Chapter 107

SUBDIVISIONS AND OTHER DEVELOPMENTS*

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ARTICLE I. IN GENERAL

Sec. 107-1. Title; territorial applicability.

These regulations shall officially be known, cited and referred to as the "Subdivision Ordinance of the City of Bella Vista, Arkansas," hereinafter referred to as "these regulations," and shall apply to the areas outlined on the official planning area map of the city.
(Ord. No. 2009-10, § 100.1, 9-4-2009)

Sec. 107-2. Definitions.

Definitions not expressly prescribed herein are to be construed in accordance with the customary usage in municipal planning and engineering practices. Whenever used in this regulation, the term "may" is permissive, while the term "shall" is to be interpreted in its mandatory sense. For the purpose of interpreting this regulation, certain words used herein are defined as follows:

100-year flood means a flood with one percent chance of occurring in any year. The term is misleading because of its statistical derivation. A "100-year flood" may occur many times in any given 100 year period, or it may not occur at all in 100 years.

AASHTO means American Association of State Highway and Transportation Officials.

Abutting means having property or district lines in common. Since zoning district lines fall to the centerline of a street, alley, or waterway, lots which appear physically separated abut at said district line.

Access means the way or means by which a piece of property is approached or entered.

Access drive means the way or means by which a piece of property is entered or exited by a vehicle from any right-of-way or paved surface of any street, road, or highway.

Access easement means an easement granted by an owner of land to provide access to a lot or parcel not fronting a street or roadway.

ADA means the American Disabilities Act.

Agent (of city) means a person with delegated authority for a specific purpose.

AHTD means the Arkansas State Highway and Transportation Department.

Alley means a minor public right-of-way used for utility installations and vehicular access to the back or the side of properties abutting a street.

Approval, conditional, means approval of a plan, plat, or activity by the commission subject to performance by the applicant of certain stipulated conditions.

Bella Vista development calendar means the scheduling calendar maintained by the city planning office which contains dates of scheduled planning commission meetings and city council meetings. The Bella Vista development calendar will be the official calendar for determining the timeliness of any applications or requests made pursuant to the ordinance from which this chapter is derived.

Block means a parcel of land, intended to be used for urban purposes, which is entirely surrounded by public streets, highways, railroad rights-of-way, public walks, parks, drainage channels, or a combination thereof.

BMP is an acronym meaning best management practice.

Board of adjustment means the zoning board of adjustment which considers requests for relief from existing ordinances on matters of residential, commercial and industrial development. In general, it strongly supports the character of the municipality and the aims of its long range planning efforts.

Bond means any form of security including a cash deposit, surety bond or instrument of credit in an amount and form satisfactory to the city.

Buffer means a strip of land established to protect one type of land use from another. A buffer strip is landscaped and kept in open space.

Buffer, perimeter landscaping, means a continuous area of land set aside along the perimeter of a lot in which landscaping is used to provide a transition between and reduce the environmental, aesthetic, and other impacts of one type of land use upon another.

Building code means regulations established by local governments describing the minimum requirements for buildings; includes foundation, roofing, plumbing, electrical, and other specifications for safety and sanitation.

Building line means a line drawn on plats and other property description maps delineating the area within which a structure can be built.

Building setbacks. See *Setbacks.*

Certificate of completion of improvements means a statement by a developer's engineer-of-record certifying that all improvements and installations are complete and built in conformance with the city's specifications and this chapter.

Circuit clerk means the Benton County circuit clerk.

City means the City of Bella Vista, Arkansas.

City limits means the limits of the land area occupied by, and under jurisdiction of, the city.

Collocation means the use of a wireless telecommunications facility by more than one wireless telecommunications provider.

Commission means the planning commission of the city.

Comprehensive plan means a composite of the mapped and written proposals, as adopted by the Bella Vista planning commission and city council, whether in whole or in part, recommending the physical development of the community. Said plan includes, but is not limited to, the planning area map, land use plan, master street plan and master street plan map for the city.

Council means the city council.

County means Benton County, Arkansas.

Covenant means a provision in a deed limiting the use of the property and prohibiting certain uses.

Cul-de-sac means a street with only one outlet and being permanently terminated within the plat by a vehicular turnaround.

DBH means diameter at breast height.

Deadend street means a street having one end open to traffic and being permanently terminated at the opposite end.

Dedication means land and improvements offered to the city and accepted by the city for public use, control and maintenance; the dedication of any street or alley right-of-way, utility easement, drainage easement, or access easement through any tract of land regardless of the area involved.

Deed means a legal document conveying ownership of real property.

Design professional means a person, licensed and registered by the State of Arkansas, qualified by education and experience to prepare plans and specifications required under these regulations. Generally, design professionals are registered architects, licensed landscape architects, or registered professional engineers.

Design speed means the maximum safe speed that can be maintained over a specified section of roadway when conditions are so favorable that the design features of the roadway govern.

Developer means that person, firm or corporation undertaking to develop a subdivision or any other type of land development as defined in this chapter.

Development means any manmade change in improved and unimproved real estate, including but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

Development plan means a drawing showing all proposed improvements to a piece of property including streets, parking lots, buildings, drives, signs, utilities, drainage, and grading by size and location.

Drainage easement means an easement providing for the flow and removal of surface water across a property.

Easement means a grant by a property owner for the use by the public, a corporation, or certain persons of a strip of land for specific purposes.

Egress means a means of exit from a property to a public street.

Engineer means a registered professional engineer in good standing, and licensed to practice in the State of Arkansas.

Federal Emergency Management Agency (FEMA) means the independent federal agency that, in addition to carrying out other activities, oversees the administration of the National Flood Insurance Program.

Fire apparatus road means a roadway provided for use by emergency and fire vehicle to access a subdivision from a main artery. Full specifications are provided in the Arkansas Fire Prevention Code.

Fire chief means the appointed official of the city responsible for all functions of the fire department.

Fire marshal means the fire chief or his designee, responsible for enforcement of Fire Prevention Codes of Arkansas.

Final plat approval means approval of a plat that is in conformance with the preliminary plat along with all required financial guarantees.

FIRM means flood insurance rate map.

Floodplain means a geographic area susceptible to periodic inundation from overflow of natural waterways and determined as to extent by the Federal Emergency Management Agency (FEMA).

Frontage road means a street, parallel to and adjacent to a major highway or thoroughfare, which provides access to abutting properties.

Functional classification system means the process by which streets and highways are grouped into classes, or systems, according to the character of service they are intended to provide.

Health department means the county health department and/or the Arkansas State Health Department.

Highway department, state, means the Arkansas State Highway and Transportation Department.

Horizontal datum means, at its most basic level of definition, the horizontal datum is a collection of specific points on the earth that have been identified according to their precise northerly or southerly location (latitude) and easterly or westerly location (longitude) (National Geodetic Survey, 1986).

Horizontal property regime means creation of a condominium project in which co-owners own free interests in units together with fractional interests in general common elements which determines the use to be made of improved land whether or not such improvement is composed of one or more separate buildings of one or more floors or stories.

Housing code means part of the technical codes adopted by the city by ordinance.

Improvement means any betterment of existing conditions of land such as,. but not limited to, streets, curbs, gutters, sidewalks, trails, pavement, pedestrian ways, water mains, storm sewers, signs, monuments, landscaping, streetlights, fire hydrants, or other actions resulting in permanent changes in the condition of the land.

Improvement plans means the engineering drawings showing types of materials and construction details for the physical structures and facilities excluding dwelling units to be installed in conjunction with the development of the subdivision.

Incidental subdivision means the subdivision of land that does not require an applicant to go through the complete preliminary and final plat process. Incidental subdivisions include lot splits, informal plats, property line adjustments and correction plats.

Ingress means a means of entrance to a property from a city street.

International Fire Code means and is used synonymously with the Arkansas Fire Prevention Code.

Irrevocable letter of credit means a legal financial instrument in the form approved by the city. The instrument gives the right to a dollar amount to the city to guarantee construction or maintenance of improvements in a subdivision.

Land surveyor means an individual licensed to practice land surveying in the State of Arkansas.

Land use plan means a written plan with goals and objectives along with a map depicting and describing present land uses and future land uses expected in the city. This plan is approved by the city council.

Large scale development means the development of a tract, lot or parcel developed as a single improvement. The term "development" shall include, but not be limited to, the construction of a new improvement, the construction of an addition to an existing improvement, or a revision of land use which results in the need for access and utilities.

Lattice tower means a support structure constructed of vertical metal struts and cross braces forming a triangular or square structure which often tapers from the foundation to the top.

LID means low impact drainage design and is a method of designing drainage systems or facilities to allow runoff to penetrate the ground in place instead of concentrating runoff in structures or facilities.

Lot means a parcel of land, legally defined in a recorded deed or a recorded plat, fronting on a public dedicated right-of-way or other approved private drive. The lot shall not be divided by any public highway or alley, including any part thereof subject to any easement for any purpose other than a public highway or alley, but excluding any part thereof severed from another lot where the severance creates any nonconformity of use or structure. Said lot shall establish one building site and comply with all subdivision rules and regulations of the city.

Lot, double frontage, means a lot which runs through a block from street to street and having frontage on two non-intersecting streets.

Lot, reverse frontage, means a double frontage lot which is designed to be developed with the rear yard abutting a major street and with the primary means of ingress and egress provided on a minor street.

Lot, split, means a subdivision which involves the dividing or redesigning of an existing lot or lots within a block of a recorded subdivision and which does not involve the vacating, widening, narrowing or change of alignment of any thoroughfare, street, alley or easement, or involve improvements required by these regulations.

Lumen means a unit of measure of the intensity of light produce by a lamp (bulb) as indicated by the manufacturer.

Manufactured home means a detached single-family dwelling unit fabricated on or after June 15, 1976, in an off-site manufacturing facility for installation or assembly at the building site as a permanent structure with transport features removed, bearing a seal certifying that it is built in compliance with the Federal Manufactured Housing Construction and Safety Standards Code. This code means the standard for construction, design and performance of a manufactured home as set forth in the Code of Federal Regulations, Title 24, parts 3280, 3282, 3283, and 42 USC 5401 et seq., as mandated in the United States of America and as administered by the United States Department of Housing and Urban Development.

Manufactured home park means a parcel of land which has been designed or improved or is intended to be utilized for occupancy by one or more manufactured homes and which conforms to the provisions of the ordinance from which this chapter is derived.

Master street plan means the plan made and adopted by the planning commission and accepted by the city council classifying certain streets within the planning area jurisdiction as arterial or collector streets.

Monopole means a support structure constructed of a single, self-supporting hollow metal tube securely anchored to a foundation.

NPDES is an acronym meaning National Pollution Discharge Elimination System.

NOI is an acronym meaning notice of intent.

NOT is an acronym meaning notice of termination.

NWARPC means the Northwest Arkansas Regional Planning Commission.

Open space means land devoted to conservation or recreational purposes and/or land designated by a municipality to remain undeveloped.

Out lots mean parcels or tracts of land proposed as part of a large scale development for future use or development.

Outdoor light fixtures (outdoor lighting) means an outdoor illuminating device, outdoor lighting or reflective surface, lamp or similar device, permanently installed or portable, used for illumination, decoration, or advertisement. Such devices shall include, but are not limited to lights used for: buildings and structures; recreational areas; parking lot lighting; landscape lighting; architectural lighting; product display area lighting; building overhangs; open canopies; and security lighting.

Parcel means a division of land composed of one or more lots in contiguous ownership.

Parking facility means any area subject to wheeled traffic, including access areas used for parking except for single-family or two-family developments. All open areas and open spaces on the land which are designated, used, required or intended to be used for parking, maintenance, service,

repair, circulation, or operation of vehicles, including automobiles, buses, trailers, trucks, boats, and motorcycles. It includes areas used or intended to be used for driveways to such vehicular use areas, but does not include improvements to public roads, streets, highways, and alleys.

Paved width means the portion of a street available for vehicular traffic; where curbs are laid, it is the distance from back of curb to back of curb.

Paving means a substance which is concrete, asphalt, asphaltic seal coat over rock base, or any other approved quality paving material.

Pedestrian accommodation means to provide continuous pedestrian travel, segregated from vehicular traffic, within the subdivision and the subdivision boundary.

Performance bond or guarantee means any security which may be accepted in lieu of a requirement that certain improvements be made before the planning commission approves a final plat, including performance bonds by subdividers or improvement contractors, escrow agreements, letters of credit, and other similar collateral or surety agreements.

Planning area, map or boundary, means the area within the city's territorial jurisdiction for which the planning commission has determined it will prepare plans and recommend ordinances and regulations; the same being the city planning area. The "planning area" shall be the area in which provisions of the city's subdivision regulations shall apply.

Planning commission means the planning commission of the city.

Planning official means the person designated by the mayor and/or city council to have overall responsibility of the entire policy or particular portion of the policy.

Plat means a map or chart indicating the subdivision or re-subdivision of land, intended to be filed for record.

Plat correction means a correction to an existing plat that is necessary due to an incorrect legal description or scriber errors.

Plat, final, means a finished drawing showing completely and accurately all legal and engineering information and certifications necessary for recording, and includes the bill of assurance, if applicable.

Plat, preliminary, means a drawing which shows the proposed layout of a subdivision in sufficient detail to indicate unquestionably its workability in all aspect, but is not in final form for recording and the details are not completely computed.

Plat, sketch, means an informal plan of the proposed subdivision to be submitted by the developer during the preapplication process, the purpose being to acquaint the developer with plans and policies relevant to the proposed subdivision.

Preapplication conference means a meeting between planning officials and a developer to give the developer an opportunity to obtain advice concerning a proposed development of a plan or

subdivision to avoid unnecessary costs or delays and to obtain informal guidance to prevent conflicts. This conference takes place before submission of the formal application for approval of a plan or a preliminary plat.

Property line adjustment means a transfer or adjustment of a property line which does not create a separate, new lot. A property line adjustment may or may not dedicate rights-of-way or utility easements.

Protective covenants mean property restrictions established by the subdivider.

Public utility means a public or private business organization, subject to governmental regulation, that provides an essential commodity or service, such as water, electricity, transportation, or communication, to the public.

Quorum court means the county quorum court made of the elected justices of peace serving 13 districts.

Recreational vehicle means a vehicular type unit primarily designed as temporary living quarters for recreational, camping, or travel use, which either has its own motor power or is mounted on or drawn by another vehicle. The basic entities are: travel trailers, truck campers, and motor homes that are not larger than ten feet by 50 feet, exclusive of tongue and extended areas such as slides or bump-outs. For purposes of this regulation, also included are other types of vehicles such as, but not limited to, trucks, vans and buses that have been converted to temporary dwellings for travel, recreation, and vacation use, regardless of size.

Recreational vehicle park means a tract of land upon which two or more recreational vehicle sites are located, established, or maintained for occupancy by recreational vehicles of the general public as temporary living quarters for recreation or vacation purposes.

Recreational vehicle site means a plot of ground (lot) within a recreational vehicle park intended for the accommodation of a recreational vehicle, including all required appurtenant structures and having provisions for available utility connections.

Recreational vehicle stand or pad means a concrete pad upon which the recreational vehicle is situated.

Replat means the act of platting the lots, parcels, and easements in a recorded subdivision or partition plat to achieve a reconfiguration of the existing subdivision or partition plat, or to increase or decrease the number of lots in the subdivision.

Resubdivision means the changing of any existing lot or lots of any subdivision plat previously recorded with the county clerk. Resubdivision includes new townhouse or condominium projects, and townhouse or condominiums into private ownership of property previously occupied on a rental basis. Resubdivsion also includes lots, parcels, units and real property converted to time-share units or estates.

Retaining wall means a structure erected between lands or land and water of different elevations that resists the lateral displacement of soil or other materials resulting from a separation in grade. Retaining walls are typically constructed to protect structures or prevent erosion from the upper slope.

Right-of-way. The usage of the term "right-of-way" for land platting purposes shall mean that every right-of-way hereafter established and shown on a final plat is to be separate and distinct from the lots or parcels adjoining such right-of-way and not included within the dimensions or areas of such lots. Rights-of-way intended for streets, crosswalks, water mains, sanitary sewers, storm drains, or any other use involving maintenance by a public agency or utility company shall be dedicated to public use by the maker of the plat on which such right-of-way is established.

Setbacks, building, means lines established by the zoning ordinance designating the area intended for future right-of-way as established by the master street plan and restricting the placement of buildings thereon.

Sight triangle means a triangular area formed by a diagonal line connecting two points on intersecting street rights-of-way, measured 35 feet along each pavement edge starting at the intersection point.

Sketch plans. See *Plats, sketch.*

Staff means employees of the city and designees of the mayor of the city.

Street means a general term denoting a public or private thoroughfare which affords the principal means of access to abutting property. The term includes all facilities which normally occur within the right-of-way; it shall also include such other designations as highway, thoroughfare, parkway, road, throughway, pike, avenue, boulevard, land, place, court, but shall not include an alley or a pedestrian way. For the purpose of this chapter, streets shall be classified as follows:

(1) *Arterial streets:* Those streets designated as arterial, major and minor, on the city master street plan.

(2) *Collector streets:* Those streets designated as collector and sub-collector streets on the master street plan.

(3) *Residential streets:* Streets that are used primarily for access to abutting properties.

(4) *Loop streets:* Minor streets that begin from one minor street and curve to end on the same minor street.

(5) *Cul-de-sac:* Short local streets having one end open to traffic and being permanently terminated at the other end by a circular area which permits vehicles to turn around without having to stop and back up.

(6) *Deadend streets:* Those streets which have terminated at one end where vehicles must stop and back up in order to turn around.

Street, existing, means any street which has a minimum width of 20 feet of hard surfaced material. Gravel roads or roads which are in extremely poor condition will not qualify as an existing street for purposes of this regulation.

Street width means the width of the street used for traffic or when curbs are used the distance from back of curb to back of curb.

Structure means anything inanimate constructed or erected with a fixed location on the ground, or attached to something having a fixed location on the ground including roof overhangs, carports, garages, porches, and other similar structures.

Subdivider means any person dividing or proposing to divide land so as to constitute a subdivision and includes any agent of the subdivider.

Subdivision means subdivision is the division of any parcel of land into separate parcels, lots, units or building sites for the purpose (whether immediate or future) of sale or building development.

Subdivision, minor, means a subdivision of land into five or less lots, parcels or other divisions.

Surveyor means a licensed state land surveyor or a registered public surveyor as authorized by the state statutes to practice the profession of surveying in the State of Arkansas.

Swale, drainage, means a shallow trough-like depression that carries water mainly during rainstorms or snow melts.

SWPPP is an acronym meaning stormwater pollution prevention plan.

Telecommunication means the technology which enables information to be exchanged through the transmission of voice, video, or data signals by means of electrical or electromagnetic systems.

Territorial jurisdiction. See *Planning area*.

Throat length means the distance between the paved edge of where the driveway meets street and the first opportunity for a vehicle to turn left or right.

Tract means a specified or limited area of land, normally measured by a metes and bounds description.

Use means the purpose for which land or a building is designed, arranged, or intended, or for which either is, or may be, occupied or maintained.

USGS means the United States Geological Survey.

Utility easement means a grant by a property owner for the use by the public, a corporation, or certain persons of a strip of land by public or private utilities.

Vacation means legal abandonment of a platted street right-of-way or easement.

Variance means an official dispensation to act contrary to a zoning or subdivision regulation.

Vertical datum is used to measure heights given on maps. The starting point for measuring these heights are mean sea level points established at coastal places.

Waiver means permission from the planning commission to depart from the requirements of these regulations.

Watercourse (wet or dry) means a running stream of water having a bed and banks; the easement one may have in the flowing of such a stream in its accustomed course. A watercourse may be sometimes dry.

Wireless communications antenna means the physical device through which electromagnetic, wireless telecommunications signals authorized by the Federal Communications Commission are transmitted or received. Antennas used by amateur radio operators are excluded from this definition.

Wireless communications equipment shelter means the structure in which the electronic receiving and relay equipment for a wireless telecommunications facility is housed.

Wireless communications facility means a land use facility that transmits and/or receives electromagnetic signals for the purpose of transmitting analog or digital voice or data communications. It includes antennas, microwave dishes, horns and other types of monopoles, or similar structures supporting said equipment, equipment buildings, shelters or cabinets, and other accessory development. The term "wireless communication facility" includes personal wireless services as defined in the Federal Telecommunication Act of 1996, and as subsequently amended. The term "wireless communication facility" shall not include federally licensed amateur radio stations and facilities used exclusively for receive-only antennas.

Wireless communications tower means a structure intended to support equipment used to transmit and/or receive telecommunications signals including monopoles, guyed and lattice construction steel structures.

Zoning ordinance means government (usually municipal) laws that control the use of land within a jurisdiction.
(Ord. No. 2009-10, § 200.01, 9-4-2009; Ord. No. 2010-09, § 200.01, 7-26-2010; Ord. No. 2011-05, § 200.01, 6-28-2011; Ord. No. 2011-14, § 200.01, 12-2-2011)

Sec. 107-3. Authority.

(a) These regulations govern the subdividing and developing of land within the corporate limits and the planning area boundary, herein after referred to as "the planning area," defining the territorial jurisdiction of the city and are adopted in accordance with the provisions of A.C.A. §§ 14-56-401—14-56-426.

(b) By authority of the ordinance establishing the planning commission, adopted pursuant to the powers and jurisdictions vested through applicable state statutes, the planning commission does hereby exercise the power and authority to review, approve, and disapprove plats for the subdivision of land within the planning area jurisdiction which shows lots, blocks, or sites with or without new streets.

(c) By the same authority, the planning commission does hereby exercise the power and authority to pass and approve the development of platted subdivisions of land already recorded in the office of the county circuit clerk, if such plats are already platted and undeveloped, with no improvements.

(d) The plat shall be considered to be entirely or partially undeveloped, if:

(1) Such plat has been recorded with the county circuit clerk's office after the effective date of these regulations without a prior approval by the planning commission;

(2) Such plat has been approved by the planning commission where the approval has been granted:

a. More than three years prior to the granting of a building permit on the partially or entirely undeveloped land; and

b. The zoning ordinance, either bulk or use, for the district in which the subdivision is located, has been changed subsequent to the original final approval.

(Ord. No. 2009-10, § 100.2, 9-4-2009)

Sec. 107-4. Purpose.

(a) These regulations are formulated to promote safety, public health, and the general welfare of the citizens and its planning area.

(b) The purpose of these regulations is to provide for the harmonious development of the city and the coordination of streets and other public utility improvements within subdivisions with existing or planned improvements or other features of the general plan including the master street plan and the land use plan.

(c) These regulations and standards for the subdivision and improvement of land for urban use are designed to make provision for adequate air, open space, drainage, transportation, public utilities, and other needs, and to ensure the development and maintenance of a healthy, attractive, and efficient community that provides for the conservation and protection of its human and natural resources.

(d) These regulations are intended to set forth the procedures, requirements, and minimum standards governing the subdivision of land within the territorial jurisdiction of the city and should be administered in a manner:

(1) To assist the orderly, efficient, and coordinated land development within the planning area of the city in accord with its adopted land use plan, master street plan and zoning ordinance.

(2) To promote the health, safety, and general welfare of the residents of the city.

(3) To ensure conformance of subdivision plans with public improvement plans for the city and its environs.

(4) To protect and conserve the value of buildings and improvements and to minimize adverse impact on adjoining or nearby properties.

(5) To establish a beneficial relationship between the uses of land and buildings and the municipal street system to require proper location and design of streets and building lines, to minimize traffic congestion, and to make adequate provision for pedestrian traffic circulation.

(6) To establish reasonable standards of design and procedures for subdivision and re-subdivision to further the orderly development and use of land and to ensure proper legal descriptions and monumentation of subdivided lands.

(7) To encourage the wise use and management of natural resources and to provide adequate and safe recreational areas of natural beauty and topography within the community.

(8) To provide for adequate provisions for transportation, water, drainage, and other public requirements.

(9) To provide for proper ingress and egress to properties and neighborhoods.

(10) To guide the future growth and development of the city in accordance with the land use plan and the master street plan.

(11) To assist orderly, efficient and integrated development within the city's planning area.

(12) To promote sound development through utilization of good design principles.

(13) To facilitate ,the further re-subdivision of large tracts into smaller parcels, or replatting existing subdivisions

(14) To secure equitable handling of all subdivision plans by providing uniform procedures and standards for observance both by developers and the planning commission.

(Ord. No. 2009-10, § 100.3, 9-4-2009)

Sec. 107-5. Jurisdiction.

These regulations shall be applicable to all lands within the city and its planning area. The planning area includes those areas depicted on the planning area map, copies of which are on file with the city clerk and the county circuit clerk, all as provided in A.C.A. title 14, ch. 56, subch. 4 (A.C.A. § 14-56-401 et seq.).

(Ord. No. 2009-10, § 100.4, 9-4-2009)

Sec. 107-6. Planning area map.

Included as part of this regulation by reference is the map titled "Planning Area Map" which delineates the planning area boundary. Within the planning area the city shall plan and apply subdivision regulations. The map includes the corporate city limits and that area outside the city limits within the territorial jurisdiction. The planning boundary was reviewed by and approved by the Northwest Arkansas Regional Planning Commission, adopted by the city planning commission, ratified by the city council and filed for record with the county circuit clerk's office.

(Ord. No. 2009-10, § 100.5, 9-4-2009)

Sec. 107-7. Applicability to certain activities.

It is the policy of the city to consider the subdivision of land and the subsequent development of subdivided plats as subject to the control of the city pursuant to the general plan, primarily the land

use plan and master street plan of the city, for orderly planning and efficient development of the city and the planning area. These regulations and development standards shall apply to the following forms of land subdivision and development:

(1) *Subdivision.* The division of land into two or more tracts, lots, sites, or parcels;

(2) *Property line adjustments.* A transfer or adjustment of a property line which does not create a separate, new lot. A property line adjustment may or may not require dedication of right-of-way or utility easements;

(3) *Large scale developments.* All development, other than single-family and duplex; or

(4) *Dedications.* The dedication of any street or alley right-of-way, utility easement, drainage easement, or access easement through any tract of land regardless of the area involved.

(Ord. No. 2009-10, § 100.6, 9-4-2009)

Sec. 107-8. Exemptions.

(a) *Street widening.* These regulations and development standards shall not apply to the public acquisition by purchase or dedication of parcels of land for the widening or opening of streets or for other improvements.

(b) *Horizontal property regime.* These regulations and development standards shall not apply to any horizontal property regime within any lot for which the same documentation as required by state statute to be filed with the county for the establishment of that horizontal property regime shall have been filed with the city and where all buildings within that lot shall have been built to meet the fire separation requirements of the city between units, as defined in the Horizontal Property Act of the State of Arkansas (A.C.A. § 18-13-101 et seq.).

(Ord. No. 2009-10, § 100.7, 9-4-2009)

Sec. 107-9. Amendments.

On any proposed amendments to these regulations, the planning commission shall hold a public hearing, for which 15 days' advance notice in a local newspaper of general distribution has been published. Following such hearing, the city council may adopt the amendments as recommended by the planning commission or as determined by a majority vote of the city council.

(Ord. No. 2009-10, § 100.9, 9-4-2009)

Sec. 107-10. Approval required.

No subdivider proposing to make or having made a subdivision within the territorial jurisdiction of the city shall proceed with any construction work on the proposed subdivision prior to obtaining a planning commission approval, and shall not convey title to any lot or lots before obtaining from the planning commission a certificate of final plat approval and the acceptance and filing of said plat with the county circuit clerk.

(Ord. No. 2009-10, § 100.8, 9-4-2009)

Sec. 107-11. Conflicting regulations.

All ordinances or parts of ordinances inconsistent or in conflict with these regulations for the city are hereby repealed and amended to comply herewith by virtue of the ordinance, from which this article is derived, adopting this regulation.
(Ord. No. 2009-10, § 100.10, 9-4-2009)

Sec. 107-12. Severability.

Any clause or provision of these regulations declared invalid or unconstitutional by the court shall not affect the validity of the regulation as a whole or any other part of the Code thereof. If any court of competent jurisdiction shall adjudge invalid the application of any provision of these regulations to a particular subdivision of land, such judgment shall not affect the application of such provisions to any other subdivision of land, not specifically included in such judgment.
(Ord. No. 2009-10, § 100.12, 9-4-2009)

Sec. 107-13. Abrogation and greater restriction.

It is not intended by these regulations to repeal, abrogate, annul, impair or interfere with any existing easements, covenants, agreements, rules, regulations or permits previously adopted or issued pursuant to the law; however, where these regulations impose greater restrictions, the provisions of these regulations shall govern.
(Ord. No. 2009-10, § 100.13, 9-4-2009)

Sec. 107-14. Non-liability.

In their interpretation and application, the provisions of these regulations shall be held to be minimum requirements and shall be liberally construed in the favor of the city and shall not be deemed a limitation or repeal of any other power granted by the Arkansas Code Annotated.
(Ord. No. 2009-10, § 100.14, 9-4-2009)

Secs. 107-15—107-31. Reserved.

ARTICLE II. ADMINISTRATION AND ENFORCEMENT

Sec. 107-32. Administration.

(a) These rules and regulations shall be administered by the planning commission and the mayor or his designee. The commission may, from time to time, recommend instructions and operating procedures to be followed in the administration of these regulations to the end that the public may be better informed and that approval of plats be expedited.

(b) In addition to the requirements established herein, all subdivision plats shall comply with all other, current and future, applicable rules, regulations and laws including, but not limited to, the city land use plan, the master street plan, and the zoning ordinance, building and housing codes, and any

other regulations adopted by the city council, and any regulations or special requirements of the state health department, state highway and transportation department, or other appropriate state agencies.
(Ord. No. 2009-10, § 300.01, 9-4-2009)

Sec. 107-33. Enforcement.

(a) *Duty to enforce.* It shall be the duty of the city engineer or mayor or his designee to enforce these regulations and to bring to the attention of the mayor and the city attorney any violation or lack of compliance herewith.

(b) *Building permits.* The mayor or his designee shall not issue building permits for any structure on any lot in a subdivision for which the plat or plan has not been approved and recorded in the manner prescribed herein.

(c) *Plat approval.* No plat of any tract of land within the planning area jurisdiction shall be accepted by the county circuit clerk for filing of record unless the plat has been approved by the planning commission, and bears the signature of the proper city official.

(d) *Compliance.* No conveyance by metes and bounds of tracts or lots coming under the definition of subdivision of land without compliance with the applicable provisions of this regulation or amendments thereto shall be permitted. No dedication of streets shall by itself be accepted by the city unless the usage of the adjoining affected land is shown. If the purpose of the opening of the street is to make the affected land available for sale as a redevelopment or subdivision, the street may not be accepted until accompanied by the required plat, and all improvements are completed and accepted by the appropriate agencies.

(e) *Utilities.* No public utility whether publicly or privately owned shall provide, extend or authorize the extension of service to any lot, building, structure, or location within the area under the jurisdiction of the city and its planning area unless:

(1) *Prior establishment.* A lot, building or structure was established before the adoption of these subdivision regulations; or

(2) *Approval.* A plat of the location has been approved by the planning commission and filed and recorded in the office of the county circuit clerk.

(f) *Exceptions.* Notwithstanding the above provisions, nothing herein shall prevent a citizen, other than a subdivider in violation of this article, from obtaining a building permit, final inspection, utility service or any other administrative service or remedy, upon the following conditions:

(1) Where the lot for which the administrative permit or service sought lies within a subdivision which fails to conform with the requirements of this article and such nonconformity was known to the planning commission, mayor or his designee and no action to enforce the requirements of this article was initiated by requesting an injunction in a court of competent jurisdiction within six months of acquiring knowledge of the alleged violations or nonconformity; or

(2) Where the lot for which the administrative permit or services sought lies within a subdivision which was located in the planning area boundary, but outside the city limits at the time of filing.

(g) *Streets.* The issuance of any building permit does not constitute acceptance of or intent by the city to accept any streets providing access to the lot on which the permit is issued.
(Ord. No. 2009-10, § 300.02, 9-4-2009)

Sec. 107-34. Violation and penalty.

(a) *Procedures.*

(1) When, in the opinion of the mayor or his designee, a violation of this chapter exists, and a subdivider who has not complied with the requirements and procedures set forth herein attempts to proceed with construction work, or attempts to convey title to any lot or lots before obtaining final plat approval, or otherwise is in substantial violation of this chapter, the mayor or his designee shall, within 15 days of becoming aware of a possible violation, issue a written order to the alleged violator.

(2) Said written order shall be by certified mail, restricted delivery, and shall set out the specific violations alleged.

(3) Notification to the mayor and city attorney of the issuance of the written order shall be given.

(4) If the alleged violator, within seven days of receipt of said order, does not cease and desist from activities not in conformance with this article, or the mayor or his designee shall, within seven additional days, transmit to the city attorney an affidavit setting out the nature of the violation.

(5) The city attorney shall take appropriate measures to enforce this chapter, including, but not limited to, seeking injunctive relief from a court of competent jurisdiction.

(b) *Penalties.*

(1) Any person, firm or corporation that violates any provision of these regulations or amendments thereto shall be guilty of a misdemeanor and on conviction shall be fined not less than $50.00 nor more than $250.00 for each offense.

(2) Each day that any violation of these rules and regulations are in effect shall constitute a separate offense and be subject to additional fines.

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

(Ord. No. 2009-10, § 300.03, 9-4-2009)

Sec. 107-35. Waivers.

(a) *General.*

(1) When, by the strict interpretation of these regulations, an applicant incurs undue restrictions on the physical property to be subdivided or developed, a waiver for such requirements may be granted by the planning commission.

(2) Under no circumstance should a waiver be granted because of a personal hardship or for personal or emotional reasons. Waivers shall not be granted based strictly on financial hardship.

(3) A waiver is determined by the strict interpretation and enforcement of the rules and regulations upon a given piece of property to be subdivided or developed.

(b) *Procedures.*

(1) Application. A written application shall be filed with the planning and code enforcement department accompanied by the filing fee required for such applications in the currently adopted schedule of fees. Such applications shall be filed in accordance with the city development calendar. The application shall state fully the grounds for the waiver and provide reasoning based on the review criteria provided in subsections (b)(6)a. through d. of this section.

(2) Under exceptional circumstances, the planning commission may grant waivers at the time of final plat approval.

(3) In granting the waiver, the planning commission shall prescribe any conditions that it deems necessary to or desirable in the public interest.

(4) In considering the petition for a waiver, the planning commission shall take into account the nature of the proposed use of land involved, existing uses of land in the area, proximity to public utilities, the number of persons who will reside or work in the proposed subdivision, and the probable effect of such waiver upon traffic conditions and upon the public health, safety and general welfare in the vicinity.

(5) The findings of the planning commission, together with the specific facts upon which findings are based, shall be incorporated into the official minutes of the planning commission meetings at which such waiver is granted. Waivers may be granted only when in harmony with the general purpose and intent of these regulations.

(6) No waiver shall be granted unless the planning commission finds all of the following:

a. That there are special circumstances or conditions affecting the land involved such that the strict application of the provision of these regulations would deprive the applicant of the reasonable use of this land.

b. That the waiver is necessary for the preservation and enjoyment of a substantial property right of the applicant.

c. That the granting of the waiver will not be detrimental to the public health, safety and welfare or injurious to other property in the area.

d. That the granting of the waiver will not have the effect of preventing the orderly subdivision of other land in the area in accord with the provision of these regulations.

(7) Four affirmative votes of the planning commission's authorized membership shall be necessary for the passage of any waiver.

(Ord. No. 2009-10, § 300.04, 9-4-2009; Ord. No. 2011-05, § 300.04, 6-28-2011)

Sec. 107-36. Vacation of plats.

(a) *Vacation prior to lots being sold.* Any plat or any part of a plat may be vacated by the owner of the premises at any time before the sale of any lot therein by written instrument to which a copy of such plat shall be attached declaring the same to be vacated. Vacation of a plat shall be subject to the approval of the city council if the plat is located within the corporate limits. It will be subject to quorum court approval if located outside the corporate limits, but within the planning area of the city.

(b) *Approval by planning commission.* Such an instrument shall be approved by the planning commission with the same plat submission requirements, review processes and fees as are required for plats of subdivisions. Between the preliminary plat and the final plat, the planning commission will be afforded the opportunity for review and may reject any such plat that destroys public rights in any of its public uses, improvements, streets or alleys.

(c) *Filing and recording.* Such an instrument shall be executed, acknowledged or approved and recorded or filed in like manner as plats of subdivisions. Being duly recorded or filed shall operate to destroy the force and effect of the recording of the original plat so vacated and to divest all public rights in the streets, alleys, and public grounds and all dedications laid out or described in such plat.

(d) *Vacation after lots are sold.* When lots have been sold, the plat may be vacated in a manner herein provided by all the owners of lots in such plat joining in the execution of such writings.

(Ord. No. 2009-10, § 300.05, 9-4-2009)

Sec. 107-37. Vacation of street rights-of-way, easements, or alleys.

(a) *Application for easement-alley vacation.* The application shall be submitted to the mayor or his designee pursuant to the city development calendar and shall consist of the following:

(1) *Application.* Completed and signed application form as provided by the appropriate city official or city staff.

(2) *Fee.* Pay the filing fee specified in the application forms.

(3) *Petition.* A petition to vacate street right-of-way, alley or easement.

(4) *Consent for property owners.* Written consent of all property owners abutting the street right-of-way, alley or easement to be vacated.

(5) *Ownership.* Proof of ownership of all property abutting the street right-of-way, alley or easement to be vacated.

(6) *Consent from utilities.* Written consent from all utilities affected by street right-of-way, alley or easement to be vacated.

(b) *Review and approval.* The mayor or his designee will review the request and approve, approve with comments or deny the request for a vacation. The city council shall make the final determination on approval of vacations by adopting an ordinance stating that the legal description as provided by the applicant and verified by the city is vacated.
(Ord. No. 2009-10, § 300.06, 9-4-2009)

Sec. 107-38. Appeals.

(a) *Appeals from staff interpretations or actions.* Owners of record of the property being considered may appeal city staff interpretations or actions regarding the subdivision regulations to the planning commission of the city.

(b) *Appeals from planning commission actions.*

(1) An owner of a lot of record of the property in question may appeal planning commission actions on the following items to the city council of the city:

a. Denial of waivers of the subdivision regulations;

b. Denial of preliminary plats, incidental subdivisions, final plats or large scale developments; or

c. Any conditions of approval determined by the planning commission, in granting approval for a development under these regulations.

(2) All other final decisions of the planning commission must be appealed to the circuit court.

(c) *Circuit court.* Unless set forth otherwise in this section, all appeals from final actions taken by the city council or planning commission shall be taken to the circuit court.
(Ord. No. 2009-10, § 300.07, 9-4-2009)

Sec. 107-39. Assurance of performance.

When the owner/developer requests final plat approval under the requirements contained in section 107-98(2), the owner/developer shall enter into an agreement with the city to guarantee installation or ensure the completion of improvements. The city may accept the subdivision and issue a certificate of final plat approval subject to all requirements of the chapter and upon providing one of the following guarantee requirements or financial instruments:

(1) *Performance bond.*

a. A performance bond may be posted to the city for completion of the improvements.

b. Such performance bond shall specify the time for completion of the improvements and installations and shall be in the amount determined by the engineer-of-record and agreed upon by the city engineer or the mayor or his designee and shall be 125 percent of the amount estimated to complete the improvements and installations for the subdivider in compliance with these rules and regulations.

c. Such performance bond shall be issued by a surety company authorized to do business in the State of Arkansas and shall remain in force for a period of one year or until improvements and installations are complete.

d. For improvement completion that takes over one year, an extension must be approved by the planning commission if found reasonable.

e. If the extension is not approved, the bond amount, in full, will be payable to the city at the end of the year. The performance bond shall not be renewed without approval of the planning commission.

(2) *Cash deposit.*

a. The subdivider may provide a cashier's check in the amount as determined by the engineer-of-record and agreed upon by the city engineer or the mayor or his designee as 125 percent of the estimated amount to complete the improvements and installations to comply with these rules and regulations.

b. The check shall be cashed one year from date of approval unless improvements are completed.

c. For improvement completion that takes over one year, an extension must be approved by the planning commission if found reasonable.

d. If the extension is not approved, the check amount, in full, will be payable to the city at the end of the year.

(3) *Irrevocable letter of credit.* The subdivider may provide an irrevocable letter of credit to the city pursuant to the following conditions:

a. The letter of credit will be for an amount of 125 percent of the amount estimated to complete the improvements as determined by the engineer-of-record and agreed by the city engineer, mayor, or his designee.

b. The letter of credit will be irrevocable and will list the city as the sole beneficiary.

c. The letter of credit will be in a form approved by the city attorney.

d. The city, as the sole beneficiary, shall be entitled to payment upon making demand for payment under the terms of the letter of credit in the event the subdivider is in default. Further, the city shall be entitled to use all of the money secured by the letter of credit to assure the cost of completion of the work in the subdivision.

e. The subdivider will not be entitled to any excess monies until the work in the subdivision has been completed.

f. The terms of the letter of credit shall be limited to a time specified not to exceed one year unless extension is granted by the planning commission. If the extension is not approved for longer than one year, then the amount of the letter of credit shall be payable in full to the city.

g. The letter of credit extension shall provide all costs incurred by the project and related inflation costs.

(Ord. No. 2009-10, § 300.08, 9-4-2009)

Sec. 107-40. Maintenance guarantee.

No less than one year's maintenance by the developer shall be ensured prior to the filing of a plat. One of the following methods, dependent upon the method utilized, in section 107-39, must be followed:

(1) *Certificate of completion of improvements.* If a certificate of completion of improvements is submitted prior to filing of the final plat, a maintenance bond or letter or credit must also be submitted to the city prior to the filing of the final plat. The maintenance bond, cash deposit or letter of credit must meet the following conditions:

a. It must be in an amount of 25 percent of the value of the donated assets. The value of the donated assets shall be as estimated by the engineer-of-record and agreed upon by the mayor or his designee.

b. It must be irrevocable and shall list the city as sole beneficiary.

c. It must be in a form approved by the city attorney.

d. It must run for no less than one year.

e. At the end of one year, if the improvements have not been adequately maintained, as determined by the mayor or his designee, the city shall be entitled to payment upon making demand for payment under the terms of the maintenance bond, cash deposit or letter of credit. The city shall be entitled to use all of the money secured by the maintenance bond, cash deposit or letter of credit to assure the proper maintenance of the improvement.

f. The subdivider shall not be entitled to any excess monies until the maintenance of the improvements in the subdivision has been satisfactorily completed.

(2) *Performance bond.*

a. If a performance bond is posted to assure completion of the improvements, that performance bond must also include provisions that automatically convert it to a maintenance bond upon completion of the improvements or on the date the performance bond lapses, whichever comes first.

b. Such maintenance bond shall meet all the conditions in the certificate of completion of improvements listed in subsection (1) of this section.

(3) *Cash deposit.*

a. If a cashier's check is provided to assure completion of the improvements, that cashier's check shall be cashed upon completion of the improvements or one year from submittal, whichever comes first.

b. Upon completion of the improvements, a sum in the amount of 25 percent of the value of donated assets shall be held by the city for a period of one year to assure proper maintenance. Any amount above this sum shall be returned to the provider of the cashier's check.

c. At the end of one year, this sum shall be used to perform needed maintenance. Any amount not needed for proper maintenance as determined the mayor or his designee will be returned to the provider of the cashier's check.

(4) *Irrevocable letter of credit.*

a. If an irrevocable performance letter of credit is posted to assure completion of the improvements, that letter of credit shall include provisions that automatically convert if to an irrevocable maintenance letter of credit upon completion of the improvements or on the date the performance letter of credit lapses, whichever comes first.

b. Such maintenance letter of credit shall meet all conditions in the certificate of completion of improvements, subsection (1) of this section.

c. When the mayor or his designee has received notification that one of the heretofore described mechanisms assuring completion of the improvements have been executed, the planning commission may certify final plat approval.

(Ord. No. 2009-10, § 300.09, 9-4-2009)

Sec. 107-41. Release of guarantee.

(a) *Certificate of completion.* To request a release of a guarantee, the owner/developer's engineer-of-record shall submit a certification of completion to the mayor or his designee that the development is complete and functional.

(b) *Final inspection.* The mayor or his designee shall conduct a final inspection of remaining guaranteed items. The final inspection must be approved prior to releasing the guarantee.

(c) *Guarantee released.* In the event the guarantee is released, the city shall reimburse the owner/developer the amount of the cashier's check.

(Ord. No. 2009-10, § 300.10, 9-4-2009)

Secs. 107-42—107-70. Reserved.

ARTICLE III. PRELIMINARY PLATS

Sec. 107-71. Applicability.

(a) Any owner of land within the planning area boundary of the city seeking to subdivide property shall not proceed with any construction work on the proposed subdivision before obtaining preliminary plat approval nor shall the owner attempt to record the plat of the subdivision or any part thereof, including conveyance of title to any lot, prior to obtaining final plat approval from the planning commission.

(b) The conditions in subsection (a) of this section shall also apply to lot splits and minor subdivisions.

(Ord. No. 2009-10, § 400.01, 9-4-2009)