

**CHAPTER 16.04
GENERAL PROVISIONS AND POLICIES**

16.04.005 AUTHORITY AND JURISDICTION

- A. This Ordinance is adopted under the authority of the constitution and laws of the State of Texas, including particularly Subchapters A and B of Chapter 212 of the Texas Local Government Code and the City Charter of the City of Benbrook.

- B. All land subdivided or platted into lots, blocks and streets within the City of Benbrook, Texas or within its extraterritorial jurisdiction, as provided by State law, shall comply in full with the requirements of this Ordinance. No Plat shall be filed in the office of the County Clerk for a tract within the City or its extraterritorial jurisdiction unless it is approved by the City.

16.04.010 SHORT TITLE

This ordinance shall be known and may be cited as the "Subdivision Ordinance of the City of Benbrook, Texas".

16.04.015 POLICY STATEMENTS

- A. It is the policy of the City of Benbrook that all subdivisions approved under this Ordinance shall be consistent with the Comprehensive Plan, Zoning Ordinance and any other supplemental land use and community development policies that may be adopted by the City Council. No Plat or subdivision of land within the City or its extraterritorial limits shall be approved unless it conforms to such Plans, Policies and Ordinances.

- B. Land to be subdivided shall be of such character that is can be used safely for building purposes without danger to health or peril from fire, flood, or other menace, and land shall not be subdivided until proper provision has been made for drainage, water, sewerage, schools, transportation facilities, and other public improvements.

- C. The existing and proposed public improvements shall conform to and be properly related to the Comprehensive Plan and the capital budget and program of the City, and it is intended that these regulations shall supplement and facilitate the enforcement of the provisions and standards contained in building and housing codes, the Zoning Ordinance, Comprehensive Plan, and capital budget and program of the City.

16.04.020 PURPOSE

It is the purpose of the Subdivision Ordinance of the City of Benbrook to:

- A. provide for the orderly, safe, and healthful development of the area within the City and within the area surrounding the City in accordance with the City's Comprehensive Plan;

- B. promote and protect the health, safety, morals, and general welfare of the community by requiring that adequate streets, drainage facilities, and other public improvements are provided in all subdivisions;

- C. provide for adequate light, air, and privacy, to secure safety from fire, flood, and other danger, and to prevent overcrowding of the land and undue congestion of population;

- D. protect the character and the social and economic stability of all parts of the City and to encourage the orderly and beneficial development of all parts of the City;

- E. protect and conserve the value of land throughout the City and the value of buildings and improvements upon the land, and to minimize the conflicts among the uses of land and buildings;
- F. guide public and private policy and action in order to provide adequate and efficient transportation, water, sewer, drainage, schools, parks and other public requirements and facilities;
- G. insure that public facilities are available and will have a sufficient capacity to serve the proposed subdivision;
- H. prevent the pollution of air, streams, and ponds, to assure the adequacy of drainage facilities, to safeguard the water table, and to encourage the wise use and management of natural resources throughout the City in order to preserve the integrity, stability, and beauty of the community and the value of the land;
- I. preserve the natural beauty and topography of the City and to insure appropriate development with regard to these natural features;
- J. provide for open spaces through the most efficient design and layout of the land, including the use of average density in providing for minimum width and area of lots, while preserving the density of land as established in the Zoning Ordinance of the City of Benbrook;
- K. provide facilities which can be maintained without imposing a burden to the taxpayers; and
- L. provide accurate and complete Plat records for the property within the City, all in accordance with a comprehensive plan.

16.04.025 INTERPRETATION AND CONFLICT

- A. The interpretation and application of the provisions of these regulations shall be held to be the minimum requirements for the promotion of the public health, safety, and general welfare.
- B. Whenever the standards and specifications in this Ordinance conflict with those contained in another Ordinance, the most stringent or restrictive provision shall govern.

16.04.030 PLATTING REQUIRED

- A. Every owner of every tract of land located within the corporate limits or extraterritorial jurisdiction of the City of Benbrook who divides the tract into two or more parts as provided in Chapter 212, Subchapter A and B, of the Local Government Code shall cause a plat to be made by a registered public surveyor which shall accurately describe all of the said tracts by previously platted lot and block number, or by metes and bounds if necessary and locate same as required by this Ordinance.
- B. All platted lots shall meet the minimum frontage required by the Zoning Ordinance onto a paved street meeting the right-of-way and pavement requirements of the Thoroughfare Plan and this Ordinance.
- C. No lot may be sold and no transfer of title to any part of such tract shall be made until a plat meeting the requirements of this ordinance is approved by the City and filed in the Plat Records of Tarrant County, Texas.

- D. No building permit shall be issued on any tract of land until a plat of said tract meeting the requirements of this ordinance is approved by the City and filed in the Plat Records of Tarrant County, Texas.

16.04.035 APPROVAL OF PLAT

- A. No plat shall be filed of record, no lot may be sold and no transfer of title to any part of such tract shall be made, and no tract of land within the corporate limits or extraterritorial jurisdiction of the City of Benbrook shall be improved until a plat shall have been approved by the Planning and Zoning Commission, in accordance with these provisions and Subchapter A or B of Chapter 212 of the Texas Local Government Code, or a Minor Plat that has been approved by City Staff, in accordance with this Ordinance, and filed in the plat records of Tarrant County, Texas.
- B. No plat shall be approved by the Planning and Zoning Commission unless the plat contains a dedication of land for public improvements and public purposes in accordance with the minimum requirements and standards set forth in this ordinance. Every owner of property which shall hereafter be subdivided into two or more parts or platted into a single lot, shall be required to dedicate to the City that portion of such property as is necessary for the orderly development of streets, roadways, thoroughfares, utilities, emergency access, or other public purposes, and such dedication requirements, as imposed, shall be a prerequisite to plat approval.
- C. No plat shall be approved by the Planning and Zoning Commission unless it generally conforms to the Comprehensive Plan and adopted development policies, and unless each lot, block or tract therein fronts upon a dedicated public street, approved private street, or other approved access.

16.04.040 DEDICATION AND IMPROVEMENTS REQUIRED; ROUGH PROPORTIONALITY; APPEALS

- A. Every owner of any tract which is required to be platted as provided herein shall be required to dedicate to the City a reasonable portion of such property as is necessary for the orderly development of streets, roadways, thoroughfares, drainage, utilities, emergency access, or other public purposes, and such dedication requirements as imposed shall be a prerequisite to plat approval.
- B. The developer shall enter into an agreement with the City providing for the installation of streets, paving, curbs, gutters, street lighting, street signs, provision for underground utilities, and drainage facilities in that subdivision in accordance with the standards and provisions of the City Development policies. The developer shall assure construction of the necessary improvements by posting a surety or performance bond or an irrevocable letter of credit for one hundred percent (100%) of the developer's share of construction costs, as approved by the City Manager.
- C. The developer shall enter into an agreement with the Benbrook Water and Sewer Authority for the installation of the water and sewer system in that subdivision in accordance with the Policies and Procedures of the Benbrook Water and Sewer Authority. The developer shall assure construction of the necessary improvements by providing an surety or performance bond for one hundred percent (100%) of the developer's share of construction costs, as approved by the Manager of the Benbrook Water and Sewer Authority.
- D. Prior to a decision by the Planning and Zoning Commission on a preliminary or final plat application for which an exaction is required as a condition of approval, the City Engineer shall prepare a written statement affirming that each exaction requirement to be imposed

as a condition of plat approval is roughly proportionate to the exactions required of other developments of a similar nature and extent. In making this determination, the City Engineer may consider:

1. The range of facilities required, per lot, for other developments within the same zoning district, and
2. the adequacy of existing public facilities to serve the proposed development.

The City Engineer may require that the applicant, at its expense, submit any information or studies that may assist in making the proportionality determination.

E. An applicant for a preliminary or final plat may appeal the requirement for an exaction if the applicant believes that the exaction will result in a disproportionate burden on the applicant in comparison to other development of a like nature and extent.

1. The applicant must file a written appeal with the City Secretary within ten (10) days of the date of the Planning and Zoning Commission hearing. Processing of the plat shall be suspended pending resolution of the appeal and no developer's agreement may be executed until the appeal is resolved.
2. The City Secretary shall schedule a hearing of the appeal before the City Council at a regularly scheduled City Council meeting approximately 30 days following receipt of the written appeal. One week prior to the scheduled City Council meeting, the applicant shall submit fifteen (15) copies of a study prepared by a registered professional engineer demonstrating that the exaction being required is not roughly proportionate to those required of other development of a similar nature and extent within the City of Benbrook. Such study shall also demonstrate that a waiver or modification of the required exaction shall not result in inadequate public facilities to serve the proposed development. The City Engineer shall also submit his findings regarding the need for the required exactions and the basis for his rough proportionality determination.
3. After holding the hearing and receiving evidence on both sides, the City Council may
 - a. deny the appeal and impose the exaction requirement of the Planning and Zoning Commission,
 - b. grant the appeal and waive in whole or in part an exaction requirement necessary to achieve proportionality, or
 - c. grant the appeal and direct that the City shall participate in the costs of the exaction.

- The City Council shall make such determination within 30 days of the hearing.
4. An applicant may appeal the determination of the City Council to a county or district court of Tarrant County within 30 days of the final determination by the City Council.

16.04.045 PARKLAND DEDICATION REQUIRED

A. PURPOSE

1. This section is adopted to provide recreational areas in accordance with the Park and Recreation facilities element of the Benbrook Comprehensive Plan in the form of neighborhood parks as a function of development in the City of Benbrook. It is hereby declared by the City Council that recreational areas in the form of neighborhood parks are necessary and in the public welfare, and that the only adequate procedure to provide the same is by integrating such a requirement into the procedure for planning and developing property for subdivisions in the City.

2. Neighborhood parks are those parks providing for a variety of outdoor recreational opportunities and within convenient distances from a majority of the residences to be served thereby. The park areas established by the City Council and shown on master plan for the City shall be prima facie proof that any park located therein is within such a convenient distance from any residence located therein. The primary cost of neighborhood parks should be borne by the ultimate residential property owners who, by reason of the proximity of their property to such parks, shall be the primary beneficiaries of such facilities. Therefore, the following requirements are adopted to achieve the purposes stated.

B. General Requirements

These requirements shall apply to land zoned residential which is to be used for single-family, duplex and/or apartment residential purposes.

1. Whenever a final plat is filed on record with the County Clerk of Tarrant County for development of a residential area in accordance with the planning and zoning ordinances of the City, such plat shall dedicate an area of land for park purposes, which area shall equal one (1) acre for each one hundred (100) proposed dwelling units. Fee simple title to the parkland shall be conveyed to the City by general warranty deed. Any proposed plat submitted to the City for approval shall show the area proposed to be dedicated. The required dedication may be met by a payment of money in lieu of land when permitted or required by the other provisions of this section.
2. The City Council declares that development of an area smaller than two (2) acres for public park purposes is impractical. Therefore, if fewer than two hundred (200) units are proposed by a plat filed for approval, the developer shall be required to pay the applicable cash in lieu of land amount unless the dedication will increase the size of an existing park.
3. In instances where an area of more than two (2) acres are required to be dedicated, the City Council shall have the right to accept the dedication for approval on the final plat, or to refuse same, after consideration of the recommendation of the Park & Recreation Board and Planning and Zoning Commission, and to require payment of cash in lieu of land, if the City determines that sufficient park area is already in the public domain in the area of the proposed development, or if the recreation potential for that zone would be better served by expanding or improving parks.
4. The dedication required by this section shall be made by filing of the final plat or contemporaneously by separate instrument unless additional dedication is required subsequent to the filing the final plat. If the actual number of completed dwelling units exceed the figure upon which the original dedication was based, such additional dedication shall be required, and shall be made by payment of the cash in lieu of land or by the conveyance of an entire number lot to the City.

C. Money in Lieu of Land Dedication

Subject to approval of the Planning and Zoning Commission, a land owner responsible for dedication under this Section may elect to meet the requirements of Subsection B of this section, in whole or in part by a cash payment in lieu of land made at the time of final plat recording or as stated in the Developer's Agreement. The dedication requirement shall be met by a payment in lieu of land at a per-dwelling unit price set from time to time by resolution by the City Council, sufficient to acquire land and provide for adjacent streets and utilities for a neighborhood park to serve the park zone in which such

development is located. The fee assessed per dwelling unit shall be in accordance with Chapter 1.12 of the Benbrook Municipal Code. Cash payments may be used only for acquisition or improvement of a park located within the same planning area as the development, unless the developer executes a waiver and requests that the funds be used for some other park project, in which case the funds may be used for such project. The fee shall be evaluated periodically based on current land values.

D. Park Master Plan Considerations

Land shown on the City's Comprehensive Plan as being suitable for development by the City for a major recreational center, school site, park, or other public use, shall be reserved for a period of one (1) year after the preliminary plat is approved by the City. A failure by the City Council to notify the subdivider of its interest in acquiring the land within the one year period shall constitute a waiver of the right to reserve the land. Any waiver of the right to reserve the land shall no longer be effective if the preliminary plat expires without adoption of a final plat.

E. Special Fund, Right to Refund

1. There is hereby established a special fund for the deposit of all sums paid in lieu of land dedication under this Section or any preceding ordinance, which fund shall be known as the Park Land Dedication Fund.
2. The City shall account for all sums paid in lieu of land dedication under this Section with reference to the individual plats involved. Any funds paid for such purposes must be expended by the City within ten (10) years from the date received by the City for acquisition or development of a neighborhood park as defined herein. Such funds shall be considered to be spent on a first in, first out basis. If not so expended, the owners of the property on the 1st day of such period shall be entitled to a pro rata refund of such sum, computed on a per dwelling unit basis. The owners of such property must request such refund within one (1) year of entitlement, in writing, or such right shall be barred.

F. Additional Requirements, Definitions for Neighborhood Parks

1. Any land dedicated to the City under this Section must be suitable for park and recreation uses. The following characteristics of a proposed area are generally unsuitable (unless recommended in the Comprehensive Plan):
 - a) Any area primarily located in the 100-year floodplain.
 - b) Any areas of unusual topography or slope which renders same unusable for recreational activities.

The above characteristics of a parkland dedication area may be grounds for refusal of any preliminary or final plat.

2. Drainage areas may be accepted as a part of a neighborhood park if the entire floodplain width is dedicated to the City and if no significant area of the park is cut off from access by such channel. If land is dedicated which is in the floodway fringe but not including the floodway, then it shall count as one-half ($\frac{1}{2}$) of the requirement as set forth in Paragraph B.1 above.
3. Each park shall have ready access to an improved public street.

4. Unless provided otherwise herein, an action by the City shall be by the City's Planning and Zoning Commission.
5. All parkland dedication shall be consistent with the standards as set forth in the Comprehensive Plan.

G. Credit for Private Parks

If a developer desires to incorporate private park, recreation or open space areas or amenities within their development, they may request limited credit for these facilities against their public open space requirements. A developer may request credit for any private park, recreation or open space area, but such private park, recreation or open space amenities may never satisfy more than 50 percent of the total park and open space dedication requirement of this ordinance.

H. Appeals

Decisions of the City Planner in the implementation of this policy may be appealed to the Planning and Zoning Commission, and decisions of the Planning & Zoning Commission may be appealed to the City Council. The standard for review of decisions shall be whether the decision rendered was clearly unreasonable, arbitrary or capricious and therefore constituted a clear abuse of discretion.

16.04.050 CONSTRUCTION; BUILDING PERMITS; CERTIFICATES OF OCCUPANCY

- A. The City shall not recommend approval of a septic tank permit by Tarrant County for the installation of septic tanks upon any lot in a subdivision or upon any tract of land for which a Final Plat has not been approved and filed for record, or upon any lot in a subdivision in which the standards contained herein or referred to herein have not been complied with in full.
- B. No building, repair, plumbing, mechanical, or electrical permit shall be issued by the City for any structure on a lot in a subdivision or upon any tract of land for which a Final Plat has not been approved and filed for record, nor for any structure on a lot within a subdivision in which the standards contained herein or referred to herein have not been complied with in full.
- C. No application for a building permit shall be considered for approval by any City official until the developer has entered into an agreement providing for the installation of water, sewer, streets, paving, curbs, gutters, utilities, and drainage facilities in that subdivision in accordance with such provisions and standards of the City. Assurances of such installation within a set time limit will be provided by the making of cash or corporate surety bond or depositing money in escrow as provided by City Development Policies.
- D. The City shall not repair, maintain, install or provide any streets or public utility services in any subdivision for which a Final Plat has not been approved and filed for record, nor in which the standards contained herein or referred to herein have not been complied with in full.
- E. The City shall not permit the sale or supply any water, gas, electricity, or sewerage service to a lot within a subdivision or to any tract of land for which a Final Plat has not been approved and filed for record, nor in which the standards contained herein or referred to herein have not been complied in full. Nothing contained herein shall be construed to prohibit maintenance of existing service except where, in the determination of the Director of Community Development, a public health and safety hazard exists.

- F. Any land which, in its natural state, is subject to a one hundred (100) year flood or which cannot be properly drained shall not be subdivided, re-subdivided, or developed until it is demonstrated to the satisfaction of the Planning and Zoning Commission that the construction of specific improvements proposed by the developer can be expected to yield a usable building site.
- G. No building permit, certificate of occupancy or "power-on" approval shall be granted for any building occupied by a single business that crosses a lot or property line, until the property is replatted into a single lot.
- H. No construction of any public improvements shall be initiated by the developer/owner until, (1) a final plat has been approved by the City; (2) a Subdivider's Agreement has been approved by the City; (3) all performance and maintenance bonds, or their equivalent, have been provided to the City; (4) all inspection and permit fees have been paid; and (5) a Notice to proceed is issued by the City.

16.04.055 ACCEPTANCE OF DEDICATION

Any dedication of streets, utilities, easements, public areas, parks or other land shown on a plat shall be deemed to be an offer of dedication which may be withdrawn by the subdivider/owner at any time prior to filing of the plat in the deed records. Withdrawal of any such dedication shall void any previous approval of the plat. Approval of a plat by the Planning and Zoning Commission shall not be deemed an acceptance of any proposed dedication and shall not impose any duty on the City concerning the improvements or maintenance of such dedication until the developer has actually improved same and the City has accepted and made use thereof.

- A. For any subdivision for which a plat has been filed for record, or where land has been divided by metes and bounds and no plat filed for record, and which has not been approved according to these regulations, or which fails to meet the standards contained or referred to herein, the Commission shall adopt a Resolution concerning such failures or lack of approval and indicating that same is in violation of the provisions of this Ordinance. The Commission shall cause a copy of such resolution, signed by the chairman of the Commission and attested to and notarized by the City Secretary or designee, to be filed in the Deed Records of Tarrant County.
- B. If compliance and approval are secured following the filing of said Resolution, the Commission shall file in the Deed Records of Tarrant County an instrument that, in effect, rescinds such earlier filed resolution.
- C. Disapproval of a plat by the Commission shall be deemed a refusal by the City to accept the offered dedications shown thereon. Approval of a plat shall not impose any duty upon the City concerning the maintenance or improvement of any such dedicated parts until the proper authorities of the City have actually appropriated the same by entry, use, or improvement. Any such dedication, before or after actual appropriation may be vacated by the Council in any manner provided by law.

16.04.060 AMENDMENTS

The City Council may from time to time amend this Ordinance, in accordance with appropriate procedures provided by law.