

ORDINANCE NO. 2018-30

AN ORDINANCE OF THE CITY OF IOWA COLONY, TEXAS, AMENDING THE SUBDIVISION ORDINANCE; PROVIDING PROCEDURES AND SEQUENCES FOR PLAT APPROVAL, PLAT RECORDING, BUILDING PERMITS, AND CERTIFICATES OF OCCUPANCY; ALLOWING EARLY PLATTING UNDER SOME CONDITIONS; ADDRESSING DEFICIENCIES IN DRAINAGE IMPROVEMENTS; ALLOWING EARLY PERMITTING AND CONSTRUCTION OF MODEL HOMES UNDER SOME CONDITIONS; PROVIDING FOR COMPLIANCE, ENFORCEMENT METHODS, AND NOTATIONS ON PERMITS AND PLATS; MAKING FINDINGS OF FACT; PROVIDING FOR CONFLICTS IN TERMS; BEING SUBJECT TO THE PROVISIONS OF THE SUBDIVISION ORDINANCE PROVIDING THAT A VIOLATION IS A MISDEMEANOR PUNISHABLE BY A FINE OF UP TO \$500 PER DAY; AND PROVIDING A SAVINGS CLAUSE, SEVERANCE CLAUSE, AND EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF IOWA COLONY, TEXAS:

SECTION ONE. The term "Subdivision Ordinance" herein shall mean Ordinance No. 2002-10 of the City of Iowa Colony and all amendments thereto.

SECTION TWO. Subsection 1.B of the Subdivision Ordinance was amended by Ordinance No. 2015-23 to read as follows and is not further amend by this ordinance:

"B. Compliance with Ordinance. This subsection shall govern and control, in the event of any conflicts with other sections.

1. **No Subdivision Without Approved, Recorded Plat.** Any person who subdivides any tract, lot or parcel of land within the City of Iowa Colony or its extraterritorial jurisdiction must submit to the City for its approval a preliminary plat, final plat, amending plat, replat or abbreviated plat, as applicable. No subdivision of any tract, lot or parcel of land shall be lawful until such time that the plat has been approved in accordance with the terms of this Ordinance and lawfully recorded in the Brazoria County plat records.
2. **No Recorded Plat and No Lot Sales Before Infrastructure is Completed and Approved; Exception.** Regardless of any other provision, no plat of any type shall be recorded until all public infrastructure, public improvements, subdivision infrastructure, and subdivision improvements described on the plat or on the documents accompanying the plat have been completed and have been inspected and approved by the City, except as provided by section 28 regarding early recordation. This paragraph applies even if the plat has been finally

approved. Without limiting the generality of the foregoing, this means that lot sales are prohibited until the infrastructure is completed and approved. Even if a plat is approved or signed, the City shall hold the plat and not deliver it for recording until the recording will be lawful under this ordinance.

3. **No Construction of Infrastructure Before Plat Approval.** Unless and until a final plat, abbreviated plat, amending plat, or replat of a subdivision shall have been first approved in the manner provided herein by the City, no person shall construct or cause to be constructed any street, utility, or public or subdivision infrastructure, improvements, or facilities of any nature. This paragraph does not require the plat to be recorded before construction of the public infrastructure or subdivision infrastructure described in this paragraph; rather public and subdivision infrastructure are to be constructed after final plat approval and before plat recordation, except to the extent that section 28 allows earlier plat recordation.
4. **No Building Permits for Non-Infrastructure Until Plat is Recorded.** Unless and until a final plat, abbreviated plat, amending plat, or replat of a subdivision shall have been first approved in the manner provided herein by the City and lawfully recorded in the plat records of Brazoria County, no person shall construct or cause to be constructed any home, business, or other improvements other than subdivision infrastructure or public infrastructure on any lot, tract, or parcel of land in the subdivision.
5. **No Permit for Unlawful Construction.** No building, plumbing, electrical, mechanical, or other construction permit shall be issued by the City any work that is unlawful under this ordinance or otherwise.
6. **No Certificate of Occupancy Until Infrastructure is Completed and Approved.** No certificate of occupancy shall be issued by the City for any structure on a lot or tract in a subdivision unless all public improvements, public infrastructure, subdivision improvements, and subdivision infrastructure shown on the plat or accompanying documents have been completed and have been approved by the City.
7. **Deficiencies in Drainage Improvements.** If any required drainage improvements inside or outside the subdivision, have not been completed and approved by the City or by any drainage district with jurisdiction thereof, then the City shall have the right, but shall not be required to, deny plat recordation, infrastructure approval, building permits for improvements other than infrastructure, and certificates of occupancy for structures in the subdivision; or the City may allow the subdivider to use the exception under Section 28.

SECTION THREE. Subsection 22.B.23 of the Subdivision Ordinance was amended by Ordinance No. 2015-23 to read as follows and is not further amended by this ordinance:

- “23. a. A notation, in language acceptable to the City, on the plat that no certificate of occupancy and no city services shall be provided or allowed to any lot or property in the subdivision, until all required storm drainage improvements, which may include detention, and all other required public infrastructure improvements have been completed and have been approved by the City.

“Any failure to provide this notation shall not impair any provision of this ordinance.

- “b. A notation, in language acceptable to the City, on the plat disclosing the scope of the drainage review and approval by the City, pursuant to the interlocal agreement between the City and Brazoria County Drainage District No. 5.”

SECTION FOUR. Section 5 of the Subdivision Ordinance was amended by Ordinance No. 2015-23 to read as follows and is not further amended by this ordinance:

“Section 5. Enforcement

“Except as otherwise provided in Section 1.B, the City of Iowa Colony shall refuse to issue permits or furnish City services, if applicable, to any person who violates the terms of this Ordinance, and in addition shall have the right to prohibit or correct violation(s) by writs of injunction, prosecution, or other legal process. Except as otherwise provided in Section 1.B, the City shall withhold improvements of any nature whatsoever, including issuance of building permits, the maintenance of streets and furnishing of water and sewer service, if applicable, to or within a subdivision until the subdivision plat has been approved by the City Council and lawfully recorded in the plat records, all the infrastructure improvements have been completed and formally accepted by the City, and final as-built construction plans have been provided to the City.

“See also Section 1.B. regarding Compliance with Ordinance.”

SECTION FIVE. Section 28 of the Subdivision Ordinance was originally enacted by Ordinance No. 2015-23 and is hereby amended to read as follows:

“Section 28. General Exception for Early Plat Recordation and Early Construction

See also certain exceptions for model homes in Section 29.

“A. Benefits of This Exception.

"If the City Council determines, in its sole discretion, that a subdivision qualifies for the exception in this section, then the following things may be done after the City approves and signs the final plat, even if the infrastructure has not been built or approved:

- "1. the plat may be recorded;
- "2. Accordingly, lots in the subdivision may then be sold after the plat is recorded; and
- "3. Building permits may be issued for construction of homes, businesses, and other non-infrastructure improvements in the subdivision (note: building permits for infrastructure may be issued upon plat approval and before recording, even without this exception).

"B. Qualifications for This Exception

"All of the following requirements must be satisfied in order for the exception under this section to apply.

"1. **Written Application.** The subdivider must apply in writing for this exception and provide any information reasonably required by the City.

"2. **Two Percent Administrative Fee.** At the time of application for this exception, the subdivider shall pay the City an administrative fee equal to two percent of the cash deposit described in this section. The first half of that two percent administrative fee is not refundable under any circumstances. If the City Council grants the exception under this section, then the second half of the two percent administrative fee shall then become unrefundable under any circumstances, except as provided in **paragraph 28(B)(3)(b)**. However, if the City Council denies the exception under this section, then half of the two percent administrative fee shall be refunded to the subdivider.

"3. **One Hundred Ten Percent Cash Deposit.**

a. Within 10 business days after the City Council approves an application under this section, the subdivider must deliver a cash deposit to the City for 110% of the Construction Cost as defined and provided in **subsection C**, and the subdivider must at all times comply with that subsection. If the 110% cash deposit is not received by the City within the time required by this section, then the approval by the City Council automatically expires without further action by the City, and half of the 2% administrative fee shall be refunded, and the other half of the 2% administrative fee is still unrefundable.

b. The amount of the 110% cash deposit is determined as of the date of the application. The amount of the 110% cash deposit may not be reduced before payment to the City. If the applicant wishes to reduce that cash deposit, then the applicant must withdraw the application, which will result in a refund of half of the 2% administrative fee, and the applicant must file a replacement application with a new 2% administrative fee. This paragraph does not apply to partial refunds of the 110% cash deposit as the construction progresses, if the full 110% cash deposit is first paid to the City.

"4. Notation on Plat. The plat to be recorded early under this section shall bear a notation, satisfactory to the city, that it is being recorded early, pursuant to this exception, and that no certificate of occupancy and no city services shall be granted for any non-infrastructure improvements or structures in the subdivision, until the infrastructure has been completed and has been approved by the City.

"5. Notation on Building Permits: Each building permit for improvements on property in a subdivision, for which any required drainage improvements or other required public infrastructure improvements have not been completed and accepted by the City, shall include a disclosure that no certificate of occupancy shall be issued, and no city services shall be provided, until such completion and acceptance of the infrastructure. However, any failure to provide that disclosure shall not impair any provision of this ordinance. When the City determines, in its sole discretion, that the infrastructure has been completed and approved, then the City shall, upon request by the subdivider, issue a certificate, suitable for recording, stating that determination and stating that certificates of occupancy may be issued for structures in the subdivision as provided by law.

"C. Administration of Cash Deposit

"1. a. Within 10 business days after the City Council approves an application under this section, the subdivider must deliver a cash deposit to the City for 110% of the amount ("the Construction Cost") that the City Engineer determines, in his or her sole, good faith discretion, is necessary to finish construction of all unfinished public improvements, public infrastructure, subdivision improvements, and subdivision infrastructure shown on the plat or the documents accompanying it, determined as provided in **subsection B,3.**

"b. If the City Engineer ever determines, in his or her sole, good faith discretion, that the deposit held by the City is less than 110% of the remaining Construction Cost, then the City Engineer shall so notify the subdivider, who shall then pay an additional cash deposit to the City, so that the total cash deposit then held by the City is 110% of the

Construction Cost at that time. Any reference in any ordinance to the 110% cash deposit shall mean that amount as amended pursuant to this section.

“2. Any one or more of the following shall constitute a default by the subdivider:

“a. The subdivider fails to complete the infrastructure within three years after the plat is recorded;

“b. The subdivider abandons the subdivision or the construction of the infrastructure;

“c. The subdivider fails to make substantial and continuous progress on the construction of the infrastructure for sixty consecutive days or on any sixty days out of any 120 day period.

“d. The subdivider files a voluntary petition in bankruptcy or fails to obtain dismissal of an involuntary petition in bankruptcy against the subdivider within sixty days after the involuntary petition is filed, or the subdivider makes an general assignment for the benefit of creditors.

“3. If the subdivider defaults under this section, the City shall have the right, but not the obligation, to do any or all of the following at the City’s option:

“a. The City may cause all or any part of the infrastructure to be completed by the City and/or another person, at the subdivider’s expense.

“b. The City may apply the deposit to the cost of such construction and completion.

“c. The subdivider shall be liable to the City for any excess of the City’s cost of completing the infrastructure over the amount of the subdivider’s deposit available for application to that cost, the City’s attorney’s fees, court costs, other costs of collection, and other costs of litigation. The doctrine of election of remedies shall not apply against the City. All of the City’s rights and the subdivider’s obligations hereunder are cumulative of all of the City’s rights and the subdivider’s obligations from any source.

“d. Any reference in this **subsection D** to the 1% administrative fee or similar terms shall mean the half of the 2% administrative fee under this section that becomes nonrefundable upon approval by the City Council of an application under this section.

"4. If at any time after payment of the 110% cash deposit to the City, the subdivider believes the subdivision infrastructure has been partially completed without default under this section, then the subdivider shall so notify the City in writing. The City Engineer shall then evaluate the completeness of the infrastructure. If the City Council, with the advice of the City Engineer, determines in its sole discretion that the infrastructure is partially complete, and if the City approves the infrastructure only to the extent completed, then a portion of the cash deposit under this section shall be refunded as provided herein. The amount of that partial refund shall be calculated so that the City still retains 110% of the remaining construction cost, as determined by the City Engineer, but the partial refund shall never be more than requested.

"5. If at any time after payment of the 110% cash deposit to the City, the subdivider believes the subdivision infrastructure has been completed without default under this section, then the subdivider shall so notify the City in writing. The City Engineer shall then evaluate the completeness of the infrastructure. If the City Council, with the advice of the City Engineer, determines in its sole discretion that the infrastructure is complete, and if the City approves the infrastructure, then any remaining balance of the cash deposit under this section shall be refunded as provided in this section.

6. Any amount of the administrative fee that is refunded shall be paid by the City to the person who originally paid it, or to the payee designated by the original payee in a signed document satisfactory to the City. If the City is for any reason unsure who is entitled to that payment, then the City shall have the right to implead the funds into court and have the court make that determination."7. Regardless of any other provision, the City may, before refunding any unused balance of the cash deposit, apply it to any other debt of any nature of the subdivider to the City.

"8. The cash deposit hereunder is for the benefit and protection of the City, and the City may deal with the deposit for the City's own self-interest, benefit, and protection. The City shall never under any circumstances be deemed an agent or fiduciary of the subdivider or any other person.

"9. The City shall not pay the subdivider any interest on the cash deposit. The City shall not be obligated to earn any interest on the cash deposit. However, any interest that the City actually receives on the cash deposit shall become a part of the deposit and be administered pursuant to the same rules as the principal of the deposit.

“D. Administration of Two Percent Administrative Fee

“1. Any reference herein to the one percent administrative fee or words to that effect shall mean the half of the two percent administrative fee that becomes nonrefundable upon approval by the City Council of an application under this section.

“2. The City shall not be obligated to earn any interest on the one percent administrative fee for this exception. However, if the City actually receives interest on the one percent administrative fee, and if the one percent administrative fee then is refunded due to the denial of the application, then the interest actually earned on the one percent administrative fee shall be disbursed pursuant to the same rules as the principal of that fee.

“3. If the one percent administrative fee becomes refundable, then the City shall pay it to the person who originally paid it, or to the payee designated by the original payee in assigned document satisfactory to the City. If the City is for any reason unsure who is entitled to that payment, then the City shall have the right to implead the funds into court and have the court make that determination.

“4. Regardless of any other provision, the City may, before refunding any part of the one percent administrative fee, apply it to any other debt of any nature of the subdivider to the City.

“5. The entire two percent administrative fee hereunder is for the benefit and protection of the City, and the City may deal with that fee for the City’s own self-interest, benefit, and protection. The City shall never under any circumstances be deemed an agent or fiduciary of the subdivider or any other person concerning any of the two percent administrative fee, regardless whether any of that fee is ever refundable or refunded.

“E. Policies and Procedures

“The City Engineer is authorized to promulgate policies and procedures for the administration of this ordinance that are not inconsistent with the terms of this ordinance.”

SECTION SIX. Section 29 of the Subdivision Ordinance was originally enacted by Ordinance No. 2015-23 to read as follows and is not further amended by this ordinance:

“Section 29. Exception for Early Construction of Model Homes

28. “A. Benefits of This Exception; Relation to Early Platting Under Section

“A subdivider who holds a valid Model Home Permit under this section may obtain a building permit to construct model homes before the subdivision plat is recorded, all as herein provided. A Model Home Permit is never a substitute for a building permit.

“This section operates independently of the broader exception for early platting under Section 28.

“If the broader exception for early platting is granted under Section 28, then a Model Home Permit under this section is unnecessary.

“B. Qualifications for Model Home Permit

“A Model Home Permit shall not be issued, unless all of the qualifications in this subsection are satisfied.

“1. The subdivider must own the lots on which model homes are to be constructed. This paragraph does not prohibit the subdivider from making contractual arrangements for another person to build or operate a model home on the subdivider’s model home lot.

“2. The number of model homes must not exceed the smaller of the following:

“a. Five percent of the lots in the same section of the subdivision; or

“b. Ten model homes in the same section of the subdivision.

“3. The model home must not be used for dwelling purposes. The model home must be displayed to the public for purposes of marketing lots or homes in the subdivision. The model home may also be used for office purposes for the development and marketing of the subdivision, but this use must be subordinate to the principal use as a display home.

“4. A Model Home Permit does not allow the subdivider to sell the model home or the lot where it is located or to occupy the model home for dwelling purposes, until this ordinance otherwise allows such sale.

“5. The subdivider must file with the City Secretary a complete and correct application for a Model Home Permit, together with the application fee.

“C. Model Home Permit Procedure

“1. An applicant for a Model Home Permit must submit an application on a form satisfactory to the City Manager, containing the following information:

- “a. The name of the subdivision, as shown on the plat thereof;
- “b. The name and contact information of a person at the subdivider with knowledge of the Model Home Permit;
- “c. The lot, block, and section number of each lot for which the Model Home Permit is requested;
- “d. The number of lots in that platted section of the subdivision;
- “e. The following statement: “I hereby certify that all of the information in this application is true and complete. I have read and understood Section 29 of the Iowa Colony Subdivision Ordinance. Without limiting the generality of the foregoing, I understand that a Model Home Permit does not allow me to sell the lots for which it is granted, and I cannot obtain a Certificate of Occupancy for a model home as a dwelling unless and until other provisions of the Iowa Colony Subdivision Ordinance allow it.”
- “f. The date of the application;
- “g. The signature of the applicant; and
- “h. Such other information concerning the application as any officer of the City requires.

“2. The application must be accompanied by an administrative fee of \$200.00, unless a different fee is provided by the Iowa Colony Fee Ordinance, as amended from time to time.

“3. Upon receipt of a complete and correct application, the City Secretary shall consult with the City Manager, or in the absence of the City Manager with the Mayor, concerning the application. If those persons are satisfied that the qualifications for the Model Home Permit are satisfied, then the City Secretary shall issue a Model Home Permit on a form provided by the City.

“4. A building permit to construct a model home pursuant to a Model Home Permit under this section shall include a disclosure that the model home may not be occupied as a dwelling and may not be sold, unless and until such action is authorized by the Subdivision Ordinance. However,

the failure to give this disclosure shall not impair any requirements of this ordinance.”

SECTION SEVEN.

A. The City Council hereby finds that a public hearing has been held, and that all requirements of law have been satisfied in the enactment of this ordinance.

B. The remainder of the Subdivision Ordinance, all other ordinances of the City of Iowa Colony, and the Iowa Colony Engineering Design Criteria Manual shall remain in full force and effect, as hereby amended.

C. In the event of any conflicts between the terms of this ordinance or between this ordinance and any other ordinance, the more restrictive provision shall govern and control.

D. If any part of this ordinance, of whatever size, is ever declared invalid or unenforceable for any reason, the remainder of this ordinance shall remain in full force and effect.

E. This ordinance shall be effective immediately upon its passage and approval.


PASSED AND APPROVED on the 17th day of December, 2018.

CITY OF IOWA COLONY, TEXAS

BY:


Michael B. Holton, Mayor

ATTEST:


Kayleen Rosser, City Secretary

