. ENFORCEMENT**

#### **17.1. General**

**17.1.1.** The violation of any provision of this Ordinance is unlawful and a misdemeanor offense. Each violation, upon conviction, shall be punished by a fine not to exceed two thousand dollars (\$2,000.00) per violation if the violation is of a provision of this Ordinance that governs public health or sanitation. The violation of any other provision of this Ordinance, upon conviction, shall be punished by a fine not to exceed five hundred dollars (\$500.00) per violation.

**17.1.2.** Each day a violation of this Ordinance continues constitutes a distinct and separate offense.

#### **17.2. Civil Remedies**

**17.2.1.** If any building, structure, or land is used, constructed, maintained, repaired, or altered, or any development is commenced or continued in violation of this Ordinance, the City and its officers may institute any appropriate action to prevent, restrain, correct, or abate the violation, including all remedies available pursuant to state law.

**17.2.2.** The City is authorized to seek civil penalties not to exceed one hundred dollars (\$100.00) per violation, with each day a violation of this Ordinance continues constituting a distinct and separate offense.

**17.2.3.** The imposition of any penalty shall not preclude the City and its officers from instituting any other appropriate action to require compliance with this Ordinance and with administrative orders and determination made pursuant to this Ordinance.

### **17.3. Administrative Action**

**17.3.1. Stop Work Orders.** When an appropriate authorized official of the City determines that there has been non-compliance with any material term, condition, requirement or agreement under this Ordinance, the person shall be ordered by the City in writing to cease and desist from further development or construction material to the alleged non-compliance until corrected by compliance.

**17.3.2. Withholding of Other Authorizations.** The City may refuse to grant development, construction, or occupancy approvals for improvements for a property that does not fully and completely comply with all terms and conditions of this Ordinance.

Without limiting the type or number of approvals the City may withhold, the City is specifically authorized to refuse to grant site development permits, building permits, utility connections, and certificates of occupancy.

**17.3.3. Appeal.** Said person may appeal an administrative order to the City Administrator by giving written notice. The City Administrator shall hear the appeal within five (5) days of receiving such notice. Said person may appeal in writing a negative ruling by the City Administrator to the City Council, which shall hear the appeal at the next regular meeting following receipt of the notice, provided that the City has sufficient time to comply with the Texas Open Meetings Act and any other applicable law or ordinance.