

SUBDIVISIONS

Article I. General Provisions

Sec. 26-1.	Title.
Sec. 26-2.	Purposes of regulations.
Sec. 26-3.	Authority.
Sec. 26-4.	Applicability.
Sec. 26-5.	Conformity with zoning ordinance.
Sec. 26-6.	Interpretation, conflict and separability.
Sec. 26-7.	Amendment to subdivision regulations.
Sec. 26-8.	Effect on pending plats.
Sec. 26-9.	Violations.
Sec. 26-10.	Filing fees.
Secs. 26-11--26-24.	Reserved.

Article II. Definitions

Sec. 26-25.	Definitions.
Secs. 26-26--26-39.	Reserved.

Article III. Application Procedures

Sec. 26-40.	Pre-application procedures.
Sec. 26-41.	Sketch plat.
Sec. 26-42.	Coordination of flexible zoning application with subdivision approval.
Sec. 26-43.	Minor subdivisions.
Sec. 26-44.	Preliminary plat - minor subdivisions.
Sec. 26-45.	Preliminary plat - major subdivisions.
Sec. 26-46.	Final plats - major and minor subdivisions.
Sec. 26-47.	Lot line adjustments.
Sec. 26-48.	Lot split.
Sec. 26-49.	Lot combination.
Secs. 26-50--26-69.	Reserved.

Article IV. Assurance for Completion and Maintenance of Improvements

Sec. 26-70.	Completion of improvements.
Sec. 26-71.	Improvement agreement and guarantee of completion of public improvements.
Sec. 26-72.	Temporary improvements.
Sec. 26-73.	Governmental units.
Sec. 26-74.	Construction of improvements.
Sec. 26-75.	Failure to complete improvements.
Secs. 26-76--26-99.	Reserved.

***Cross reference(s)**--Department of public works and transportation, § 2-336 et seq.; department of community services, § 2-366 et seq.; planning commission, § 2-531 et seq.; buildings and building regulations, ch. 7; community redevelopment, ch. 11; manufactured homes and trailers, ch. 19.

State law reference(s)--Powers of home rule charter cities, Mo. Const. art. VI, § 19(a); plats generally, RSMo ch. 445; subdivision regulations, RSMo 89.400 et seq.

ST. JOSEPH CODE

Article V. Improvements

Sec. 26-100.	Adequacy of improvements/required minimum improvements.
Sec. 26-101.	Design specifications.
Sec. 26-102.	Street design.
Sec. 26-103.	Sidewalks.
Sec. 26-104.	Blocks.
Sec. 26-105.	Lots.
Sec. 26-106.	Sewerage facilities.
Sec. 26-107.	Stormwater management.
Sec. 26-108.	Sedimentation and erosion control.
Sec. 26-109.	Lighting.
Sec. 26-110.	Exceptions for existing improvements.
Sec. 26-111.	Easements.
Sec. 26-112.	Connection to water system.
Sec. 26-113.	Nonresidential subdivisions.
Sec. 26-114.	Street trees.
Secs. 26-115--26-129.	Reserved.

Article VI. Relief

Sec. 26-130.	Variances from subdivision requirements.
Sec. 26-131.	Right to reconsideration of finding, decision or recommendation.
Sec. 26-132.	Appeals to governing body.
Secs. 26-133--26-139.	Reserved.

Article VII. Transportation Impact Fee Regulations

Sec. 26-140.	Short title.
Sec. 26-141.	Findings.
Sec. 26-142.	Intent.
Sec. 26-143.	Authority.
Sec. 26-144.	Definitions.
Sec. 26-145.	Applicability of transportation user fee.
Sec. 26-146.	User fee is a condition of development approval.
Sec. 26-147.	Establishment of transportation user fee service areas.
Sec. 26-148.	Transportation user fees per service unit.
Sec. 26-149.	Assessment of transportation user fees.
Sec. 26-150.	Computation of road user fee.
Sec. 26-151.	Credits against transportation user fees.
Sec. 26-152.	Establishment of accounts.
Sec. 26-153.	Use of proceeds of user fee account.
Sec. 26-154.	Appeals.
Sec. 26-155.	Refunds.
Sec. 26-156.	Updates to planning and revision of fees.
Sec. 26-157.	Agreement for capital improvements.
Sec. 26-158.	Use of other financing mechanisms.
Sec. 26-159.	Impact fee as additional and supplemental regulations.
Sec. 26-160.	Relief procedures.
Sec. 26-161.	Exemption from this article.
Sec. 26-162.	Liberal construction.
Sec. 26-163.	Severability.

ARTICLE I. GENERAL PROVISIONS**Sec. 26-1. Title.**

This ordinance shall be known, cited and referred to as the subdivision regulations of St. Joseph, Missouri.

(G.O. 1264, 2-13-95; G.O. 1438, 7-29-96)

Sec. 26-2. Purposes of regulations.

(a) The purposes of these provisions are to regulate the subdivision and improvement of land for urban use, to provide adequate light, air, open space, drainage, transportation, public utilities and other needs; to assure the maintenance of health, safety and an attractive and efficient community; and to encourage the economical use of human and natural resources.

(b) The subdivision of land is the first step in the process of urban development. The arrangement of land parcels in the community for residential, commercial and industrial uses and for streets, alleys, schools, parks and other public purposes provides the basic framework for the uses of land and for the arrangement of the community.

(c) These regulations are designed, intended and should be administered in a manner to:

- (1) Implement the city's adopted comprehensive plan of urban development.
- (2) Provide for neighborhood conservation and prevent the development of slums and blight.
- (3) Harmoniously relate the development of the various tracts of land in the city to the existing community development and facilitate and coordinate the future development of adjoining tracts.
- (4) Provide the best possible design for the tract being subdivided and developed.
- (5) Reconcile the diverse interests of the subdivider, adjacent property owners and the city.
- (6) Coordinate the provision of streets within subdivisions with existing and planned

streets and with other features of the comprehensive plan and official map.

- (7) Ensure that all necessary public utilities and facilities are provided and are or will be available, accessible and adequate, pursuant to adopted city standards and requirements, at the time of subdivision or development.

- (8) Establish adequate and accurate records of land subdivision.

(Code 1969, Sec. 20-1; G.O. 1264, 2-13-95; G.O. 1438, 7-29-96)

Sec. 26-3. Authority.

This chapter is enacted pursuant to the authority of RSMo Sections 89.010 through 89.490 and Chapter 445, together with all other statutory and legal authority which now, or which may in the future, provide authority for subdivision regulations.

(G.O. 1264, 2-13-95; G.O. 1438, 7-29-96)

Sec. 26-4. Applicability.

(a) Hereafter, every owner or subdivider of any lot, tract or parcel of land situated within the corporate limits of the city who may seek to subdivide the same into two or more parts for the purpose of laying out any subdivision or any additions thereto shall comply with the provisions of these regulations, unless otherwise exempted pursuant to this section.

(b) The following activities do not require subdivision approval by the city; however, the city shall not extend utilities, provide access to public roads nor issue building permits for the development of any property which has not received final plat approval, except as otherwise provided by these regulations.

- (1) The public acquisition of land for the widening of existing streets.
- (2) Any lot, parcel or tract of land located within the area governed by these regulations which has been legally subdivided, resubdivided or replatted prior to the adoption of these regulations.

§26-70

- (3) A division of property through inheritance, the probate of an estate or by order of a court of law.
- (4) The creation of leasehold space within a multi-occupant building, such as a condominium, or a commercial building site which does not abut a public street, or the division of property into such leaseholds, provided that the property is a part of an approved subdivision or addition and regulated in accordance with the site plan requirements of the city, and the plat has been amended as may be required to add easements or otherwise serve the leasehold. For purposes of this action, a leasehold abuts a public street if it is immediately adjacent to a public street or if it is so close to a public street that no usable property lies between the leasehold and the public street.

(Code 1969, Sec. 20-3; G.O. 1264, 2-13-95; G.O. 1438, 7-29-96)

Sec. 26-5. Conformity with zoning ordinance.

All plats reviewed under the provisions of these regulations shall conform to all zoning ordinance provisions for the district in which the plat is to be located. All required zoning changes shall be made prior to approval of the final plat by the council.

(G.O. 1264, 2-13-95; G.O. 1438, 7-29-96)

Sec. 26-6. Interpretation, conflict and separability.

(a) *Interpretation.* In their interpretation and application, the provisions of these regulations shall be held to be the minimum requirements for the promotion of the public health, safety and general welfare. These regulations shall be construed broadly to promote the purposes for which they are adopted.

(b) *Conflict with other laws.* These regulations are not intended to interfere with, abrogate or annul any other ordinance, rule or regulation, statute or other provision of law except as provided in these regulations. Where any provision of these regulations imposes restrictions different from those imposed by any other provision of these regulations, or other provision of law, the provision which is more restrictive or imposes higher standards shall control.

(c) *Separability.* If any part or provision of these regulations or the application of these regulations to any person or circumstances is adjudged invalid by any court of competent jurisdiction, the judgment shall be confined in its operation to the part, provision or application directly involved in the controversy in which the judgment has been rendered and it shall not affect or impair the validity of the remainder of these regulations or the application of them to other persons or circumstances. The council hereby declares that it would have enacted the remainder of these regulations without any such part, provision or application which is judged to be invalid. (G.O. 1264, 2-13-95; G.O. 1438, 7-29-96)

Sec. 26-7. Amendment to subdivision regulations.

For the purpose of protecting the public health, safety and general welfare, the commission or council may from time to time propose amendments to these regulations which shall be approved by the council by ordinance after a public hearing.

(G.O. 1264, 2-13-95; G.O. 1438, 7-29-96)

Sec. 26-8. Effect on pending plats.

All applications for plat approval, including final plats, pending on the effective date of adoption of these regulations and which have not lapsed shall be reviewed pursuant to the regulations in effect at the time of such approval; except that any final plat under construction and approved on or after August 8, 2004 may, at the developer's discretion, be allowed to install street lights under the lighting standards as approved on October 6, 2008.

(G.O. 1264, 2-13-95; G.O. 1438, 7-29-96; G.O. 2313, 12-1-08)

Sec. 26-9. Violations.

(a) It shall be unlawful for any person to sell or offer for sale any lot within the city before the plat thereof has been filed, approved, acknowledged and recorded, as required by these regulations. Any person violating the provisions of these regulations shall forfeit and pay to the city a penalty not to exceed \$300.00 for each lot transferred or sold or agreed or negotiated to be sold and such transfers or sales shall be rescinded until there has been full compliance with all applicable provisions of these regulations.

(9/1/18)

(b) It shall be unlawful for any person to violate any of the provisions of these regulations or to neglect or to refuse to comply with any applicable provisions of these regulations. (Code 1969, Sec. 20-22; G.O. 1264, 2-13-95; G.O. 1438, 7-29-96)

Sec. 26-10. Filing fees.

(a) Filing fees for subdivision approvals are as follows:

- (1) Minor subdivision
 - a. Residential -- basic fee\$265.00
Plus \$20.00 per lot
 - b. Commercial -- basic fee..... \$1,050.00
Plus \$25.00 per lot
- (2) Preliminary major subdivision.. \$1,050.00
Plus \$25.00 per lot
- (3) Final major subdivision: No additional fee if preliminary major subdivision fee has been satisfied.

(b) Filing fees for other requests covered by this chapter are as follows:

- (1) Subdivision variance..... \$1,050.00
- (2) Lot line adjustment \$53.00
- (3) Street/alley vacation:
 - a. First 500 feet.....\$395.00
 - b. Each additional 100 feet\$58.00

(c) Miscellaneous fees:

- (1) If the city incurs fees and/or expenses from outside consultants for subdivision review, inspection or materials testing, the developer shall reimburse the actual cost to the city.

The above non-refundable filing fee shall be paid to the director of financial services, who shall provide a receipt showing payment of said fee.

(Code 1969, Sec. 20-51(a); G.O. 1264, 2-13-95; G.O. 1438, 7-29-96; G.O. 1572, 11-3-97; G.O. 1797, 10-2-00; G.O. 1929, 4-28-03; G.O. 2040, 8-30-04; G.O. 2115, 8-1-05)

Secs. 26-11--26-24. Reserved.

ARTICLE II. DEFINITIONS

Sec. 26-25. Definitions.

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

- (1) *Alley.* A minor way which is used primarily for secondary or service access to the back or side of properties otherwise abutting on a street.
- (2) *Applicant.* A developer or owner submitting an application for subdivision (preliminary or final plat) approval, site plan approval or other development approval.
- (3) *Application.* The application form and all accompanying documents required by these regulations for approval of a subdivision plat.
- (4) *Arterial. Principal* - An interstate roadway or highway that connects the region with other areas of the state and other states, the principal purpose of which is mobility rather than serving individual land uses. *Minor* - A roadway that connects the urban area to cities and towns inside and outside the region, the principal purpose of which is mobility rather than serving individual land uses; however, access to land is provided at an increasing rate as the minor arterial moves down in the hierarchy. There are three types of minor arterials and the following hierarchy: *relievers*, which provide direct relief for traffic on major metropolitan highways; *expanders*, which provide a way to make connections between developing areas outside the interstate ring or beltway; and *connectors*, which augment principal arterials within the interstate ring or beltway and also provide good, safe access connections within and among towns in developing and rural areas.

- (5) *Block*. A defined portion of a parcel or tract of land entirely surrounded by public highways or streets, other than alleys. In cases where the platting is incomplete or disconnected, the building regulations official shall determine the boundaries of the block.
- (6) *Boulevard*. A roadway that shall have a park-like landscaping treatment with a wider right-of-way including but not limited to significant setbacks, limited access points, extra wide sidewalks, transit facilities where deemed necessary, and is so designated on the major street plan, land use plan map and the boulevard system master plan. Where certain right-of-way permits raised landscaped medians shall be included.
- (7) *Capital improvements program*. A proposed schedule of all future capital and public facility projects listed in order of construction priority, together with cost estimates and the anticipated means of financing each such project.
- (8) *Collector (residential and nonresidential)*. A street which provides for traffic movement between arterials and local streets and direct access to abutting property and is so designated on the major street plan. Mobility and land access are equally important on collector streets.
- (9) *Commission*. "Commission" refers to the planning commission of the city.
- (10) *Completion security/maintenance security*. A surety bond or maintenance bond from a licensed bonding company, a cash escrow or a letter of credit in favor of the city.
- (11) *Construction Plan*. Complete construction drawings of all streets, curbs, sanitary and storm sewers, sidewalks, drainage, culverts, utilities, water lines and connections, lighting fixtures and other similar improvements.
- (12) *Council*. "Council" refers to the city council of the city.
- (13) *Cul-de-sac*. A street having one end open to traffic and being permanently terminated by a vehicle turnaround at the other end.
- (14) *Culvert*. A structure designed to convey a watercourse not incorporated in a closed drainage system under a road or pedestrian walk.
- (15) *Curb*. A vertical or sloping edge of a street.
- (16) *Dedication*. The action of a property owner, developer or subdivider transferring property or an interest in property to the city.
- (17) *Design*. The location and alignment of streets, grades, widths of streets, alignment and width of easements, alignment and right-of-way for drainage and sanitary sewers, the layout of lots, the extent of buffers and landscaping, the location of parking, location and configuration of lighting and signage and such other similar aspects of the proposed development.
- (18) *Developer*. The legal or beneficial owner or owners of a lot or of any land included in a proposed development; or the holder of an option or contract to purchase, or any other person having an enforceable proprietary interest in such land.
- (19) *Director*. "Director" refers to the director of community services of the city.
- (20) *Drainage*. The removal of surface water or groundwater from land by drains, grading or other means.
- (21) *Driveway*. A paved or unpaved area used for ingress or egress of vehicles from a street to a building, garage or other structure or facility.
- (22) *Easement*. A right-of-way granted, but not dedicated, for limited, specific use of private land for a public or quasi-public purpose and within which the owner of the property shall not erect any permanent structures.

- (23) *Escrow*. A deed, bond, money or lot, tract or parcel of property delivered to a third person and held by said person until the fulfillment of a specified condition.
- (24) *Expressway*. A street which provides for rapid movement of large volumes of through traffic between areas and across the city and does not provide for access to abutting properties, and is so designated on the major street plan. Expressways include only divided roadways with few intersections at grade.
- (25) *Final Approval*. The official action of the zoning & planning commission on a conditionally approved preliminary plat after all conditions, engineering plans and other requirements have been completed or fulfilled and the required improvements have been installed, or guarantees have been properly posted for their completion.
- (26) *Final Plat*. A plat prepared in accordance with the provisions of these and any other applicable regulations, which plat is prepared in the proper format to be recorded in the office of public records of Buchanan County.
- (27) *Flexible Zoning*. Zoning techniques designated to allow flexibility in use and/or density of project design, including planned use development.
- (28) *Freeway*. An expressway with full control of access, grade separation, divided roadway and which provides for rapid movement of large volumes of traffic through an area, and is so designated on the city's major street plan.
- (29) *Governing Body*. See council.
- (30) *Grade*. The slope of a street, or other public way, specified as a ratio of the length of the slope to the difference in elevation between the highest and lowest ends of the slope.

SUBDIVISIONS

§26-70

- (31) *High density area.* An area of more than six dwelling units per acre.
- (32) *Improvements.* Street pavements, curbs, sanitary and storm sewers, permanent street monuments, sidewalks, drainage, culverts, utilities, water lines and connections, sewer lines and connections, lighting fixtures and other similar capital and public facility projects.
- (33) *Lateral sewers.* Pipes conducting sewage from individual buildings to larger pipes called sewer mains that are generally located in street rights-of-way.
- (34) *Local street (high density and low density).* A street which provides direct access to abutting land, for local traffic movements and is so designated on the major street plan.
- (35) *Lot.* A parcel of land or legal lot of record approved in accordance with the procedures set forth by this chapter of the code of ordinances, intended to be separately owned, developed and otherwise used in accordance with Chapter 31, zoning, of this code of ordinances.
- (36) *Lot combination.* A combination of lot(s) in a platted subdivision into one lot of no more than three acres
- (37) *Lot, corner.* A lot located at the intersection of interception of two or more streets at an angle of not more than 135 degrees. If the angle is greater than 135 degrees, the lot shall be considered an interior lot.
- (38) *Lot, interior.* A lot which is bounded on at least two parallel sides by other lots and is other than a corner lot.
- (39) *Lot line adjustment.* A boundary relocation between two or more existing adjacent parcels, where the land taken from one parcel is added to an adjacent parcel, and where no additional lots are created.
- (40) *Lot lines.* The lines bounding the perimeter of a lot as defined herein.
- (41) *Lot, non-conforming.* A lot which does not comply with one or more requirements of these regulations.
- (42) *Lot of record.* A parcel of land shown with a separate and distinct number or letter on an official map approved by the city in accordance with this chapter and maintained by Buchanan County, or a parcel of land shown as separate and distinct from contiguous property upon a map approved by the council, commission or director in the manner provided by ordinance, or a lot which is part of a subdivision, the plat of which has been duly recorded.
- (43) *Lot split.* A division of a lot in a platted subdivision into no more than three lots.
- (44) *Main (water or sewer).* In any system of continuous piping, the principal artery to which branches or lateral lines may be connected.
- (45) *Maintenance agreement.* An agreement which may be required and accepted by the city or another designated governmental agency to ensure that necessary improvements are maintained and will function as required for a specific period of time.
- (46) *Maintenance guarantee.* Any security which may be required and accepted by the city or another designated governmental agency to ensure that necessary improvements are maintained and will function as required for a specific period of time.
- (47) *Major street plan.* A transportation plan created in conformance with RSMo § 89.340 *et seq.* Specifying the general location, character and extent of streets and other public ways.
- (48) *Open space.* Any parcel or area of land or water essentially unimproved and set aside, dedicated, designated or reserved for the public or private use or enjoyment or for the use and enjoyment of owners and occupants of such land or of land adjoining or neighboring such space.

(9/1/18)

- (49) *Owner*. An individual, firm, association, syndicate, partnership or corporation having a sufficient proprietary interest in land to seek development of the land.
- (50) *Parcel*. A portion or phase of a tract of land.
- (51) *Parkway*. A type of arterial street limited to noncommercial traffic with full or partial control of access and usually located within a park or a ribbon of park-like development, and is so designated on the major street plan.
- (52) *Partial building permit*. A permit issued by the chief building official to allow the movement of dirt and other organic or inorganic matter associated with the ground surface, and placement of concrete, concrete blocks, bricks or other material as allowed by the city's building code for a building foundation.
- (53) *Pedestrian way*. A right-of-way or easement dedicated to public use for persons travelling on foot.
- (54) *Planned development*. An area of minimum contiguous size, as specified by the zoning ordinance, to be planned, developed, operated and maintained according to plan and containing one or more structures with appurtenant common areas.
- (55) *Plat*. A map or maps of a subdivision or site plan.
- (56) *Preliminary approval*. The official action of the zoning and planning commission conferring certain rights prior to final approval after specific elements of a preliminary plat have been agreed upon by the commission and the applicant.
- (57) *Preliminary plat*. A plat prepared in accordance with the provisions of these and any other applicable regulations, which plat is made for the purpose of showing the design of a proposed subdivision and the existing conditions in and around it.
- (58) *Reservation*. Holding land for future public use by designating public areas on a plat as a condition of approval.
- (59) *Right-of-way*. Land opened, reserved or dedicated for a street, pedestrian way, drainage way or other public purpose associated with travel or movement of automobiles, people, water or utilities.
- (60) *Sewer*. Any pipe or conduit used to collect and convey sewage or stormwater runoff from the generating source to treatment plants or receiving streams.
- (61) *Sidewalk*. A concrete pedestrian pathway typically located along the side of a street and running parallel to the street.
- (62) *Sight triangle*. A triangular-shaped portion of land established at street intersections in which nothing shall be erected, placed, planted or allowed to grow in such a manner as to limit or obstruct the sight distance of motorists entering or leaving the intersection.
- (63) *Site plan*. An accurately scaled development plan that illustrates the existing conditions on a parcel and which depicts the details of a proposed development.
- (64) *Sketch plat*. A plat prepared in accordance with the provisions of these and any other applicable regulations, which plat is made for the purpose of providing a conceptual design of planned unit developments and other flexible zoning techniques to support the subdivision rationale.
- (65) *Street*. A public right-of-way which affords principal means of vehicular access to property abutting thereon and/or which serves to move through traffic between areas and across the city.
- (66) *Street lights*. One of a series of lights that are usually attached to tall poles, spaced at intervals along a public street or roadway, and illuminated from dusk to dawn.

- (67) *Subdivider.* Any person, firm, corporation, partnership or association acting individually or as a unit who causes land to be divided for the use of himself or others.
- (68) *Subdivision.* The division of a lot, block, tract or parcel into two or more lots, blocks, tracts or parcels or any division of land involving the dedication of a new street or other public right-of-way or a change in existing streets, alleys, easements, water, sewer or other public improvements. Subdivision includes the resubdivision of a previously subdivided lot, block, tract or parcel. All proposed subdivisions shall include a complete lot, block, tract or parcel.
- (69) *Subdivision improvement agreement.* An agreement which may be required and accepted by the city or another designated governmental agency to ensure that necessary improvements required as part of an application for development will be satisfactorily completed.
- (70) *Subdivision, major.* Any subdivision not classified as a minor subdivision.
- (71) *Subdivision, minor.* A subdivision of an entire lot of record resulting in not more than a total of three lots, tracts, blocks or parcels whether the lots are created at one time or over an extended period of time, provided that such subdivision does not involve a planned development; that such subdivision does not involve creation of new public streets, that such subdivision does not involve the extension of a utility or other public facility; or that such subdivision does not involve the installation of drainage improvements through one or more lots to serve one or more other lots.
- (72) *Subdivision review committee.* A city committee consisting of the directors of the following departments or their designees: planning and community development, legal, public works and transportation, fire and, when necessary, health.
- (73) *Through street.* Any street with outlets at both ends and neither end terminating in a cul-de-sac or stub street.
- (74) *Tract.* The entire land area of a proposed subdivision.
- (75) *Zoning ordinance.* The regulations adopted by the city pursuant to the authority of RSMo §§ 89.010 *et seq.* (Code 1969, Sec. 20-2; G.O. 1264, 2-13-95; G.O. 1438, 7-29-96; G.O. 1757, 3-20-00; G.O. 1766, 5-15-00; G.O. 2359, 11-30-09; G.O. 2859, 7-2-18)

Secs. 26-26--26-39. Reserved.

ARTICLE III. APPLICATION PROCEDURES

Sec. 26-40. Pre-application procedures.

Before any application is made pursuant to these regulations, the owner, the owner's agent, the applicant and/or the owner's engineer or land planning consultant shall confer with the director and the subdivision review committee to discuss, in general, the procedures and requirements for subdivision and/or site plan approval pursuant to these regulations, and more specifically, the tentative development plans of the applicant. Discussion should focus on applicable provisions of these regulations, physical features of the proposed development, the availability of public facilities and services, the timing and placement of public improvements and any comprehensive plan, official map and major street plan requirements for land use, parks, schools and public open spaces. The director shall preliminarily determine whether the proposed development will be classified as a minor subdivision or a major subdivision. A minimum of one pre-application meeting will be held each month unless no new subdivisions are proposed. (G.O. 1264, 2-13-95; G.O. 1438, 7-29-96)

Sec. 26-41. Sketch plat.

The sketch plat is intended to be conceptual in nature and is used only in conjunction with flexible zoning applications such as planned developments. While accuracy and legibility are essential, the submittal of detailed, finished plans is discouraged. The submitted material should provide information sufficient to determine general compliance with city ordinances, standards and policies. The sketch plat shall include the property to be subdivided and all immediately adjacent unplatted property owned by the same owner, and shall comply with the submittal requirements contained in Section 26-42(c)(2).

(G.O. 1264, 2-13-95; G.O. 1438, 7-29-96)

Sec. 26-42. Coordination of flexible zoning application with subdivision approval.

(a) In order to fully implement flexible zoning techniques such as planned unit development and cluster zoning, applicants shall be required to submit applications for subdivision review simultaneously with applications for zoning approval. Depending upon the size and location of the proposed development, such applications shall conform with either the minor or major subdivision application requirements of these regulations.

(b) Where the zoning ordinance authorizes flexible zoning applications that permit the use of land and density of structures to differ from that allowed as of right, and the application also involves the subdivision of land, whether residential or non-residential, subdivision approval by the commission shall be required in addition to all other procedures and approvals required by the zoning ordinance, regardless of whether applicable zoning procedures also require commission approval, review or recommendation.

(c) Procedure.

(1) When a flexible zoning application is submitted that also involves the subdivision of land, the application shall first be submitted to the governmental body or official authorized to accept the

application pursuant to the zoning ordinance.

- (2) The application for subdivision approval shall be made in the form of a sketch plat, containing, in addition to all of the requirements of the zoning ordinance, the following information:
- a. Legal description of the property proposed to be subdivided;
 - b. Name of the proposed subdivision;
 - c. Date, scale, North arrow;
 - d. Property owner's name and address;
 - e. Description of all existing covenants, liens and encumbrances;
 - f. Name, address and seal or registration number of licensed engineer, architect or surveyor who has prepared the sketch plat;
 - g. Location of property lines;
 - h. Existing or platted easements, rights-of-way, streets or other public ways;
 - i. Masses of trees or individual trees of eight inches or more in diameter, measured four feet above ground level;
 - j. Names of adjoining landowners within 185 feet of any perimeter boundary of the proposed subdivision;
 - k. Location, sizes, elevations and slopes of existing sewers, water mains, culverts and other underground structures within the boundaries of the proposed subdivision and immediately adjacent thereto;
 - l. Existing permanent buildings;
 - m. Utility poles and utility rights-of-way on or immediately adjacent to the property proposed to be subdivided;
 - n. Approximate topography, at the same scale as required for a preliminary plat;
 - o. Approximate location and width of all proposed streets within and abutting the proposed subdivision;
 - p. Preliminary proposals for connections with existing water supply and sanitary sewerage systems and preliminary proposals for collecting and discharging surface water drainage;

- q. Approximate location, dimensions and area of all proposed or existing lots;
- r. Approximate location, dimensions and area of all parcels of land proposed to be set aside for park or playground use or other public use;
- s. Vicinity map showing all streets and the general development pattern and land uses of the surrounding area at a scale of 1" = 100';
- t. Zoning district boundaries of all property 200 feet of the proposed subdivision;
- u. If the sketch plat covers only a part of the applicant's contiguous holdings, the applicant shall submit, at a scale of no more than 1" = 200', a sketch in pen or pencil of the proposed subdivision area, together with its proposed street systems and an indication of the probable future street, drainage and utility system for the remaining portion of the tract.

(3) The governmental body or official authorized to accept the zoning application shall refer the application and sketch plat to the commission for preliminary review and approval. The commission shall review all aspects of the application as are required by these regulations and the zoning ordinance.

(4) The commission shall forward its recommendation on the application to the council. Action shall first be taken on the zoning application. If the zoning application is granted, the applicant shall prepare a preliminary plat as described in Section 26-44 of these regulations and shall then follow the remaining major subdivision procedures described herein, including review by the commission and the council.

(G.O. 1264, 2-13-95; G.O. 1438, 7-29-96; G.O. 2081, 3-14-05)

Sec. 26-43. Minor subdivisions.

(a) Following the preapplication conference, applicants for minor subdivision approval may submit eight prints of a preliminary plat, as

described in Section 26-44, to the director. The director shall review the preliminary plat and inform the applicant of any necessary changes or corrections to ensure that the application conforms with these regulations, all other applicable ordinances and plans of the city and all other applicable state regulations.

(b) If the director determines that all such submission requirements have not been met, the director shall notify the applicant that the application is not complete and specify the information required to be submitted to complete the application. Notice of completeness/incompleteness shall be mailed by certified mail to the applicant not more than ten working days after submission by the applicant of the preliminary plat and required accompanying information as set forth in these regulations.

(c) At any time during the review process, either prior to or following the determination of completeness, the subdivision review committee may review and comment upon the application.

(d) When the application has been determined to be complete, the director shall approve, disapprove or conditionally approve the preliminary plat. If the director disapproves the preliminary plat, the grounds for such decision shall be forwarded in written form within ten working days to the applicant by certified mail.

(e) Preliminary plats of minor subdivisions that have been approved or conditionally approved may proceed directly to final plat approval pursuant to Section 26-46.

(f) No building permit shall be issued for any lot within a subdivision unless the sewage disposal facilities are reviewed and approved by the city as being in conformance with all applicable state and local standards and unless the plat has received the approval of the director, in writing and entered upon the plat. (Code 1969, Sec. 20-4; G.O. 1264, 2-13-95; G.O. 1438, 7-29-96)

Sec. 26-44. Preliminary plat - minor subdivisions.

Preliminary plats for minor subdivisions shall include the following information:

- (1) Tract boundaries (traverse bearings and distance of the boundaries).

- (2) North point and scale.
- (3) Location by section, township, range, county and state, including descriptive boundaries of the subdivision.
- (4) Name of the proposed subdivision.
- (5) Legal description of the entire tract to be subdivided and reference of the legal description to at least one corresponding point designated in the Missouri State Plane Coordinate System.
- (6) A key map showing the tract in relation to the surrounding area.
- (7) Scale specification of no greater than one inch equals 100 feet (1" = 100') and date on each map, sheet or plan.
- (8) Names and addresses of the applicant, developer(s), owner(s) of record, and the name, address and seal of the engineer, land surveyor, architect or land planner responsible for subdivision layout.
- (9) Within 200 feet of the proposed subdivision, names of adjacent subdivisions, layout of streets (with names) and including an indication of whether such streets are paved or unpaved, dedicated rights-of-way with widths, connections with adjoining platted streets, widths and locations of alleys, easements and public walkways adjacent to or connecting with the tract, location and size of all existing sanitary sewer, storm sewer and water supply facilities.
- (10) Existing topography with contours at a maximum of two foot intervals. All topographic data shall relate to USGS data.
- (11) Existing and proposed deed restrictions and protective covenants.
- (12) Lot layout, dimensions, approximate lot areas, easements and setback requirements.
- (13) All parcels of land to be dedicated or reserved for public use or for use in common by property owners in the subdivision and any conditions of such dedication or reservation.
- (14) Preliminary plans showing layout of all proposed sanitary sewerage lines and facilities and lines and facilities of the water distribution system and the location of the closest existing water and sewer mains.
- (15) Storm water management plan, calculations and proposed size, nature and location of all proposed storm drainage improvements.
- (16) Identification, location and nature of all existing and proposed zoning districts and land uses to be included within the subdivision and the zoning district and status of adjacent properties within 200 feet.
- (17) A service availability letter from appropriate fire district, water district, sewer district, school district, St. Joseph Cablevision, Missouri State Highway Department, St. Joseph Light & Power, Missouri Gas Energy, Missouri-American Water Company, Southwestern Bell Telephone, the United States Post Office and/or other agencies, where applicable.
- (18) Receipt from the director of finance showing paid preliminary plat fee.
- (19) A certificate from the city finance department indicating that there are no outstanding or delinquent fees, assessments or taxes with respect to the property proposed for subdivision and/or the property owner.

(Code 1969, Sec. 20-8; G.O. 1264, 2-13-95; G.O. 1438, 7-29-96)

Sec 26-45. Preliminary plat - major subdivisions.

(a) *Submittal requirements.* Following the preapplication conference, applicants for major subdivision approval may prepare and submit a preliminary plat to the director. The preliminary plat shall be in sufficient detail to convey the

applicant's ideas and intentions in platting the proposed subdivision. It shall contain a written description of the existing conditions on the tract and the necessary drawings and sketches as required by this section to convey the applicant's plan of development.

(b) *Filing procedure.* The applicant shall file the following with the director, at least 45 days prior to the regular commission meeting at which the preliminary plat is to be considered:

- (1) Fifteen full-size copies of the proposed preliminary plat and 15 copies reduced to 11 inch by 17 inch paper;
- (2) Fifteen copies of all other information required by this section;
- (3) The applicable plat review fee; and
- (4) A complete list of the names and mailing addresses of all owners of record of all land within 185 feet of the perimeter boundaries of the proposed subdivision.

(c) *Application date.*

- (1) The director shall review the plat and other information and documentation submitted by the applicant and, within ten working days, determine if the application as submitted is complete.
- (2) If the application is determined to be complete, the director shall so notify the applicant by certified mail and shall forward the application to the commission for review at its next regularly scheduled meeting.
- (3) If the application is determined to be incomplete, the director shall return the application to the applicant with a written explanation specifying the additional information required to be submitted to complete the application. Notice of completeness/incompleteness shall be mailed by certified mail to the applicant not more than ten working days after submission by the applicant of the preliminary plat and required accompanying information as set forth in these regulations.

(4) At any time during the review process but prior to submission of the application to the commission, the subdivision review committee shall review and comment upon the application.

(5) For the purposes of these regulations, the date of the regular meeting of the commission, including any adjourned date thereof, at which time a complete preliminary plat is reviewed shall constitute the official submittal date of the plat. The 60 day period specified in RSMo § 89.420 for formal approval or disapproval of the plat will commence from the official submittal date of the preliminary plat.

(d) *Contents.* Preliminary plats for major subdivisions shall include all of the information items required by Section 26-44 plus the following:

- (1) Layout and width of right-of-way and cross sections showing surfacing of all streets and public ways proposed for the subdivision; horizontal and vertical profiles showing alignment of all streets and proposed street names;
- (2) If it is contemplated that the subdivision will be developed in phases, the following additional information shall be required:
 - a. A description of each of the proposed phases of development, with each phase clearly identified on all maps, drawings and plans.
 - b. The location of any and all temporary improvements for safe ingress and egress and access to all areas of each phase or phases of development on all maps, drawings and plans.
 - c. Each phase shall provide for the logical progression of streets and utilities, including but not limited to, sanitary sewers, stormwater management, electric, water, gas, cable television and street lighting.

Nothing in this section shall be construed to prohibit the combination of any or all phases of development into one phase, or fewer than originally planned. Any temporary improvements that are no

longer necessary solely due to the combination of two or more phases need not be constructed, provided the combined phases proposed meet the standards identified in Subsection (d)(2)b. above.

(e) *Action on the preliminary plat - public hearing.* Within 60 days after the submission of a complete preliminary plat to the commission, the commission shall hold a public hearing on the preliminary plat application. Notice of the hearing shall be published at least one time in an official newspaper or newspaper of general circulation in the city at least 15 days before the hearing. Notice by publication shall be the responsibility of the city. Written notice of the date, place, time and general subject of the hearing shall be mailed to the owners of record of all land within 185 feet of the perimeter boundary of the proposed subdivision. Notice by mail shall be the responsibility of the city; provided, however, that it shall be the responsibility of the applicant for subdivision approval to provide the city with the list of property owners of record to be noticed. The applicant shall be solely responsible for the accuracy of the list. Notice shall be mailed not less than 15 days before the hearing. The failure of a property owner to receive such notice by mail shall not be grounds for invalidating any action taken by the commission at the hearing.

(f) *Commission recommendation.* Following the hearing, but still within 60 days of submission of the complete preliminary plat, the commission shall make a recommendation to approve, to disapprove or to approve with conditions the preliminary plat and shall submit such recommendation to the council. The commission, with the consent of the applicant, may extend the 60 day period.

(g) *Guidelines for commission recommendation.* The commission shall consider the following criteria in making a recommendation on the preliminary plat:

- (1) The plat substantially conforms with an approved sketch plat reviewed in the preapplication conference.
- (2) The plat conforms to these regulations and the applicable provisions of the zoning ordinance and other land use regulations.

- (3) The plat represents an overall development pattern that is consistent with the goals and policies of the comprehensive plan, the major street plan, the official map, the capital

improvements program and any other applicable planning documents adopted by the city.

- (4) The development shall be laid out in such a way as to result in:
 - a. Good natural surface drainage to a storm sewer or a natural water course.
 - b. A minimum amount of grading on both cut or fill and preservation of good trees and other desirable natural growth.
 - c. A good grade relationship with the abutting street(s), preferably somewhat above.
 - d. Adequate width for the type and size of dwellings contemplated, including adequate side yards for light, air circulation, access and privacy.
 - e. An adequate depth for outdoor living space.
 - f. Generally regular shapes, avoiding acute angles and breaks in property lines.
 - g. Favorable building location not requiring excessive grading, footings or foundation walls, to the extent practicable.
 - h. Mitigation of adverse affects of excessive shadow, noise, odor, traffic, drainage and utilities on neighboring properties.

- (5) The plat contains a parcel, lot and land subdivision layout that is consistent with good land planning and site engineering design principles.
- (6) The location, spacing and design of proposed streets, curb cuts and intersections are consistent with good traffic engineering design principles.
- (7) The plat is served, or will be served at the time of development, with all necessary public utilities, including, but not limited

- to, water, sewer, gas, electric and telephone service.
- (8) The plat is served, or will be served at the time of development, with all necessary public facilities at appropriate levels of service standards as may be established in the comprehensive plan, major street plan and other documents. Such facilities include, but are not limited to, streets, fire protection, police protection, emergency medical services, schools, parks, recreation and open space and libraries.
- (9) The plat shall comply with the stormwater regulations of the city and all applicable storm drainage and floodplain regulations to ensure the public health and safety of future residents of the subdivision and upstream and downstream properties and residents. The commission shall expressly find that the amount of off-site storm water runoff after development will be no greater than the amount of off-site storm water runoff before development.
- (10) Each lot in the plat of a residential development has adequate and safe access to/from a local street. If lot access is to/from a collector or arterial street, the commission shall expressly find that such access is safe and that no other lot access or subdivision configuration is feasible.
- (11) The plat will be laid out and developed in a manner that is sensitive to environmental features and/or characteristics of the tract or parcel including, but not limited to, topography, slope, soils, geology, hydrology, floodplains, wetlands, vegetation and trees. If a proposed plat will require extensive grading, soil removal, fill, cuts and/or removal of mature trees, the commission shall expressly find that such actions represent the minimum necessary for safe and efficient use of the tract or parcel and that no other lot layout would be more effective at preserving environmental features and/or characteristics. Where extensive grading, soil removal, fill, cuts and/or removal of mature trees is proposed by the applicant, the commission shall urge the applicant to consider cluster or planned development
- to obtain the same number of lots but without environmental damage.
- (12) The plat is located in an area of the city that is appropriate for current development activity and which will not contribute to sprawl and leapfrog development patterns nor to the need for inefficient extensions and expansions of public facilities, utilities and services.
- (13) If located in an area proposed for annexation to the city, the area has been annexed prior to, or will be annexed simultaneously with, plat approval.
- (14) The applicant agrees to dedicate land, right-of-way and easements, as may be determined to be needed to effectuate the purposes of these regulations and the standards and requirements incorporated herein.
- (15) All relevant and applicable submission requirements have been satisfied in a timely manner.
- (16) Improvements may include any necessary upgrades to the adjacent existing roads and facilities to current standards and shall include dedication of adequate right-of-way to meet the needs of the city's transportation plan.
- (h) *Recommendation of disapproval.* If the commission recommends disapproval of the preliminary plat, the grounds for such recommendation shall be made a matter of record.
- (i) *City council.* Following action by the commission, the council shall review the application and the recommendation of the commission and either approve, conditionally approve or disapprove the preliminary plat. The council shall base its review and decision on the criteria listed in Section 26-45(g) herein and such other factors as it deems relevant and applicable.
- (1) If the preliminary plat is approved without conditions and meets the requirements of a final plat, the plat shall be considered to be an approved final plat and shall be subject only to the council's acceptance of all required dedications,

§26-70

and may be filed and recorded pursuant to Sections 26-46(h) and (i).

- (2) If the preliminary plat is approved with conditions, the applicant shall meet or arrange to meet the conditions and then proceed with the final plat approval process pursuant to Section 26-46.
- (3) If the preliminary plat is disapproved, the city clerk shall, within ten days of the council action, record the reasons for disapproval in the minutes of the city council meeting, notify the applicant in writing of the action and the reasons therefor and return the preliminary plat to the applicant.

(j) *Effect of preliminary plat approval.* Preliminary plat approval shall confer upon the applicant, for a period of two years from the date of approval, the right to proceed to final plat approval and to develop the subject tract or parcel pursuant to the terms and conditions pursuant to which the preliminary plat approval was granted by the city. The two year period may only be extended by the commission and only if the applicant has applied in writing for an extension and the commission determines that a longer period should be granted due to unusual circumstances. If no final plat on any portion of a subdivision for which preliminary approval has been granted is approved within said two year period, or such longer period as the commission may expressly allow, a re-submission of the preliminary plat (or a revised preliminary plat) shall be required pursuant to the then current subdivision regulations and any other applicable land use regulations or requirements. After approval of the preliminary plat, the applicant may proceed to prepare and file a construction plan as may be required for all public facilities and utilities to be provided, and may submit the proposed final plat to the commission for action.

(Code 1969, Sec. 20-4 & 20-8; G.O. 1264, 2-13-95; G.O. 1438, 7-29-96; G.O. 1766, 5-15-00; G.O. 2081, 3-14-05)

Sec. 26-46. Final plats - major and minor subdivisions.

(a) *Filing procedure.* The applicant shall file the following with the director 15 days prior to the commission meeting at which the final plat is to be reviewed:

- (1) Three reproducible originals, 15 full-size copies of the proposed final plat and 15 copies reduced to 11 inch by 17 inch paper;
- (2) The final plat in AutoCad format on a three and one-half inch floppy disk.
- (3) A minimum of 14 copies of the additional information required pursuant to Subsection (b) hereunder;
- (4) A completed application form;
- (5) The applicable fees for filing and recording the plat, and for review of the construction plans; and
- (6) An agreement in writing on a form provided by the city attorney that the developer will install all of the improvements required herein.

A final plat shall not be accepted for review after the date of expiration of the preliminary plat.

(b) *Information required.* The final plat shall be prepared on a mylar or similar quality material at a scale of no greater than one inch equals one hundred feet (1" = 100') with a maximum size of 24" X 36" or those dimensions required by the county department of records. The final plat shall show or have attached the following information:

- (1) Name of the subdivision;
- (2) Date, scale and north arrow;
- (3) Total acreage of the proposed subdivision;
- (4) The location of survey monuments "referenced in" on the ground so that they can be reproduced in the field;
- (5) The state plane coordinates tied to the city's geographic information system (GIS);
- (6) The location by section, township, range, county and state, including descriptive boundaries of the subdivision;
- (7) Abstract of title or other certificate establishing ownership interests and proof

(9/1/18)

that proper parties have signed the plat for all land in the subdivision;

- (8) The lines, profiles, typical sections and grades of all proposed streets, (which include sidewalks), and their widths and names;

SUBDIVISIONS

§26-70

- (9) An accurate delineation of any property offered for dedication to the city or another public entity for public use;
 - (10) The boundary lines of all adjoining lands for a distance of 100 feet and showing (with dotted lines) the right-of-way lines and adjacent streets and alleys with their widths and names;
 - (11) Building lines and easements for rights-of-way provided for public use, services or utilities, with figures showing their dimensions and listing uses that are being provided;
 - (12) All dimensions and bearings, both linear and angular, radii and arcs, necessary for locating the boundaries of the subdivision, blocks, lots, streets, easements, building lines and other areas to be dedicated for public or private use. The linear dimensions are to be expressed in feet and decimals of a foot;
 - (13) Area in square feet for each lot or parcel, which shall equal or exceed applicable zoning ordinance requirements;
 - (14) An accurate drawing of the proposed subdivision;
 - (15) Completed final construction plans conforming with the requirements of these regulations, for all roadway, grading, sanitary sewerage system, storm drainage facilities, water distribution system and other pertinent site improvements. Eight copies of such construction plans shall be submitted with the final plat;
 - (16) A copy of all deed restrictions and/or protective covenants and, if applicable, articles of incorporation and bylaws of a homeowner's association for the proposed subdivision; a copy of any amendments to the restrictions shall be submitted to the city as well;
 - (17) Other information pertaining to the proposed development as may be determined to be necessary from time to time by the commission to facilitate review of the final plat;
 - (18) A certificate from the city finance department indicating that there are no outstanding delinquent taxes, assessments or fees with respect to the property proposed for subdivision and/or the property owner; and
 - (19) Certification by a registered land surveyor, engineer or architect that all details of the plat are correct.
- (c) *Review procedures.* The final plat shall conform as closely as possible to the approved preliminary plat. All improvements and facilities to be provided by the developer shall be approved by the director and installed prior to the issuance of any building permit, or adequate security in lieu of making improvements shall be provided in accordance with Section 26-71 of these regulations. All required dedications and easements shall be offered by the developer before the council shall approve the final plat; approval of the final plat shall be as required in Section 26-46(e).
- (d) *Substantial deviation from preliminary plat.* Prior to submitting the final plat to the commission, the subdivision review committee shall review the plat for substantial deviation from the approved or conditionally approved preliminary plat. If the final plat for a subdivision is found to deviate substantially from the approved preliminary plat, the applicant will be required to submit a new final plat if the deviations are eliminated, or a new preliminary plat if the deviations are retained and shall not be insulated against changes in subdivision or other applicable land development regulations occurring between the original preliminary plat approval and the resubmission. Substantial deviations may include, but are not necessarily limited to, the following:
- (1) A change in the location or design of a public street or sidewalk;
 - (2) A change in the layout of lots or blocks;
 - (3) A change in access to lots;
 - (4) A change in areas, streets, rights-of-way or easements to be reserved or dedicated;
 - (5) A change in the drainage plan which increases the runoff from the tract;

(9/1/18)

- (6) A change in the public utilities and facilities to be provided;
- (7) A change in the location and/or configuration or number of parking spaces serving a multi-family residential development or a non-residential development;
- (8) A change in the area proposed for annexation, if relevant and applicable;
- (9) A change in the number and/or size of lots; and
- (10) A change in the extent of buffering between the proposed subdivision and adjacent areas and/or land uses.

(e) *Final plat approval.* Final plats for major subdivisions and minor subdivisions wherein dedications are required shall be denied, approved, or approved with conditions by the city council within 60 days of its consideration, and action shall be forwarded to the applicant by written notice from the city clerk. The official minutes of the city council meeting may be provided as written notification of action. Minor subdivisions wherein no dedications are required shall be denied, approved, or conditionally approved by the planning commission. Notification of the commission's actions shall be provided to the applicant within 60 days of consideration and shall be provided through the official minutes of the meeting.

(f) *Guidelines for decision.* The commission shall consider the following criteria in making a decision on the final plat:

- (1) That the final plat substantially conforms to the approved preliminary plat or corresponding phase thereof and any conditions and exceptions granted pursuant thereto.
- (2) That the final plat conforms to all applicable requirements of these regulations, the zoning ordinance and other applicable land development regulations.
- (3) That all submission requirements of these regulations have been satisfied.

(g) If the proposed final plat is approved, the director shall sign the plat. The applicant may then file and record the plat pursuant to Section 26-46(i). If the proposed final plat is disapproved, the secretary of the commission shall, within ten days of the commission action, record the reasons for disapproval in the minutes of the commission meeting, notify the applicant in writing of the action and the reasons therefore and return the final plat to the applicant.

(h) *Effect of final plat approval.* Final plat approval shall confer upon the applicant, for a period of five years from the date of approval, the right to apply for building permits and to develop the subject tract or parcel pursuant to the terms and conditions pursuant to which the final plat approval was granted by the commission or council; provided, however, that no final plat shall be filed and recorded unless and until approval by the commission/council has been endorsed thereon. No lot in the subdivision may be sold until the final plat and construction plans have been approved and the plat has been officially recorded. If the final plat is not recorded within 90 days after approval by the commission/council, the commission/council shall formally request the applicant to explain the extenuating circumstances preventing recordation of the final plat. The commission/council shall then determine whether provision of an extension would serve the best interests of the city. If these findings are negative, the commission/council shall revoke approval of the final plat and shall so notify the applicant, the city clerk and the county recorder of deeds.

(i) *Filing and recordation.* Within 90 days following final plat approval by the commission, the three reproducibles of the final plat shall be filed by the city clerk with the county recorder of deeds; after acknowledgement by the county recorder of deeds one copy shall be retained by the county recorder of deeds and two copies shall be returned to the city clerk, one copy to be retained by the city clerk and the other to be transmitted to the director. The applicant shall bear all expenses in connection with the filing of the final plat and the city clerk shall not be required to file the final plat until the applicant has paid the required filing fee. The city clerk shall be under no obligation to file the final plat until the applicable filing fee has been paid by the applicant and the applicant provides proof of acceptance of all dedications as required by the

preliminary or final plat approval. If not paid, and if the final plat is, therefore, not filed within 90 days of approval by the commission, the final plat shall be placed on the commission agenda for further action including, but not limited to, revocation of approval and/or imposition of additional conditions. Only after the final plat is filed by the city clerk shall the city clerk notify the county recorder of deeds to record the copy of the final plat retained by the county recorder of deeds.

(j) Occupancy permits shall not be issued for any structure within the boundaries of the subdivision until all of the required improvements have been constructed and are available to each lot in the subdivision and have been inspected and approved by the director of public works and transportation.

(k) Building permits shall not be issued for any structure within the boundaries of the subdivision until all of the required improvements have been constructed and are available to each lot in the subdivision and have been inspected and approved by the director of public works and transportation, or a designee thereof, or until satisfactory completion security in lieu of construction has been formally accepted by the city. A person may provide written notice to the director of community services, or a designee thereof, that a justifiable hardship would be created by the immediate installation of certain required improvements. The director of community services, or a designee thereof, shall determine if, in fact, a hardship is justified and such justification shall be based on the lack of availability of professional services required to install said improvements. Such lack of availability shall not extend beyond a six month time period. Timely construction of the improvements shall commence within one month following the expiration of this six month hardship period. Justifiable hardships based on any reason other than as noted in this section shall be approved, conditionally approved or denied in accordance with Section 26-130, "variances from the subdivision requirements," or acceptance by the city of satisfactory completion security in lieu of improvements.

(l) Partial building permits, as defined in Section 26-25 "partial building permits", may be issued by the chief building official prior to the completion of required improvements. In no event shall a partial building permit be issued without an executed agreement of the type referenced in Subsection (m) below.

(m) As a condition of the issuance of any permit requested and issued prior to the acceptance by the director of public works and transportation of street, electrical, water, gas, sewer, and other improvements, the developer shall execute a hold harmless and indemnity agreement in a form acceptable to the city attorney. Any such agreement shall provide that the developer agrees to hold harmless and indemnify the city from any cause of action or liability due to city failure to provide any service to the development due to the absence of such improvements.

(Code 1969, Secs. 20-5, 20-7 & 20-9; G.O. 1264, 2-13-95; G.O. 1438, 7-29-96; G.O. 1757, 3-20-00; G.O. 1766, 5-15-00; G.O. 1815, 2-20-01)

Sec. 26-47. Lot line adjustments.

(a) *Adjustment of lot lines between adjacent parcels.* No person shall record a deed or other document adjusting the property boundary not otherwise approved by the procedures of this chapter, unless a lot line adjustment is first approved by the director in the manner herein described.

- (1) Requests for lot line adjustments shall be made on forms provided by the director, shall provide all information necessary to enable the proposal to be properly evaluated, shall be accompanied by the required filing fee and by the preliminary record of survey showing the proposed new parcel boundaries and including complete legal descriptions.
- (2) After investigation and receipt of reports of other departments or affected agencies, the director shall approve the lot line adjustment, or approve it subject to conditions or exactions necessary to conform to zoning and building ordinances or to facilitate relocation of existing utilities, infrastructure or easements, or to assure that the record of survey map is properly recorded,

provided it is found in writing that the proposed lot line adjustment conforms to local zoning and building ordinances.

- (3) The time limits applicable to the approval or conditional approval of subdivisions as provided in Section 26-46(h) herein, shall apply to any such lot line adjustment.
- (4) If the proposed lot line adjustment is approved, the director shall sign the record of survey which shall contain a precise legal description of the adjusted property, supplied by the applicant and certified by a registered civil engineer or licensed land surveyor. Within 90 days following approval by the director, three reproduces of the lot line adjustment shall be filed by the city clerk with the county recorder of deeds; after acknowledgement by the county recorder of deeds, one copy shall be retained by the county recorder of deeds and two copies shall be returned to the city clerk, one copy to be retained by the city clerk and the other to be transmitted to the director. The applicant(s) shall bear all expenses in connection with the filing and the city clerk shall not be required to file the lot line adjustment until the applicant(s) has paid the required filing fee.

(b) *Notice of disapproval.* If the proposed lot line adjustment is disapproved, the director shall within 30 days after the application date, notify the applicant in writing of the action and the reasons therefore.

(c) *Minor subdivisions not precluded.* Nothing in this article shall preclude the applicant from filing a minor subdivision and recording a final plat in lieu of the lot line adjustment procedure.

(d) *Appeal.* An applicant may appeal the disapproval of a lot line adjustment in the same manner as provided in Section 26-132(a) Disapproval of Preliminary Plat by the director. (G.O. 1264, 2-13-95; G.O. 1438, 7-29-96)

Sec. 26-48. Lot split.

(a) *Lot split.* No person shall record a deed or other document adjusting the property boundary not otherwise approved by the procedures of this chapter, unless a lot split is first approved by the

director or his/her designee in the manner herein described.

- (1) The proposed lot split is part of a previously final platted and recorded subdivision, does not create more than three (3) lots of record and each recorded lot is less than ten (10) acres;
- (2) The proposed subdivision is in compliance with all other provisions of this section and any other ordinances and regulations of the City of St. Joseph and no substandard tract, parcel, or lot will be created;
- (3) The proposed lot split will satisfy the conditions set forth in this section without the construction of public streets, water facilities, storm drainage facilities, sanitary sewer, sidewalks and stormwater drainage detention facilities. It is the intent of this provision to limit the administrative approval of lot divisions to those cases in which the improvements required by these regulations already serve each proposed lot. If it is determined that the lot division shall require the addition of public utility easements or additional site improvements, the applicant shall be required to present their proposal to the planning commission or the city council for approval;
- (4) The proposed lot split subdivision will not create any non-conforming lots;
- (5) The proposed lot split will not result in substantial increase in service requirements, (e.g. utilities, traffic control, parks, schools, streets, nor interfere with the maintenance of existing service levels, e.g. additional curb cuts, repaving, etc.; and if the lot split does result in a substantial increase in service requirements, the applicant shall be required to present their proposal to the planning commission or the city council for approval
- (6) The lot split is consistent with the surrounding area and development. In determining consistency, the size dimension of lots previously developed,

the layout and design of existing subdivisions and the degree of deviation from previous development shall be considered; and

- (7) A lot of record may only be split or subdivided once using the administrative approval process. If an applicant wishes to further subdivide a previously administratively approved subdivision, the director or his/her designee shall deny the application.

(b) *Administrative denial of lot split.* If the director or his/her designee finds that any of the above listed circumstances cannot be met, these representatives shall deny the request for lot split and cause said application to be submitted for consideration at a regularly scheduled Planning Commission Meeting.
(G.O. 2859, 7-2-18)

Sec. 26-49. Lot combination.

(a) *Lot combination.* No person shall record a deed or other document adjusting the property boundary not otherwise approved by the procedures of this chapter, unless a lot combination is approved by the director or his/her designee in the manner herein described:

- (1) The proposed lot combination is in compliance with all other provisions of this chapter and subdivision regulations of the City of St. Joseph and no substandard lot will be created; and
- (2) The proposed lot combination involves property within a residential zoning district; or
- (3) The proposed lot combination involves property within zoning districts other than residential and the following conditions have been satisfied:
 - a. Upon a finding by the director or his/her designee that the proposed lot combination does not substantially increase the density of development or does not substantially increase demands on public infrastructure serving existing lots; or
 - b. The proposed lot combination shall not cause the relocation of any

existing public utilities, public utility easements and/or public right-of-way, or

- c. The lot combination creates a new lot that is consistent with the surrounding area. In determining consistency, the size and dimension of lots previously developed, the layout and design of existing subdivisions and/or development.

(b) *Administrative denial of lot combination.* If the director or his/her designee finds that any of the above listed circumstances cannot be met, these representatives shall deny the request for lot combination and cause said application to be submitted for consideration at a regularly scheduled planning commission meeting.
(G.O. 2859, 7-2-18)

Secs. 26-50--26-69. Reserved.

ARTICLE IV. ASSURANCE FOR COMPLETION AND MAINTENANCE OF IMPROVEMENTS

Sec. 26-70. Completion of improvements.

(a) Except for a single or two-family residential subdivision which may exercise the option provided in Subsections 26-71(a) through 26-71(e) as provided below, all applicants shall be required to complete, to the satisfaction of the director of public works and transportation all street, sanitary and other public improvements, as well as lot improvements on the individual residential lots of the subdivision or addition as required in Article V of these regulations prior to approval of the final plat for the subdivision. The required improvements shall be those specified in the approved street improvement plan(s) and said improvements shall be initiated within two years.

(b) As a condition of preliminary plat approval, the commission may require the applicant to deposit in escrow a deed describing by metes and bounds and conveying to the city all street rights-of-way, easements and public land required by these regulations, pending acceptance of improvements by the city and recordation of the final plat. In the event the applicant is unable to complete the required improvements, and such improvements are deemed necessary for the preservation of the public health and safety, the

§26-70

city may compel the delivery of the deed in order to complete the improvements as required. (G.O. 1264, 2-13-95; G.O. 1438, 7-29-96; G.O. 1766, 5-15-00; G.O. 1997, 1-5-04)

Sec. 26-71. Improvement agreement and guarantee of completion of public improvements.

(a) *Subdivision improvement agreement.* The commission may waive the requirement of Section 26-70(a) for the completion of required improvements prior to issuance of building permits and, in lieu thereof, may permit the applicant to enter into a subdivision improvement agreement by which the applicant covenants and agrees to complete all required public improvements no later than five years following the date upon which the final plat is signed. Such five-year period may be extended for up to an additional five years upon its expiration at the discretion of the director of public works and transportation. The commission may also require the applicant to complete and dedicate some required public improvements prior to approval of the final plat and to enter into a subdivision improvement agreement for completion of the remainder of the required improvements during such five-year period. The applicant shall

covenant to maintain the required public improvements for a period of two years following acceptance by the city of all required public improvements and shall provide a warranty that all required public improvements shall be free from defect for a period of two years following such acceptance by the city. The subdivision improvement agreement shall contain such other terms and conditions as are agreed to by the applicant and the city.

(b) *Covenants to run with the land.* The subdivision improvement agreement shall provide that the covenants contained therein shall run with the land and bind all successors, heirs and assignees of the applicant. The subdivision improvement agreement shall be recorded with the county recorder of deeds. All existing lienholders shall be required to subordinate their liens to the covenants contained in the subdivision improvement agreement.

(c) *Completion security.*

- (1) Whenever the commission permits an applicant to enter into a subdivision improvement agreement, the applicant shall be required to provide sufficient security to ensure completion of the required public improvements. Such security shall be in the form of a surety bond, cash escrow or letter of credit.
- (2) The surety bond, cash escrow or letter of credit shall be in an amount estimated by the director of public works and transportation as reflecting the cost of the improvements in the approved construction plan and shall be sufficient to cover all promises and conditions contained in the subdivision improvement agreement.
- (3) In addition to all other security, when the city participates in the cost of an improvement, the applicant shall provide a performance surety bond from the contractor, with the city as a co-obligee.
- (4) The issuer of any surety bond shall be subject to the approval of the city attorney.

(d) *Escrow agent.* If security is provided in the form of a cash escrow, the applicant shall

deposit same with the director of finance and with an escrow agent mutually agreed upon by the director and the applicant subject to council approval and audit, a cash amount or certified check endorsed to the escrow agent for a face value in an amount not less than the amount specified by the director of public works and transportation pursuant to Section 26-71(c)(2).

(e) *Accrual.* The surety bond or cash escrow account shall accrue to the city for administering the construction, operation and maintenance of the improvements.

(f) *Maintenance security.*

- (1) The applicant shall guarantee the improvements, excluding sidewalks and streetlights, against defects in workmanship and materials for a period of two years from the date of city acceptance of such improvements. The maintenance security shall be secured by a surety bond, cash escrow or letter of credit in an amount reflecting 50% of the cost of the completed improvements pursuant to Subsection 26-71(c)(2).
- (2) If the applicant has entered into a subdivision improvement agreement for the completion of required improvements, the surety bond, cash escrow or letter of credit may be retained by the city in lieu of the maintenance security, provided the total amount of the surety bond, cash escrow or letter of credit reflects 50% of the cost of the completed improvements pursuant to Subsection 26-71(c)(2).
- (3) The applicant shall enter into a maintenance agreement with the city providing the applicant's guarantee of the improvements as required by Section 26-71(f)(1). The maintenance agreement shall be accompanied by maintenance security in the form of a surety bond, cash escrow or letter of credit totaling 50% of the costs of all completed improvements pursuant to Subsection 26-71(c)(2). The maintenance security shall run with the land and bind all successors, heirs and assignees of the applicant and shall be filed with the city clerk's office.

- (4) The city shall have the right, by ordinance, to waive the maintenance security on those sanitary sewers and street improvements constructed between March 6, 1961, and January 1, 1979; provided said improvements were built to city specifications, were inspected and approved by the director of public works and transportation and have been in use for two or more years.

(Code 1969, Sec. 20-16; G.O. 1264, 2-13-95; G.O. 1438, 7-29-96; G.O. 1766, 5-15-00)

Sec. 26-72. Temporary improvements.

The applicant shall construct and pay for all costs of temporary improvements required by the commission and shall maintain said temporary improvements for the period specified by the commission.

(G.O. 1264, 2-13-95; G.O. 1438, 7-29-96)

Sec. 26-73. Governmental units.

Governmental units to which these improvement and security provisions apply may file, in lieu of the agreement and security, a certified resolution or ordinance by the officers or directors authorized to act on their behalf, agreeing to comply fully with all applicable provisions of these regulations.

(G.O. 1264, 2-13-95; G.O. 1438, 7-29-96)

Sec. 26-74. Construction of improvements.

(a) *Construction plans.*

- (1) Following approval of the preliminary plat, the applicant shall have prepared, by a professional engineer, architect or land surveyor registered in the State of Missouri, construction plans, consisting of complete construction drawings of all easements, streets, street lights, sanitary sewers, storm water facilities, water system facilities, sidewalks and other improvements as are required by the director of public works and transportation, including specifications, for that portion of the subdivision to be covered by the final plat. Construction plans shall be submitted to the director of public works and transportation for review and approval.

- (2) All improvements required pursuant to these regulations shall be constructed in accordance with the design standards and plan requirements of these regulations, the standards and specifications of the city and, where applicable, the requirements and authorization of the appropriate state agency, utility company or local franchisee.

- (3) Public utility companies that service the subdivision shall provide a construction plan for the utility being installed to the director of public works and transportation prior to construction. The plans should be submitted prior to, or at the same time as, the construction plans submitted by the subdivider.

(b) *Completion of sidewalks.* It shall be the responsibility of the developer and/or owner of record of undeveloped lots to complete all sidewalks after three years of initial construction, the owner of record of the undeveloped lots shall provide additional approved surety to extend the timeline of completion of the sidewalks an additional two years, not to exceed five years from the recordation of the final plat. The right-of-way shall be graded and compacted per city standards and Section 26-103 of this chapter on each side of the street in preparation for installation of five foot wide concrete sidewalks. Concrete shall be placed on the base at the time that individual homes are constructed or at the end of the initial three year period, or at the end of the maximum five year extended period, with proper approved surety, from when the final plat is recorded, whichever occurs first. The developer of record shall be responsible for the completion of sidewalks adjacent to any open space or common area at the time of the construction of street improvements.

(c) *Construction plan requirements*

- (1) General. The construction plan shall be prepared by a professional engineer, architect or land surveyor registered in the State of Missouri. Five copies of the construction plan shall be submitted to the director of public works for review. The construction plan shall be at any scale from one inch equals ten feet (1" =

10') through one inch equals one hundred feet (1" = 100'), so long as the scale is an increment of ten feet and is sufficiently clear in reflecting details of the proposed construction. Construction plans shall be prepared on 24" x 36" sheets. The preliminary plat or title page shall be used as the cover sheet for the construction plan. The plan shall generally consist of the following:

- a. The preliminary plat for the project drawn on the existing topographic survey of the property.
- b. Roadway construction plan, profile and detail sheets.
- c. Sanitary sewer system construction plan, profile and detail sheets.
- d. Storm water management plan showing plan and profile of storm sewer and drainage facilities, detail sheets, hydrological and hydraulic calculations and other information as required by the director of public works and transportation.
- e. Proposed grading cross sections and final contours in critical drainage areas.
- f. Water distribution system construction plan and details.

Each of the above items shall be shown on separate sheets.

- (2) Roadway construction detail sheets. All construction details pertaining to the roadway improvements (e.g., pavement details, pavement width, curbing, sidewalk, unpaved areas, entrances, lighting, etc.) shall be shown on typical section and in plan and profile. Specific details shall include, but not be limited to:
 - a. Pavement installation, widening or resurfacing improvements dimensioned and developed in accordance with the standards available from the department of public works and transportation;
 - b. Pavement widening and resurfacing improvements in the right-of-way as measured from the centerline;
 - c. Mathematical profile grade and elevations at 25 feet intervals on vertical curves and 50 feet intervals

on tangent sections for all roadway construction. Elevations at quarter point intervals along pavement edge at street intersection corners;

- d. Resurfacing profile grade elevations on existing centerline and edges of pavement at 25 feet intervals and breaks in grade (i.e., irregularities in pavement);
 - e. Jointing plan and details for portland cement concrete pavement; and
 - f. Type and location of entrance construction.
- (3) Sanitary sewer, storm drainage and water line plan and profile sheets. All construction details pertaining to the sanitary sewerage, storm drainage and water distribution system improvements shall be prepared in accordance with all requirements of these regulations and other pertinent city regulations and standards and shall be shown in plan and profile. With the approval of the public works and transportation director, profiles may be omitted from water distribution system drawings. Specific details shall include, but shall not be limited to:
 - a. Existing ground and finished grade shown and designated;
 - b. Methods to be used in repairing open trenching of pavement;
 - c. Limits of backfill and pavement replacement at all crossings of existing roadway surfaces not bored;
 - d. Location of all utilities to be encountered in construction. Plans must be submitted to all utilities for verification of conflicts. Contact the public works and transportation director regarding all major utility conflicts within road rights-of-way; and
 - e. Proof of plan approval by any other political subdivisions having jurisdiction over any aspect of the proposed development must be received prior to construction plan approval.
 - 4) Grading plan and cross section sheets. A grading plan for the entire tract within the preliminary plat shall be provided. All grading details pertaining to site development shall be shown in plan or on

cross section sheets. Specific details shall include, but shall not be limited to:

- a. Existing and proposed contours, normally at two foot intervals, in critical drainage areas. Contour intervals for grading plans other than the above will require special approval.
- b. Site grading shall be compatible with ultimate roadway elevations.
- c. Where required by the director of public works and transportation, cross sections showing existing ground and finished grades plotted at scale of not less than one inch equals one hundred feet (1" = 100') horizontal and one inch equals ten feet (1" = 10') vertical.

(d) *Construction schedule.* Prior to submitting the construction plans to the director of public works and transportation, the applicant shall submit the construction plans to all applicable reviewing agencies and to the public utility companies that will service the subdivision and shall create a general schedule of the timing and sequence of construction for all required improvements which shall be submitted to the director of public works and transportation.

(e) *Timing of improvements.* Except upon the written approval of the director of public works and transportation, no grading, removal of trees or other vegetation, land filling, construction of improvements or other material change, except for purposes of aiding in preparation of final engineering drawings or plans, shall commence on the subject property until the applicant has:

- (1) entered into a subdivision improvement agreement with the city for completion of all required improvements;
- (2) received approval of the construction plans and all necessary permits from the director of public works and transportation; and
- (3) obtained necessary approvals and permits from other affected municipal, county or state agencies.

(f) *Modification of construction plans.* All installations of improvements and all construction shall conform to the approved construction plans. If the applicant chooses to make minor

modifications in design and/or specifications during construction, such changes shall be made at the applicant's own risk, but only with the written approval of the director of public works and transportation. It shall be the responsibility of the applicant to notify the director of public works and transportation in advance of any changes to be made from the approved drawings. In the event that actual construction work varies from that shown on the approved construction plans and such variance was not approved in advance by the director of public works and transportation, the applicant may be required to correct the installed improvements so as to conform to the approved construction plans. In addition, the city may take such other actions as may be deemed appropriate including, but not limited to, revocation of plat approval and/or permits already issued and/or withholding of future approvals and permits.

(g) *Record drawings.*

- (1) Prior to final inspection of the required improvements, the applicant shall submit to the director of public works and transportation one reproducible copy and two prints of record engineering drawings for each of the required improvements that has been completed. Each set of drawings shall be recertified by the applicant's engineer indicating the date when the record survey was made.
- (2) Sewer and storm drainage. Record drawings shall show the constructed vertical elevation, horizontal location and size of all sanitary and storm sewers, manholes, inlets, junction boxes, detention basins and other appurtenances or elements of the sewerage and storm drainage systems constructed to serve the subdivision.
- (3) Streets and street lights. Unless otherwise required by the director of public works and transportation, record drawings for roadways or street improvements shall be limited to a survey of the street centerline, with final profile elevations recorded on the drawings at 100 foot intervals, plus the notation of changes in horizontal alignment or intersection geometrics which may have been made during

construction, and the location of street lights.

- (4) Water. Record drawings for water lines, valves, fire hydrants and other appurtenances or elements of the water distribution system constructed to serve the project shall be limited to horizontal location and size of water lines and location and description of valves with dimensional ties as may be required by the director of public works and transportation.

- (5) Sidewalks. Record drawings showing location with respect to the street right-of-way, width and vertical elevation.

(h) *Inspection and acceptance of improvements.*

- (1) Required. All improvements required by these regulations shall be inspected by the director of public works and transportation or his designee, except for improvements made under the jurisdiction of other public agencies, in which case engineers or inspectors of such agency will make the necessary inspections. Where inspections are made by other agencies, the applicant shall provide the city with written reports of each final inspection.
- (2) Inspection schedule. It shall be the responsibility of the applicant to notify the director of public works and transportation of the commencement of construction of improvements 24 hours prior thereto.
- (3) Compliance with standards. The applicant or the bonded construction contractor shall bear full and final responsibility for the installation and construction of all required improvements according to the provisions of these regulations and the standards and specifications of other public agencies.
- (4) Inspection. All construction within a proposed or existing public right-of-way must be inspected during construction and prior to final acceptance of the

improvements. The developer has two options for inspection services:

- a. The developer will provide inspection services per the requirements set by the director of public works and transportation, per Section 25-90; or
- b. The city will provide the service through contracted consulting engineer(s) and the costs of said inspections, testing and reporting shall be paid by the developer to the city.

(5) Acceptance.

- a. Approval of the installation and construction of improvements by the director of public works and transportation shall not constitute acceptance by the city of the improvement for dedication purposes. Such acceptance shall be made only by ordinance adopted by the council, if deemed appropriate.
- b. The city shall not have any responsibility with respect to any street or other improvement, notwithstanding the use of the same by the public, unless the street or other improvements shall have been accepted by ordinance by the council.
- c. When improvements have been constructed in accordance with the requirements and conditions of these regulations and the specifications of the city, and the applicant has submitted as-built reproducibles to the director of public works and transportation, the director shall submit to the council, within 30 days, an ordinance to accept the improvements for maintenance by the city, except that this shall not apply to sewers which are not in an established sewer district.
- d. Upon the receipt by the council of a proposed ordinance accepting the improvements, as prepared by the director of public works and transportation certifying that all improvements have been installed in conformance with the approved construction plans and with the requirements of these regulations and all other applicable statutes,

ordinances and regulations, the council shall formally accept such improvements.

(G.O. 1264, 2-13-95; G.O. 1438, 7-29-96; G.O. 1766, 5-15-00)

- (6) Site cleanup. The applicant shall be responsible for removal of all equipment, material, dirt, gravel, straw and general construction debris from the subdivision and from any lot, street, public way or property therein or adjacent thereto. Dumping of such debris into sewers, onto adjacent property or onto other land in the city is prohibited.

(Code 1969, Secs. 20-17--20-19; G.O. 1264, 2-13-95; G.O. 1438, 7-29-96; G.O. 1766, 5-15-00; G.O. 2041, 8-30-04; G.O. 2301, 10-6-08)

Sec. 26-75. Failure to complete improvements.

If a subdivision improvement agreement has been executed and security has been posted and required public improvements are not installed pursuant to the terms of the agreement, the city may:

- (1) Declare the subdivision improvement agreement to be in default and require that all public improvements be installed regardless of the extent of completion of the development at the time the agreement is declared to be in default;
- (2) Suspend final plat approval until the public improvements are completed and record a document to that effect with the county recorder of deeds for the purpose of public notice;
- (3) Obtain funds pursuant to the surety and complete the public improvements by itself or through a third party;
- (4) Assign its right to receive funds pursuant to the surety in whole or in part to any third party, including a subsequent owner of the subdivision or addition for whom the public improvements were not constructed, in exchange for the subsequent owner's agreement to complete the required public improvements; and/or
- (5) Exercise any other rights available under the law.

Secs. 26-76--26-99. Reserved.

ARTICLE V. IMPROVEMENTS

Sec. 26-100. Adequacy of improvements/required minimum improvements.

(a) *Adequate public facilities.* The property proposed for subdivision must be adequately served by essential public facilities, services and access. Land shall not be approved for development unless and until adequate public facilities exist or provision has been made for water, wastewater, drainage, emergency access and transportation facilities that are necessary to serve the proposed development, whether or not such facilities are located on the property being subdivided or are off-site. This policy may be further defined or supplemented through the standards contained herein and such standards as are commonly applied by the department of public works and transportation. All facilities and services described herein must be designed in conformance with adopted city plans, policies and specifications and shall be provided at the applicant's cost.

(b) *Minimum improvements.* The applicant shall install or provide for the installation of the following identified minimum improvements, which are further specified in this section.

- (1) Monuments. Sufficient monuments placed at critical points within the subdivision so as to definitely establish the boundaries and points needed to rerun the survey.
- (2) Streets and street lights. Streets and street lighting which provide a safe, convenient and functional system for vehicular and pedestrian circulation and which are consistent with the major street plan, official map, comprehensive plan and other applicable state and local street plans and any amendments thereto, and which are appropriate for the particular traffic characteristics of the proposed subdivision.

- a. All streets shall be constructed in accordance with the functional classification and the specifications on file in the office of the director of public works and transportation that are current at the time of final approval of the subdivision plat by the council, and in compliance with Section 26-102 of these regulations.
 - b. Developers may choose either the cobra head light and standard pole or a “period” light and standard period pole. Once installed, the city will pay the ongoing maintenance cost equal to that of a cobra head light only. The difference in ongoing maintenance and energy cost between the cobra head and “period” lights shall be the responsibility of the developer, and can be satisfied through the creation of a neighborhood improvement district (NID), in conformance with state statutes which shall reimburse to the city the monthly cost differential per fixture/pole as charged by the local electric utility company.
 - c. The NID described in subsection b above shall be established prior to the city council approval of the final plat for said development.
- (3) Sanitary sewers. An approved sanitary sewer system and lateral connections for each lot to the public sanitary sewer system. Septic tanks shall be allowed only for lots of three acres or larger created by minor subdivision as provided by ordinance.
 - (4) Storm sewers. Compliance with the requirements of the stormwater management code of the city.
 - (5) Sidewalks. Sidewalks to provide for the safe pedestrian movement from the subdivision to public intersections and along all subdivision boundaries which abut the public right-of-way but not to exceed the scope of the subdivision. The intent is to provide a fully integrated, uninterrupted pedestrian circulation system.
- (6) Water. Connection to a public water system with adequate water pressure that is capable of providing potable water for drinking and water for health and emergency purposes, including adequate fire protection.
(Code 1969, Sec. 20-14; G.O. 1264, 2-13-95; G.O. 1438, 7-29-96; G.O. 1766, 5-15-00; G.O. 2042, 8-30-04)
- Sec. 26-101. Design specifications.**
- (a) *Planning.* Design of the development shall take into consideration all existing local and regional plans for the city, the county and for surrounding communities.
 - (b) *Site analysis.* Development of the site shall be based on the site analysis. To the maximum extent practicable, subdivision design, lot layout, public improvements and proposed development shall be located to preserve the natural features of the site, to avoid degradation of areas of environmental sensitivity and to minimize negative impacts to, and alteration of, natural features.
 - (c) *Preservation.* The following specific areas shall be preserved as undeveloped open space, to the extent consistent with the reasonable utilization of the land in the proposed subdivision as a whole, and in accordance with applicable state or local regulations:
 - (1) Unique and/or fragile areas, including wetlands as defined in Section 404 of the Federal Water Pollution Control Act Amendments of 1972, and delineated on wetland maps prepared by the U.S. Fish and Wildlife Service, field verified by on-site inspection;
 - (2) Lands in the floodplain, as defined by applicable state and/or local regulations;
 - (3) Steep slopes in excess of 20% as measured over a ten foot interval, unless appropriate engineering measures concerning slope stability, erosion and resident safety are taken;

- (4) Historically significant structures and sites, as designated by appropriate federal, state or local regulations.

(d) *Site design.* The development shall be laid out to avoid adversely affecting ground water and aquifer recharge; to minimize cut and fill; to avoid unnecessary impervious cover; to prevent flooding; to provide adequate access to lots and sites; and to mitigate adverse effects of shadow, noise, odor, traffic, drainage and utilities on neighboring properties.

(e) *Corner lots.* Corner lots must be planned and platted large enough to accommodate uniform setbacks in both directions along property lines and provide an unobstructed sight triangle of a minimum of 30 feet along each of the right-of-way lines of the intersecting streets. Within the sight triangle area, there shall be a cleared space with no obstructions between the height of three feet and ten feet above the average grade of each street, as measured from the center line.

(G.O. 1264, 2-13-95; G.O. 1438, 7-29-96)

Sec. 26-102. Street design.

(a) *Generally.* The proposed street pattern within a subdivision shall be related to and coordinated with the comprehensive plan, the major street plan, the official map and state highway plans as have been duly adopted. Except for courts and cul-de-sacs, streets shall connect with existing or already dedicated streets in adjoining or adjacent subdivisions or shall provide for future connections to adjoining unsubdivided tracts, or shall be a reasonable projection of streets in the nearest subdivided or unsubdivided tracts.

(b) *Dead-end, cul-de-sac streets.* Dead-end streets are prohibited in a subdivision except as a stub to permit future street extension into adjoining tracts or when intentionally designed as a cul-de-sac street. A cul-de-sac street shall provide a turnaround at its terminus with a right-of-way of not less than 50 feet and an outside curb radius of 40 feet, and shall be no longer than 750 feet measured from the farthest point of the cul-de-sac right-of-way to the edge of the right-of-way of the intersecting through street.

(c) *Angle of intersection.* Streets in subdivisions shall be laid out so as to intersect as nearly as possible at right angles except where

topography, lot layout, subdivision design or other conditions justify variations. The minimum angle of intersection of streets generally shall be 70°. Local streets shall be laid out so that their use by through traffic will be discouraged.

(d) *Multiple crossings.* No more than two streets shall cross at the same point in a subdivision.

(e) *Offsets.* Streets entering the opposite sides of a street in a subdivision shall either be directly across from each other, offset by at least 200 feet from center line to center line or equidistant from adjacent intersections.

(f) *Marginal access streets (frontage or service road).* Where a subdivision abuts or contains an existing arterial street or highway or railroad right-of-way, the commission may require marginal access streets or other treatment as may be necessary for the adequate protection of residential properties and to afford separation of through and local traffic.

(g) *Railroad crossings.* Where a subdivision abuts a railroad right-of-way, streets crossing the railroad at grade shall be kept to a minimum and shall be located to facilitate grade separation.

(h) *Alleys.* Alleys shall be provided in subdivisions in commercial and industrial districts, except that this requirement may be waived where other definite and assured provision is made for service access, such as off-street loading, unloading and parking consistent with and adequate for the uses proposed. Except where justified by special conditions, such as the continuation of an existing alley in the same block, alleys are not required in residential districts.

(i) *Half-streets, reserve strips.* Dedication of half-streets in subdivisions will not be approved, except where it is essential to the reasonable development of the subdivision and in conformity with the other requirements of these regulations, where it is found that it will be practicable to require the dedication of the other half when adjoining property is subdivided or where it is necessary to acquire the remaining half by condemnation so it may be improved in the public interest. Reserve strips in subdivisions will not be approved.

§26-70

(j) *Street grades.* There shall be a minimum center line grade of one-half percent in subdivision streets. The director of public works and transportation may require a greater minimum grade to facilitate drainage according to paving type. Wherever practicable grades should not exceed ten percent.

(k) *Curb radii.* Where two local streets in a subdivision intersect at approximately right angles, the curb at each block corner shall be rounded with a radius of not less than 15 feet. At all other intersections or where local streets intersect at an angle of less than 80° the curb radii shall be subject to the approval of the director of public works and transportation.

(l) *Street names.* All streets in subdivisions shall be named so as to eliminate confusion or duplications with names of existing city streets, and if a street is a continuation of a named street, the extension of the street shall bear the name of the existing street or if the new street is in alignment with an existing street, as determined by the director of public works and transportation, it shall bear the name of the existing street. All proposed names of streets shall be submitted to the commission for approval.

(m) *Islands.* Islands in subdivision streets are prohibited unless permanent surfacing is installed or the applicant agrees to maintain the islands.

(n) *Street widths.* The minimum width for each type of public street in a subdivision shall be as follows:

- (1) Freeway. Right-of-way width and pavement width of a freeway shall conform to the design standards of the state highway department.
- (2) Expressway. Right-of-way width and pavement width of an expressway shall conform to the design standards of the state highway department.
- (3) Arterials, primary. Right-of-way width of a primary arterial street shall be 84 feet, to allow for four, 12 foot wide traffic lanes and up to two, ten foot wide parking lanes; or, six, 12 foot wide traffic lanes.
- (4) Arterials, secondary. Right-of-way width of a secondary arterial street shall be 70 feet, to allow for two, 12 foot wide traffic lanes and two, ten foot wide parking lanes; or, for four, 12 foot wide traffic lanes.
- (5) Boulevard. Right-of-way width of a boulevard shall be 150 feet but may be reduced to as little as 70 feet where structures or other significant restrictions to width exist. Boulevards are to be built to the standard of its functional classifications and in addition will have a four foot bike lane in each travel direction and a 16 foot wide landscaped median except in the width restricted

corridors. (See boulevard system master plan.)

- (6) Parkway. Right-of-way width and pavement width of a parkway will vary according to specific local conditions.
- (7) Collectors, nonresidential. Right-of-way width of a nonresidential collector street shall be 60 feet with two, 12 foot wide traffic lanes and two, ten foot wide parking lanes.
- (8) Collectors, residential. Right-of-way width of a residential collector street shall be 60 feet, with two, ten foot wide traffic lanes and two, eight foot wide parking lanes.
- (9) Local streets, high density. Right-of-way width of a high density local street shall be 50 feet, with two, ten foot wide traffic lanes and two, eight foot wide parking lanes.
- (10) Local streets, low density. Right-of-way width of a low density local street shall be 50 feet, with two, ten foot wide traffic lanes and one, seven foot wide parking lane.

(o) *One-side parking.* Where parking is recommended on one side of the street only, the applicant shall designate the side of the street on which parking shall be allowed.

(p) *Abutting arterials or collectors.*

- (1) If a proposed subdivision abuts or is served by an existing or proposed arterial or collector street, as shown on the major street plan, which does not have a paved surface conforming to the standards established by the city, the director, at the preapplication conference shall inform the applicant of the requirement that the city standard be met; and that the responsibility for meeting the standard is

borne jointly by the applicant and the city to enhance the roadway to meet anticipated service levels. The applicant shall identify all such streets on the preliminary plat as required by Section 26-44(9).

- (2) The applicant shall indicate to the city how the necessary street paving will be accomplished to ensure that the residents of the subdivision do not have to drive on unpaved streets which do not meet city standards. Acceptable methods of assuring that applicable streets will be paved include the following: actual completion of the required paving pursuant to Section 26-70(a); a subdivision improvement agreement pursuant to Section 26-71(a); performance security pursuant to Section 26-71(c); payment of an amount, as estimated by the director of public works and transportation, necessary to complete the required improvement; successfully petitioning for the creation of a special assessment benefit district by which all property owners abutting or served by the street improvement contribute *pro rata* to the total amount needed to complete the required improvement; and executing a reimbursement agreement by which the applicant pays the full amount needed to complete the improvement and obtains reimbursement from other benefited properties as they develop.

(Code 1969, Sec. 20-10; G.O. 1264, 2-13-95; G.O. 1438, 7-29-96; G.O. 2360, 11-30-09)

Sec. 26-103. Sidewalks.

(a) *Grading.* Sidewalks shall be graded on both sides of the street on all lots within the proposed subdivision as determined by the specifications on file in the department of public works and transportation.

(b) *Temporary sidewalks.* Temporary sidewalks shall meet the requirements of city standards and shall be constructed and maintained at the time of street construction. Temporary sidewalks will be allowed for a period of three years from the date of the filing of the final plat with the recorder of deeds, after which the developer will be responsible for the installation of permanent sidewalk construction.

(c) *Construction.* A concrete walk at least five feet in width and four inches thick shall be provided continuously on both sides of each street for each block in the subdivision. This standard shall be considered a minimum and may be increased at the discretion of the director of public works and transportation for areas adjacent to or in the vicinity of schools, parks and other locations with significant pedestrian traffic.

(d) *Curbs.* Curbs at intersections shall be designed and constructed to provide a ramp for wheelchairs and/or bicycles in accordance with the American Disabilities Act (ADA) as set forth in city standards.

(G.O. 1264, 2-13-95; G.O. 1438, 7-29-96; G.O. 2043, 8-30-04)

Sec. 26-104. Blocks.

(a) *Length.* Blocks should have a maximum length of 1,320 feet and so far as practicable, a minimum length of 500 feet.

(b) *Depth.* Residential blocks shall normally be of sufficient depth to accommodate two tiers of lots, except where lots border on a freeway, parkway, expressway, drainageway or railroad right-of-way.

(c) *Pedestrian crosswalks.* Pedestrian crosswalks with a right-of-way width of not less than ten feet may be required on long blocks or when determined to be necessary to provide circulation or access to schools, playgrounds, shopping centers or other community facilities.

(d) *Double frontage.* Double frontage lots are prohibited except along a freeway, expressway, parkway drainageway, railroad right-of-way or other areas as specified by the director of public works and transportation.

(Code 1969, Sec. 20-11; G.O. 1264, 2-13-95; G.O. 1438, 7-29-96)

Sec. 26-105. Lots.

(a) *Lot size.* Minimum lot size shall be governed by the zoning ordinance except that where on-site sewage disposal is proposed, larger areas may be required as recommended by the health department on the basis of topography and soil investigations.

§26-70

(b) *Street frontage.* All lots shall have a frontage (approved by the commission or, in the case of a minor subdivision, by the director) upon a publicly dedicated street or a street that has received legal status as such.

(c) *Lot lines.* Lot lines shall be at approximate right angles or at radials to street lines.

(d) *Lot remnants.* No lot remnants which fail to meet the minimum lot size requirements for the zoning district in which the subdivision lies shall be allowed to remain after subdivision. To the extent that any such lot remnants would exist, they shall be added to other lots in the subdivision.

(Code 1969, Sec. 20-12; G.O. 1264, 2-13-95; G.O. 1438, 7-29-96)

Sec. 26-106. Sewerage facilities.

(a) *Department of public works and transportations standards and specifications.* The applicant shall install sanitary sewer facilities in a manner prescribed by the department of public works and transportation and in accordance with approved city standards and specifications.

(b) *Adequacy of sewerage facilities.* The sanitary sewer system shall be adequate to handle the necessary sewerage flow based upon the estimated demand generated by complete development of the subdivision.

(c) *Issuance of certificate of occupancy.* All dwelling units and buildings shall be properly connected to an approved and functioning sanitary sewer system prior to the issuance of a certificate of occupancy. The applicant shall provide for the extension of sewer lines and/or create a sanitary sewer district for the purpose of providing sewerage facilities to the subdivision if no sewer lines or no sewer district exists for the land to be subdivided.

(d) *Planned sewer extensions.* If a public sanitary sewer system will be provided to the area within a six year period as indicated in the capital improvement program, the director of public works and transportation may require the installation of a capped system or dry lines (mains only) within the road right-of-way; or, the commission may require the subdivider to make a cash payment in lieu of making the improvement.

(e) *Septic systems.* The installation of septic systems shall be prohibited, except for lots of three acres or larger created by minor subdivision as provided by ordinance. Health department approval shall be required for all septic systems. (G.O. 1264, 2-13-95; G.O. 1438, 7-29-96)

Sec. 26-107. Stormwater management.

(a) *City stormwater management code.* All subdivision applications shall be in compliance with the stormwater management code of the city, Sections 7-165 *et seq.*, of the municipal code of the city.

(b) *Responsibility.* Each applicant for subdivision approval shall have the responsibility to provide approved stormwater runoff management facilities on-site to ensure adequate drainage and control of stormwater on the property during and after any construction on the site.

(c) *Stormwater management plan required.* No subdivision development shall increase the quantity or rate of stormwater emanating from the site except in accordance with an approved stormwater management plan adopted pursuant to the stormwater management code Section 7-165(h)(7).

(d) *Subdivision design.* Streets, blocks, depth of lots, parks and other areas shall be located and laid out in such a manner and the subdivision shall be designed so as to minimize the velocity of overland flow of stormwater, to allow maximum opportunity for infiltration of stormwater into the ground, to preserve and utilize existing and planned streams, channels and detention basins and include, wherever possible, streams and floodplains within parks and other public grounds as part of the drainage system. (G.O. 1264, 2-13-95; G.O. 1438, 7-29-96)

Sec. 26-108. Sedimentation and erosion control.

(a) Each subdivision shall conform to erosion control regulations as set out by the Missouri Department of Natural Resources Storm Water Regulations termed "General" or "Site Specific" permits.

(9/1/18)

(b) The subdivider shall be responsible for erosion control for grading within a subdivision or when the subdivision is being developed in multiple phases.

(c) When a single lot is being developed, the person obtaining the building permit shall be responsible for the erosion control.

(d) For the purpose of this section, land disturbing activity shall mean any use of land that results in any change in the natural cover or topography and that may cause or contribute to sedimentation. Sedimentation occurs whenever solid particulate matter, mineral or organic, is transported by water, air, gravity or ice from the site of its origin.

(e) Final plat approval for subdivision may not be given with respect to any development that would cause land disturbing activity unless either:

- (1) An erosion control plan has been submitted to and approved by the commission; or
- (2) The commission has examined preliminary plans for the development and it reasonably appears that an erosion control plan can be approved upon submission by the developer of more detailed construction or design drawings. However, in this case, construction of the development may not begin and no building permits may be used until the commission approves the erosion control plan.

(f) As a minimum, erosion control shall provide for the following:

- (1) Sedimentation shall not be permitted to enter any waterway or drainage ditch;
- (2) Sedimentation shall not be permitted to enter onto any public right-of-way;
- (3) Sedimentation shall not be permitted to enter onto any adjacent property.
(G.O. 1264, 2-13-95; G.O. 1438, 7-29-96)

(a) *Lighting plan.* Lighting shall be provided in accordance with a plan designated by the utility company, in conformance with the standards set forth in Subsection 26-109(d).

(b) *Spacing.* Spacing of lighting standards for arterial and collector streets shall be equal in conformance with lighting standards adopted by the public works and transportation department under Section 25-90 of the code of ordinances.

(c) *Standards.* The following minimum standards shall apply to the street lighting design in new subdivisions, on streets designated on the functional class map as local, associated with the type of fixture selected for deployment. Street lighting deployed on collector or arterial streets shall comply with the standards set forth by the public works and transportation department under Section 25-90 of the code of ordinances. Lighting and spacing standards for local streets are specified as follows: at intersections and at cul-de-sacs that are more than 200 feet in length and at 400 foot intervals for blocks exceeding 400 feet in length.

(d) *Height.* The maximum height of light standards shall not exceed the maximum building height permitted in the district, or 27 feet, whichever is less.

(e) *Hazards, nuisance.* The height and shielding of lighting standards shall provide proper lighting without hazard to drivers or nuisance to residents, and the design of lighting standards shall be of a type appropriate to the development and the city.

(f) *Spotlights.* Spotlights, if used, shall be placed on light standards pointing toward the building and positioned so as not to blind the residents, rather than on the buildings and directed outward which creates dark shadows adjacent to the buildings.
(G.O. 1264, 2-13-95; G.O. 1438, 7-29-96; G.O. 1766, 5-15-00; G.O. 2044, 8-30-04; G.O. 2302, 10-6-08)

Sec. 26-109. Lighting.

§26-70

Sec. 26-110. Exceptions for existing improvements.

If the proposed subdivision is a resubdivision or is in an area with any or all required improvements as determined by the commission, and if such improvements meet the requirements of these regulations and are in good condition as determined by the director of public works and transportation, no further provision need be made by the applicant to duplicate such improvements. If the existing improvements do not meet said requirements, the applicant shall provide for the correction, repair or replacement of such improvements so that all improvements will meet the requirements of these regulations and as specified by the director of public works and transportation.

(G.O. 1264, 2-13-95; G.O. 1438, 7-29-96)

Sec. 26-111. Easements.

Utility easements shall be of sufficient width to have at least a ten foot interval between water and sewer lines. Utility lines shall be within the right-of-way of streets or alleys in all instances where practicable. In no instance shall any utility line be laid without first obtaining a permanent

§26-70

easement for same. No construction of structures is permitted in any easement. Fences may be constructed at the property owner's risk. (Code 1969, Sec. 20-13; G.O. 1264, 2-13-95; G.O. 1438, 7-29-96)

Sec. 26-112. Connection to water system.

The applicant shall be responsible for ensuring that water service is provided by the applicable water utility to every lot within the subdivision in accordance with all city and state requirements. (Code 1969, Sec. 20-15; G.O. 1264, 2-13-95; G.O. 1438, 7-29-96)

Sec. 26-113. Nonresidential subdivisions.

(a) *Layout.* If a proposed subdivision includes land that is zoned for commercial or industrial purposes, the layout of the subdivision shall make reasonable provisions to accommodate such development as the commission may require.

(b) *Site plan approval required.* A conceptual site development plan containing the same elements as specified in Section 31-070 of this code of ordinances shall be required for all nonresidential subdivisions.

(c) *Abutting arterials.* All nonresidential subdivisions shall comply with the requirements of Section 26-102(p) regarding abutting arterial or collector streets.

(d) *Requirements and standards.* In addition to the requirements and standards in these regulations, which are appropriate to the planning of all subdivisions, the applicant shall demonstrate to the satisfaction of the commission that the street, parcel and block pattern proposed is specifically adapted to the uses anticipated and takes into account other uses in the vicinity. The following principles and standards shall be observed:

- (1) Proposed industrial parcels shall be suitable in area and dimensions to the types of industrial development anticipated.
- (2) Street rights-of-way and pavement shall be adequate to accommodate the type and volume of traffic anticipated to be generated by the proposed development.

(3) Special requirements may be imposed by the director of public works and transportation with respect to street, curb, gutter, sidewalk, lighting or other facility design and improvement construction.

(4) Special requirements may be imposed by the director of public works and transportation with respect to the installation of public utilities, including water, sewer and storm drainage.

(5) Every effort shall be made to protect adjacent residential areas from potential nuisance from a proposed commercial or industrial subdivision, including the imposition of requirements for extra depth in parcels backing upon existing or potential residential development and requirements for a permanently landscaped buffer strip when necessary.

(6) Streets in nonresidential subdivisions anticipated to carry substantial volumes of nonresidential traffic, especially truck traffic, shall not be extended to the boundaries of adjacent residential areas, residential uses or residential zoning districts unless unavoidable and necessary to allow the nonresidential development. (G.O. 1264, 2-13-95; G.O. 1438, 7-29-96)

Sec. 26-114. Street trees.

Inasmuch as street trees help to lower the temperature and provide interest along the street and sidewalk, it shall be the standard practice in subdivisions to plant shade trees along streets. When planted between the street and sidewalk, they provide a measure of protection for pedestrians, help buffer traffic noise and filter pollution.

- (1) Street tree plan. A street tree plan shall be provided as part of subdivision design. It shall be conceived in a total pattern for the entire subdivision and shall show where street trees are or will be located and planting or construction details.
- (2) Tree type. As a general rule, all trees on a street shall be the same kind except to achieve special effects. Trees shall be selected from an approved list on file with the department of community services.

(9/1/18)

Selection of tree type shall be approved by the commission.

the landscape plan and shall comply with the city's adopted tree ordinance. (G.O. 1264, 2-13-95; G.O. 1438, 7-29-96)

- (3) Planting specifications. All trees at the time of planting shall have a caliper of no less than two inches measured four feet above finished grade, and be of substantially uniform size and shape, having straight trunks. Trees shall be properly planed and staked. Trees shall be of a deciduous species that will have a trunk at least 12 inches in diameter when fully mature.
- (4) Protection during construction. Where existing trees are to be retained, the applicant shall include in the plans, proposed methods of protecting trees during construction.
- (5) Maintenance. Plantings shall be watered regularly through the first growing season and in a manner appropriate for the specific plant species until they are established. Planted street trees shall be maintained in a healthy condition for the first two years after installation. Dead and dying street trees shall be replaced by the applicant during the first two years after installation.
- (6) Location. Shade trees shall be installed on both sides of all streets in accordance with the approved landscape plan. Trees shall be spaced evenly along the street. Spacing shall depend on tree size as follows:

Ultimate Tree Height/ Size (in feet)	Planting interval (in feet)
-----------------------------------------	--------------------------------

Large trees (40+)	50-70
Medium trees (30-40)	25-30
Small trees (to 30)	25-30

When a street canopy effect is desired, trees may be planted closer together, following the recommendations of a certified landscape architect. The trees shall be planted so as not to interfere with utilities, roadways, sidewalks, sight easements or street lights. Tree location, landscape design and spacing shall be approved by the commission as part of

Secs. 26-115--26-129. Reserved.

ARTICLE VI. RELIEF

Sec. 26-130. Variances from subdivision requirements.

(a) *Authorized.* If any mandatory provision of these regulations is shown by the applicant to be unreasonable and to cause undue hardship as applied to the land in a proposed subdivision the council, upon recommendation of the commission, may grant a variance to such applicant from such mandatory provision so that substantial justice may be done and the public interest secured; provided, that such variance will not have the effect of nullifying the intent and purpose of these regulations nor adversely affect the public health, safety or welfare and provided that the variance shall be the minimum necessary to accomplish its purposes. In the event that the commission shall render a tie vote on any recommendation, said vote shall represent a recommendation for denial of the request for relief. In the event of a recommendation of denial of the variance request by the commission, a two-thirds majority vote of the city council will be required to grant a variance.

(b) *Conditions.* In granting variances, the council may impose such conditions as will, in its judgment, secure substantially the objectives of the standards or requirements so varied.

(c) *Findings of fact for variance approvals.* No variance shall be granted unless it is found that all of the following apply:

- (1) There are special and unusual circumstances affecting said property such that the strict application of the provisions of this article would deprive the owner of the reasonable use of his land, and is not the mere grant of a privilege not granted to others, and
- (2) The variance is necessary for the preservation and enjoyment of a substantial property right of the owner, and

§26-70

- (3) The granting of the variance would not be detrimental to the public safety, convenience or welfare or be injurious to other property in the vicinity.

(Code 1969, Sec. 20-20; G.O. 1264, 2-13-95; G.O. 1438, 7-29-96; G.O. 1815, 2-20-01)

Sec. 26-131. Right to reconsideration of finding, decision or recommendation.

An applicant aggrieved by a finding, decision or recommendation of the commission or council may request and receive an opportunity to appear before such body to present additional relevant information and to request reconsideration of the original finding, decision or recommendation.

(Code 1969, Sec. 20-21; G.O. 1264, 2-13-95; G.O. 1438, 7-29-96)

Sec. 26-132. Appeals to governing body.

(a) An applicant for minor subdivision approval may appeal the disapproval of the preliminary plat by the director by filing a notice of appeal with the commission no later than ten days after the date on which the director notifies the applicant of the disapproval. The notice of appeal shall set forth in clear and concise fashion the basis for the appeal. The appeal shall be considered at the next regularly scheduled meeting of the commission. The commission may reverse the decision of the director only by a unanimous vote of the members of the commission present at the meeting.

(b) An applicant for subdivision approval may appeal the disapproval of any sketch, preliminary or final subdivision plat by the commission by filing a notice of appeal with the council no later than ten days after the date on which the commission notifies the applicant of the disapproval. The notice of appeal shall set forth in clear and concise fashion the basis for the appeal. The appeal shall be considered at the next regularly scheduled meeting of the council. The council may reverse the decision of the commission only by a unanimous vote of the members of the council present at the meeting. On appeal, the applicant shall be allowed to make a presentation to the council under such terms, conditions and procedures as established by the council. The council shall render a decision affirming or reversing the commission no later than 45 days after the date on which the notice of

appeal was filed. If the council reverses the commission, the applicant may proceed as appropriate under the conditions for approval agreed to by the council.

(G.O. 1264, 2-13-95; G.O. 1438, 7-29-96)

Secs. 26-133--26-139. Reserved.

**ARTICLE VII. TRANSPORTATION
IMPACT FEE REGULATIONS**

Sec. 26-140. Short title.

This ordinance shall be known and cited as the "St. Joseph Transportation User Fee Regulations." (G.O. 2264, 1-14-08)

Sec. 26-141. Findings.

The City Council of St. Joseph, Missouri, hereby finds and declares that:

(a) The comprehensive plan for the city, "Land Use Plan of the City of St. Joseph, Missouri, adopted April 25, 2005, and amended from time to time, and census and population studies to date indicate that growth will continue throughout the upcoming years and will place additional demands on the city to provide transportation facilities to support new development.

(c) Funds collected pursuant to the St. Joseph Transportation User Fee Ordinance shall be expended only on transportation facilities and facility expansions within the transportation road user fee service area from which the property is located, with respect to which the road user fee was paid.

(d) The transportation facilities and facility expansions constructed within each service area have a "rational nexus" to and provide a benefit to those properties with respect to which fees are imposed pursuant to this article.

(e) It is the intent of this article that, by establishment of transportation user fees, new development in the city will pay its fair share of the cost of transportation facilities and facility expansions required to serve such new development and that the fees paid with respect to each new development are, based on an individualized determination, roughly proportionate, both in nature and extent, to the

demand that such new development will have on transportation facilities.

(f) It is the intent of this article that the transportation facilities and expansions financed through the transportation impact fees established hereby be based, when applicable, upon the city's comprehensive plan, major street plan, and capital improvement program and are consistent therewith.

(g) The city council has considered the matter of financing of new transportation facilities and facility expansions, the need for which is necessitated by new development. The council hereby finds and declares that a transportation user fee imposed upon new development to finance city transportation facilities and facility expansions, the need for which is reasonably related to the new development, furthers the public health, safety and welfare of St. Joseph. Therefore, the city council deems it advisable to adopt the St. Joseph Transportation User Fee Ordinance as hereinafter set forth.
(G.O. 2264, 1-14-08)

Sec. 26-142. Intent.

(a) The St. Joseph Transportation User Fee Ordinance is intended to impose a user's fee upon the approval of a final plat, if a final plat must be approved prior to issuance of a building permit pursuant to the St. Joseph Land Development Code, or to the issuance of a building permit, if approval of a final plat is not so required, in an amount based upon the demand for transportation facilities or facility expansions attributable to the new development and the cost of providing such facilities necessary to serve new development. The user fee shall be payable upon issuance of a building permit. This article shall not be construed to authorize imposition of fees for transportation facilities or facility expansions the need for which is attributable to existing development or "pass through" traffic.

(b) The intent of this article is to establish a system of user's fees, as "user's fees" are interpreted in recent Missouri case law, that will be used to pay for the cost of providing transportation facilities and facility expansions, the demand for which is generated by new development. The amount of the user's fee to be paid by each new development is calculated to be directly proportionate to the demand for

transportation facilities and facility expansions created by each such new development. This article is specifically designed so as not to establish a "tax" or "fee," as such terms are used in Article X, Section 22 of the Missouri Constitution, but rather as a mechanism to equitably shift the burden of the cost of such facilities and expansions from the existing general public (which has already paid its fair share of the cost of the existing network of roads and roadways and the associated appurtenances and which will continue to pay for the cost of maintenance and repair of such existing roadways through funds other than those derived from the system of user's fees) to new development that will generate the need for the transportation facilities and facility expansions that will be provided by monies derived from this system of user's fees. The monies collected from imposition of this system of user's fees are to be used to offset the cost of providing services to new development in the form of transportation facilities and facility expansions and the system is designed to ensure that such monies collected may only be expended to provide such services. The monies may not be paid into the city's general fund to defray customary governmental expenditures. In addition, the system is designed so that the user's fee:

- (1) is paid upon the approval of designated development applications not periodically; and
- (2) is required to be expended for the provision of transportation facilities that directly benefit the person who has generated the need for such facilities within a reasonable period of time from the date such fee is paid; and
- (3) is directly proportional in amount to the transportation services provided; and
- (4) is for a service that has not historically been provided exclusively by monies derived from taxes.

(c) Towards this end, the transportation user fee adopted pursuant to this article is based upon the calculation methodology described in the "St. Joseph Transportation Facilities User Fee Report," which report is hereby incorporated by reference into this article as if fully included herein.

§26-70

(G.O. 2264, 1-14-08)

Sec. 26-143. Authority.

(a) In the creation of a system of transportation user fees, the city council is exercising the powers granted to the city pursuant to Article IV, Section 19 of the Missouri Constitution, Chapters 82, 89 and 445 of the Revised Missouri Statutes, and the St. Joseph Charter. The provisions of this article shall not be construed to limit the scope of the power necessary to accomplish the purposes that this article is designed to help achieve.

(G.O. 2264, 1-14-08)

Sec. 26-144. Definitions.

As used in this article, the following words and terms shall have the following meanings, unless another meaning is clearly intended:

- (1) "Applicant" shall mean the owner, or duly designated agent of the owner, of land on which an application for final plat approval or a building permit is requested and a transportation user fee is due pursuant to this article.
- (2) "Assessment" shall mean the determination of the amount of the transportation user fee per service unit that may be collected from a new development pursuant to this article.
- (3) "Building" shall mean a structure having a roof supported by columns or walls and intended for the shelter, housing or enclosure of any individual, animal, process, equipment, goods, or materials of any kind or nature.
- (4) "Building Permit" shall mean the permit required for new construction and additions pursuant to Chapter 7 of the St. Joseph City Code, as amended.
- (5) "Capital Improvement Plan (CIP)" shall mean the five year schedule of public improvements adopted by the city annually as a part of the city's budget process.
- (6) "City" shall mean the City of St. Joseph, Missouri.
- (7) "City Council" shall mean the city council of the City of St. Joseph, Missouri.
- (8) "Credit" shall mean the amount of the reduction of a transportation user fee designed to fairly reflect the value of transportation facilities provided by an applicant pursuant to the city's subdivision regulations and requirements.
- (9) "Demand" shall mean the increment of roadway that a proposed new development will consume (measured in vehicle miles at p.m. peak hour) based on the trips that the proposed type of new development will generate, calculated in accordance with the ITE Trip Generation Manual.
- (10) "Department" shall mean the planning and community development department or a legally designated representative thereof.
- (11) "Developer" shall mean a person who engages in development.
- (12) "Development" shall mean the construction, erection, reconstruction or use of any building for non-residential use which requires issuance of a building permit, except as specifically excepted in Section 26-145(c) of this article; and the final plating of land for residential development.
- (13) "Director" shall mean the director of planning and community development or his/her assigns of the City of St. Joseph, Missouri.
- (14) "Effective Date" shall mean the date of passage of the Transportation User Fee Regulations by the city council.
- (15) "Final Plat Approval or Approval of a Final Plat" shall mean the point at which the applicant has complied with all conditions of approval and the plat has been released for filing with Buchanan County.
- (16) "ITE Trip Generation Manual" shall mean and refer to the report entitled Trip Generation (7th ed. 2004 or most current

(9/1/18)

- edition) of the Institute of Transportation Engineers.
- (17) "Land Use Assumptions" shall mean the projection of population and employment growth and associated changes in land uses, densities and intensities adopted by the city, as may be amended from time to time, upon which the transportation user fee capital improvements plan for each service area is based.
- (18) "Map" shall mean and refer to the map entitled "Transportation User Fee Service Areas" which is on file in the office of the clerk and which defines the geographical extent of the transportation facilities user fee service areas.
- (19) "New Development" shall mean a project involving the construction, reconstruction, redevelopment, conversion, structural alteration, relocation, or enlargement of any building, any use or extension of use of land, or other similar activity that has the effect of increasing the demand for transportation facilities or facility expansions, measured by the number of trips to be generated by that type of activity, and which requires either the approval and filing with Buchanan County of a plat pursuant to the city's subdivision regulations; or the issuance of a building permit, except as specifically excepted in Section 26-145(c) of this article.
- (20) "Non-Residential Development" shall mean all development other than residential development and public and quasi-public use, as herein defined.
- (21) "Off-Site Transportation Facilities" shall mean and include the transportation facilities and facility expansions, as defined in these regulations, that are included in a transportation facility user fee capital improvements plan.
- (22) "On-Site Transportation Facilities" shall mean those transportation facilities and facility expansions that, under city ordinances, resolutions and department regulations, a developer or property owner is required to provide at no cost to the city.
- (23) "Property" shall mean a legally described parcel of land capable of development pursuant to applicable city ordinances and regulations.
- (24) "Property Owner" shall mean any person, group of persons, firm or firms, company or companies, corporation or corporations, or any other entity having an ownership interest in property with respect to which an application for development approved has been submitted.
- (25) "Public and Quasi-Public Use" shall mean a development owned, operated or used by the city; any subdivision of the State of Missouri, including but not limited to school districts; the State of Missouri and any agencies or departments thereof; and the federal government and any agencies or departments thereof.
- (26) "Recoupment" shall mean the imposition of a user fee to reimburse the city for the cost of transportation facilities and/or facility expansions that the city has previously constructed to serve the extra capacity triggered by the new development.
- (27) "Residential Development" shall mean the development of any property for a dwelling or dwellings as indicated by an application for final plat approval.
- (28) "Road or Roadway" shall mean any freeway, expressway, primary or secondary arterial or collector street designated in the city's major street plan, as may be amended from time to time. Roadway does not include any roadway designated as a numbered highway on the official Federal or Missouri Highway System.
- (29) "Service Unit" shall mean the standard unit of measure as shown on the conversion table in Schedule 1, which is on file in the office of the city clerk, adopted by the city council by resolution pursuant to Section 26-148(b) of this

- article that can be converted to trip generation rates, and that serves as a standardized measure of demand attributable to a new development.
- (30) "Subdivision Regulations" shall mean Chapter 26, Articles I through VI, inclusive of the St. Joseph City Code, the subdivision regulations of the City of St. Joseph, and all duly adopted amendments thereto.
- (31) "Transportation Facilities" shall mean roads and roadways or appurtenances to roadways that include, but are not limited: to rights-of-way; intersectional improvements; signalization or traffic control devices; medians; turn lanes; sidewalks, curbs, gutters and drainage facilities associated with roadways; street lighting; and any other ancillary roadway appurtenances or portions thereof included in a transportation user fee capital improvements plan. Transportation facilities shall include any improvement or appurtenance to an intersection with a roadway officially enumerated in the Federal or Missouri Highway System. Transportation facilities exclude on-site transportation facilities.
- (32) "Transportation Facility Costs" shall mean the amount spent, to be spent or authorized to be spent in connection with the provision of transportation facilities and/or facility expansions, which may include, but which are not limited to: funds spent on the planning; design; engineering; surveying; financing; acquisition of rights-of-way (including land purchases, court awards and costs, and attorney's fees and expert witness fees), whether conveyed by deed or easement; construction (including, but not limited to widening, paving, and grading); administration; independent engineer or financial consultant preparing or updating transportation user fee capital improvement plans who is not a city employee; or incidental expenses directly associated with the provision of transportation facilities.
- (33) "Transportation Facility Expansion" shall mean the expansion of the capacity of an existing roadway in the city to serve new development included in a transportation user fee capital improvements plan, but does not include the repair, maintenance, modernization, or expansion of an existing roadway to better serve existing development.
- (34) "Transportation User Fee" or "User Fee" shall mean a fee imposed on new development by the city pursuant to this article to fund or recoup the cost of transportation facilities or facility expansions necessitated by and attributed to that new development. These fees do not include the dedication of rights-of-way or easements for transportation facilities, or the construction of those transportation facilities or facility expansions.
- (35) "Transportation User Fee Capital Improvement Plan" shall mean the five year schedule of transportation facilities and facility expansions for each service area, which plan is used as the basis for computations of the transportation user fee per service unit for each service area pursuant to Section 26-147 of this article.
- (36) "Transportation User Fee Rate" shall mean the amount of the applicable transportation user fee per trip generated by new development as shown on Schedule 1, which is on file in the office of the city clerk, established by resolution adopted by the city council from time to time.
- (37) "Transportation User Fee Service Area" or "Service Area" shall mean the land area with the geographic boundaries of the maps adopted by the city council by resolution, pursuant to Section 26-147 of this article, showing the boundaries of designated service areas, and within which user fees for transportation facilities or facility expansions will be collected from new development occurring within that area and within which fees so collected will be expended for those transportation facilities or facility expansions identified in the

applicable transportation user fee capital improvement plan.

(38) "User Fee" shall mean a user's fee imposed on a pro rata basis in accordance with the demand for off-site transportation facilities or facility expansions, as defined in this article, created by new development.

(39) "Zoning Ordinance" shall mean Chapter 31 of the St. Joseph City Code, the zoning ordinance of the City of St. Joseph, Missouri, and all duly adopted amendments thereto.

(G.O. 2264, 1-14-08)

Sec. 26-145. Applicability of transportation user fee.

(a) This article shall be applicable to residential and non-residential development, but not public and quasi-public uses, on property in the city that is in a service area designated by resolution adopted by the city council pursuant to Section 26-147 of this article . The provisions of this article shall apply uniformly within each service area.

(b) This article shall be applicable to all new development that has not received final plat approval, if final plat approval is required by city ordinances or regulations prior to the issuance of a building permit, or if final plat approval is not required, new development for which no building permit has been issued.

(c) This article shall not be applicable to applications for:

- (1) building permits required for:
 - a. room additions, remodeling, rehabilitation or other improvements to an existing building, provided there is no increase in demand for transportation facilities or facility expansions;
 - b. rebuilding of a damaged or destroyed building, whether voluntary or involuntary, provided that the rebuilding does not result in an increase in demand for transportation facilities or facility expansions; or

c. a change in occupancy that does not result in an increase in demand for transportation facilities or facility expansions.

(2) replat approval, provided that such replat does not result in an increase in demand for transportation facilities or facility expansions.

(d) Where this article becomes applicable to an increase in demand for transportation facilities, the amount of the transportation user fee shall be based solely upon the increase in demand for transportation facilities or facility expansions generated by the new development.

(G.O. 2264, 1-14-08)

Sec. 26-146. User fee is a condition of development approval.

No application for new development shall be approved within the city without assessment of a transportation user fee pursuant to this article, except as specifically excepted by this article; and no building permit shall be issued unless the applicant has paid the transportation user fee imposed by and calculated pursuant to this article, except as specifically excepted by this article. An application for a building permit, approved by the city for a new development in a service area, without payment by the applicant and collection by the department of the transportation user fee per service unit, as required by this article, shall be null and void.

(G.O. 2264, 1-14-08)

Sec. 26-147. Establishment of transportation user fee service areas.

In furtherance of the implementation of the Transportation User Fee regulations, the boundaries of transportation user fee service area shall be established by adoption of a resolution by the city council that shall include a map showing the geographic boundaries and a legal description of each service area.

(G.O. 2264, 1-14-08)

Sec. 26-148. Transportation user fees per service unit.

(a) The transportation user fee per service unit for each service area shall be computed by the dividing of total costs of transportation facilities and facility expansions necessitated by and attributable to the new development in each service area as identified in the transportation user fee capital improvement plan for that service area, by the total number of service units anticipated within the service area.

(b) The transportation user fee per service unit that is to be paid by each new development within a service area shall be the user fee rate established by resolution of the city council initially upon adoption of these regulations (Schedule 1, on file in the office of the city clerk) and thereafter as part of the update provided for in Section 26-156 or at such other times as deemed necessary by the city. If no action is taken to amend the user fee rate, the rate then in effect shall remain in effect.

(G.O. 2264, 1-14-08)

Sec. 26-149. Assessment of transportation user fees.

(a) Upon receipt of an application for a preliminary plat, or upon receipt of an application for the final discretionary approval required for approval of development prior to issuance of a building permit, if approval of a plat is not otherwise required, or upon written request of the applicant if no further discretionary approval is required before issuance of a building permit, the director shall:

- (1) determine the applicability of this article to the property for which the application is received within 14 working days of receipt of the application by the director;
- (2) if this article is not applicable, the director shall notify the applicant within 14 days of receipt of application by director of said inapplicability, and shall process the application in accordance with all relevant city ordinances and regulations;
- (3) If this article is applicable, the director shall preliminarily calculate and assess the amount of the transportation user fee that will be imposed on the proposed new development pursuant to this article by multiplying the user fee rate by the number of service units for the proposed

development with respect to which the approval is being sought. This assessment shall be an estimate only for the benefit of the applicant and shall be subject to final determination at the time the applicant requests final plat approval or a building permit for property which does not require approval of a plat prior to the issuance of a building permit.

(b) All preliminary plats approvals subject to this article, and with respect to all proposed new development that does not require approval of a preliminary plat, all development approvals that are the last discretionary approval required by city ordinances and regulations prior to issuance of a building permit subject to this article, shall be conditioned on the payment of the user fee imposed pursuant to this article.

(c) The imposition of the transportation user fee does not alter, negate, supersede or otherwise affect any of the requirements of the city, including the city zoning ordinance and subdivision regulations and county, state or federal legislation or regulations that may be applicable to a development, which may impose roadway system related requirements, rights-of-way dedication requirements and design and construction standards for roadways.

(G.O. 2264, 1-14-08)

Sec. 26-150. Computation of road user fee.

(a) Upon receipt of an application for a building permit or final plat approval for a new development subject to this article, in such instances where final plat approval is required, the director shall calculate the amount of the applicable transportation user fee due by:

- (1) Multiplying the number of service units generated by the new development by the user fee rate per service unit for the service area using Schedule 1, which is on file in the office of the city clerk. The number of service units shall be determined by using the conversion table contained therein;
- (2) The amount of each transportation user fee due shall be reduced by any allowable credits, in the manner provided in this section of this article.

- (3) The total amount of the transportation user fee due for the new development shall be calculated and attached to the final plat or a building permit application, as the case may be, as a condition of approval.

(b) Transportation user fees shall be collected at the time an application for a building permit is filed and accepted by the city for a development with respect to which this article is applicable.

(c) If the building permit for which a transportation user fee has been paid has expired, and a new application is thereafter filed, the transportation user fee due shall be computed using Schedule 1, which is on file in the office of the city clerk, then in effect, with credits for previous payments of fees being applied against the new fees due.

(d) A building permit application or application for final plat approval must be resubmitted to the director and the amount of the transportation user fee recalculated if the applicant alters the proposed development in such a way as to result in an increased number of service units. In that case, the initial user impact fee collected for that new service unit shall be determined by using Schedule 1, which is on file in the office of the city clerk, then in effect, and such additional fees shall be collected upon application for a new building permit or application for final plat approval submitted.
(G.O. 2264, 1-14-08)

Sec. 26-151. Credits against transportation user fees.

(a) The city shall allow a credit against the amount of the transportation user fee due for the transportation facility costs of transportation facilities shown on the then current transportation user fee capital improvements plan, which have been dedicated to and accepted by the city on or after the effective date, including the value of rights-of-way for roadways, or transportation facilities or facility expansions constructed pursuant to written agreement with the city, pursuant to the rules established in this section or pursuant to guidelines provided by the director.

(b) The city shall credit escrow fees deposited with the city for transportation facilities prior to the effective date against the amount of the

transportation user fee due, subject to guidelines provided by the director.

(c) All credits against transportation user fees shall be subject to the following limitations and shall be granted pursuant to this article and additional standards promulgated by the city consistent with and in implementation of this article, which may be adopted as administrative guidelines:

- (1) No credit shall be given for dedication or construction of on-site facilities.
- (2) The unit cost used to calculate the credit shall not exceed those assumed for the transportation facilities included in the applicable transportation user fees capital improvements plan.
- (3) No credit shall be given for transportation facilities or facility expansions that are not included in the applicable transportation user fee capital improvements plan. Credit may only be given for the dedication of right-of-way or construction of facilities made and/or completed and accepted by the city after the effective date.
- (4) Credits given for new developments pursuant to this article, which have received final plat approval prior to the effective date of this article, shall be reduced by subtracting an amount equal to the transportation user fees that would have been paid by the applicant for the number of existing service units using Schedule 1 to this article.
- (5) If a credit applicable to a plat has not been exhausted within five years from the date of the acquisition of the first building permit issued with respect to that plat or within any period as may be otherwise designated by contract, the credit shall lapse.
- (6) The city will not reimburse a property owner or developer for a credit when no transportation user fees for the new development can be collected pursuant to this article or for any amount exceeding the total transportation user fee due for

§26-70

the new development, unless otherwise agreed to by the city.

(d) An applicant must apply for a credit against transportation user fees due for a new development either at the time of application for a final plat approval or at the time of building permit application, if final plat approval is not required, unless the city agrees in writing to a different time. The applicant shall file a petition for credits with the director on a form provided by the city for such purpose. The director shall provide the applicant, in writing, with a decision on the credit request, including the reasons for the decision. The decision shall specify the maximum value of the credit that may be applied against a transportation user fee, which amount and the date of the determination shall be associated with the plat or the building permit for the new development, as the case may be.

(e) The available credit associated with the plat shall be applied against a transportation user fee in the following manner:

- (1) For single-family residential lots in a new development that has received final plat approval only of single-family residential lots, such credit shall be prorated equally among those lots and shall remain applicable to those lots, to be applied at the time of filing and acceptance of an application for a building permit.
- (2) For all other types of new development, including those involving mixed uses, which have received final plat approval, the credit applicable to the plat shall be applied to the transportation user fee due at the time of acceptance by the city of the first building permit to which the credit is applicable, and thereafter to all subsequent building permits applications accepted until the credit has been exhausted.
- (3) At its sole discretion, the city may authorize alternative credit agreements upon petition by the owner or developer in accordance with the guidelines provided by the director.

(G.O. 2264, 1-14-08)

Sec. 26-152. Establishment of accounts.

(9/1/18)

(a) The city's financial services department shall establish an account for each transportation user fee service area for which a user fee is imposed pursuant to this article. All user fees collected within a service area shall be deposited into the account for that service area.

(b) Interest earned on the funds in each account shall be considered funds of the account and shall be used only for the purposes authorized in this section of this article.

(c) The city's financial services department shall maintain and keep adequate financial records of said account that shall show the source and disbursement of all funds placed in or expended from that account to ensure that the user fees expended from the account are used only for the purposes authorized in this section of this article. Disbursement of funds shall be authorized by the city at any time as is reasonably necessary to carry out the purposes and intent of this article; provided, however, that any user fees paid shall be expended within a reasonable period of time, but not to exceed six years from the date the fee is deposited into the account.

(d) The records of the accounts into which user fees are deposited shall be open for public inspection and copying during ordinary business hours. The fee for copying services shall be as established by the city.

(G.O. 2264, 1-14-08)

Sec. 26-153. Use of proceeds of user fee account.

(a) The user fees collected for each service area pursuant to this article may be used to finance or to recoup transportation facilities costs. User fees may also be used to pay the principal sum and interest and other finance costs on bonds, notes or other obligations issued by or on behalf of the city to finance transportation facilities or facility expansions.

(b) User fees collected pursuant to this article shall not be used to pay for any of the following expenses:

- (1) construction, acquisition or expansion of transportation facilities other than those identified in the transportation user fee capital improvement plan for the service area with respect to which the user fee was collected;

- (2) repair, operation or maintenance of existing transportation facilities;
- (3) upgrade, expansion or replacement of existing transportation facilities to serve existing developments at the level of service established for transportation facilities or facility expansions necessary to serve new development;
- (4) the cost of construction, acquisition or expansion of transportation facilities or transportation facility expansion necessary to accommodate "pass through" trips (i.e., trips using the transportation facility or facility expansion, but neither having an origin nor a destination in the transportation user fee service area).

(c) In the event that a transportation facility or facility expansion involves more than one transportation user fee service area, funds from each transportation user fee service area involved may be pooled to finance that transportation facility or facility expansion; provided, however, that in the event that funds expended from any service area exceed the proportionate share of the cost of the transportation facilities or facility expansion attributable to the development in such service area, that account shall be credited in the amount exceeding such share, to be repaid from the user fee proceeds collected from other contributing service areas.
(G.O. 2264, 1-14-08)

Sec. 26-154. Appeals.

(a) The property owner or applicant for new development may appeal the following decisions to a hearing officer, pursuant to Article XIII of Chapter 2 of the Code of Ordinances:

- (1) the applicability of a user fee to the development;
- (2) the amount of the user fee due;
- (3) the availability or the amount of a credit;
- (4) the applicability of a credit against a user fee due; and
- (5) the amount of a refund due, if any.

(b) The burden of proof shall be on the property owner or applicant to demonstrate, by clear and convincing evidence, that the amount of the fee or the amount of the credit was not calculated in accordance with the provisions of this article or the guidelines established for determining credits.

(c) The property owner or applicant shall file a notice of appeal with the city clerk within ten calendar days following a decision of the public works and transportation director. The application for development approval with respect to which the appeal is filed may be processed while the appeal is pending, provided that, the notice of appeal is accompanied by a bond or other sufficient surety satisfactory to the city attorney in an amount equal to the original determination of the user fee due.

(d) Within ten calendar days of the notice of appeal, or by a date as shall be agreed upon in writing between the applicant and the public works and transportation director, applicant shall submit to the public works and transportation department, traffic engineering studies containing documentation of trip generation rates for the proposed new development, vehicle miles at p.m. peak hour to be generated by the proposed new development, other trip or demand data or any relevant evidence appropriate for determination of the user fee rate for the proposed new development; and economic studies containing documentation of the cost per lane per mile for roadway construction appropriate for the proposed new development; and credits attributable to the proposed new development that can be expected to be available to replace the portion of the traffic demand generated by the proposed new development.

(e) Any property owner or applicant who remains aggrieved after receipt of the hearing officer's decision may make application for review with the board of zoning adjustment. Such application for review shall be filed with the city clerk not later than ten calendar days following the hearing officer's decision. Any such application for review shall be taken up at the next regular meeting of the board of zoning adjustment at which a quorum is present, as long as sufficient time is given for proper required public notice. The board of zoning adjustment shall hear evidence from both the department of public works and transportation, as well as the

§26-70

aggrieved property owner or applicant, and shall overturn the decision of the hearing officer only if provided with clear and convincing evidence that the hearing officer's decision was not supported by the evidence. The decision of the board of zoning adjustment shall be final.

(f) Any person aggrieved of any decision of the board of zoning adjustment may appeal to a court of competent jurisdiction, as provided by law.

(G.O. 2264, 1-14-08; G.O. 2288, 5-5-08)

Sec. 26-155. Refunds.

(a) Any user fee or portion thereof collected pursuant to this article that has not been expended with the service area with respect to which that fee or portion thereof was paid within six years from the date of payment of that user fee, upon written application by the person who originally paid the user fee, if made within 30 days of the date that is six years from the date of payment of that user fee, shall be refunded to that property owner, together with interest attributable to the amount of the refund.

(b) A user fee collected pursuant to this article shall be considered expended if, within six years from the date of payment, the total expenditures for transportation facilities or facility expansions within the service exceeds the total fees collected for those facilities during that period.

(c) If a refund is due pursuant to subsections (a) and (b) of this section, the city shall pro-rate the same by dividing the difference between the amount of the fees collected and amount of expenditures by the total number of service units within the service area for the period from which user fees were collected to determine the refund due per service unit. The refund shall be calculated by multiplying the refund due per service unit by the number of service units for the development for which the fee was paid, and interest due shall be apportioned based upon that amount.

(d) If the building permit for a new development for which a user fee has been paid has expired, and a modified or new application has not been filed within six months of said expiration, the city shall, upon written application, refund the amount of the user fee to the person who paid that user fee. The city may

establish administrative guidelines for refunding of user fees collected for which construction plans have been abandoned.

(G.O. 2264, 1-14-08)

Sec. 26-156. Updates to planning and revision of fees.

The city shall update its land use assumptions and transportation user fee facility improvement plans and shall recalculate its user fees not less than once every two years.

(G.O. 2264, 1-14-08)

Sec. 26-157. Agreement for capital improvements.

(a) An applicant for a new development may construct or finance transportation facilities or facility expansions if required or authorized by the city, by entering into an agreement with the city prior to the issuance of any building permit for the new development. The agreement shall be in a form approved by the city, and shall identify the estimated cost of the transportation facilities or facility expansions, the schedule for initiation and completion of the transportation facilities or facility expansions, and contain a requirement that the transportation facilities or facility expansions be designed and constructed to comply with city standards and such other terms and conditions as deemed necessary by the city. The agreement shall provide for the method to be used to determine the amount of the credit to be given against user fees due for the new development.

(b) In the event that city elects to reimburse an owner for the dedication, construction or financing of transportation facilities or facility expansions, the terms of reimbursement shall be incorporated in the agreement required by subsection (a) of this section.

(G.O. 2264, 1-14-08)

Sec. 26-158. Use of other financing mechanisms.

(a) The city may finance transportation facilities or facility expansions through the issuance of bonds, through the formation of special, benefit, or improvement districts or other assessment districts or through any other

(9/1/18)

authorized mechanism, in the manner and subject to such limitations as may be provided by law, in addition to the use of user fees.

(b) Except as hereinafter provided, the assessment and collection of user fees shall be additional and supplemental to, and not in substitution of, any other tax, fee, charge or assessment which is lawfully imposed on and due against the property.

(c) The city may pay all or part of user fees due for a new development taking into account available credits pursuant to guidelines duly provided by the director pursuant to Section 26-151 of this article.

(G.O. 2264, 1-14-08)

Sec. 26-159. Impact fee as additional and supplemental regulation.

User fees established by this article are additional and supplemental to, and not in substitution for, any other requirement proposed by the city on the development of land or the issuance of building permits. User fees are intended to be consistent with and implement the policies of the city's comprehensive plan, the capital improvements plan (CIP), the transportation user fee capital improvement plans, the zoning ordinance, subdivision regulations, and other city policies, ordinances and resolutions by which the city seeks to ensure the provision of adequate public facilities in conjunction with the development of land.

(G.O. 2264, 1-14-08)

Sec. 26-160. Relief procedures.

(a) Any person who has paid a user fee or the property owner with respect to which a user fee has been paid may petition the city council to determine whether any duty required by this article has not been performed within the time frames so prescribed. The petition shall be in writing and shall state the nature of the unperformed duty and request that the act be performed within 60 days of the request. If the city council determines that the duties required pursuant to this article are late in being performed, it may cause the duty to commence within 60 days of the day of the request and that the duty continue until completion.

(b) The city council may grant a variance or waiver from any requirement of this article, upon written request by developer or property owner subject to this article, following a public hearing and only upon a finding that strict application of such requirement would, when regarded as a whole, result in a taking of the property.

(c) The city council may grant a waiver from any requirement of this article on other grounds as may be set forth in guidelines provided by the director.

(d) If the city council grants a variance or waiver to the amount of the user fee due for a new development under this section, it shall cause to be appropriated, from other city funds, the amount of reduction in the user fees, to the account for the service area in which the property with respect to which the variance or waiver has been granted is located.

(G.O. 2264, 1-14-08)

Sec. 26-161. Exemption from this article.

Any building permit application, with respect to which no final plat approval was required, that was duly accepted for filing prior to the effective date of this article and which is subsequently granted and any building permit application with respect to which a final plat was approved prior to the effective date shall be exempt from the assessment and payment of a user fee, unless any such application thereafter expires.

(G.O. 2264, 1-14-08)

Sec. 26-162. Liberal construction.

The provision of this article shall be liberally construed to effectively carry out its purposes in the interest of the public health, safety, general welfare and convenience of the citizens of the city.

(G.O. 2264, 1-14-08)

Sec. 26-163. Severability.

Should a sentence, clause, part or provision of this article be declared by a court of competent jurisdiction to be invalid, the same shall not affect the validity of this article as a whole, or any part

ST. JOSEPH CODE

§26-70

thereof other than the part determined to be
invalid.

(G.O. 2264, 1-14-08)