

Chapter 10

Private Streets and Entrance Gates

02/05/08

Section 10-100 Purpose of This Chapter

The purpose of this Chapter is to establish regulations for gated subdivisions and/or with privately owned streets.

Section 10-105 Authorization for Adoption of This Chapter

The regulations contained in this Chapter have been adopted under the following authority:

- A. *Chapter 212 – Municipal Regulation of Subdivisions and Property Development of the Texas Local Government Code*, which authorizes a municipality to adopt rules governing plats and subdivisions of land within the municipality's jurisdiction.
- B. *Chapter 51 – General Powers of Municipalities of the Texas Local Government Code*, which authorizes a municipality to adopt ordinances, rules, or police regulations that are for the good government, peace, or the trade and commerce of the municipality.
- C. *The Home Rule Charter of the City of Colleyville*, which authorizes the City Council to exercise all powers granted to municipalities by the Constitution or the laws of the State of Texas.

Section 10-110 Variances and Appeals

Any person seeking approval of a development as required by this Land Development Code may request a waiver from a requirement contained in this Chapter, or appeal a decision of an administrative official by submitting a request using the procedures described in *Chapter 1 – General Provisions* of this Land Development Code.

Section 10-115 Definitions

Definitions applicable to this Chapter may be found in *Chapter 2 – Definitions* of this Land Development Code.

Section 10-120 Applicability

The regulations contained in this Chapter shall be applicable to any proposed subdivision plat, or to any request to convert a public street to a private street, submitted for approval by the City of Colleyville after October 20, 1998.

Section 10-125 Procedure

- A. City Council Approval Required - No existing subdivision shall convert any public street to a private street unless such request has been approved by the City Council, after receiving recommendation from the Planning and Zoning Commission. Furthermore, no proposed subdivision plat shall include a private street unless such plat is approved by the City Council, after receiving recommendation from the Planning

and Zoning Commission. The terms "private street" or "private streets" shall be inclusive of streets, alleys, storm drainage systems, entrance gates and structures, sidewalks and traffic signs.

- B. Public Hearings Required - A public hearing shall be required by the Planning and Zoning Commission and City Council for a request for an existing subdivision proposing to convert a public street to a private street. Written notice of such public hearings shall be mailed to the owners of real property situated within 200 feet of the proposed private street subdivision as listed on the last approved City tax roll. Such notice to be mailed not less than ten (10) days before the day set for public hearing. Such notice may be served by depositing letters properly addressed and postage paid in the City Post Office.

Section 10-130 Conditions of Approval

- A. Planning Considerations – The following criteria shall be used as guidelines in the review and approval of a private street subdivision.
1. Streets shown on the adopted Thoroughfare Plan of the City of Colleyville must not be used, maintained or constructed as private streets.
 2. A subdivision with private streets and alleys must not impede or cross an existing or proposed street as shown on the City's most recent Thoroughfare Plan or approved preliminary or final plats.
 3. A subdivision with private streets and alleys must not disrupt or disconnect an existing or proposed City of Colleyville public pedestrian pathway, hike and bike trail, or park as shown on the City's most recent Park Plan.
 4. The perimeter of a subdivision with private streets and alleys must include a minimum of eighty (80) feet of contiguous frontage upon a public street.
 5. The proposed subdivision with private streets must be zoned for residential purposes in accordance with the Colleyville Land Development Code, and contain twenty-five (25) single-family lots or greater.
- B. Public Access Considerations - In addition to the above conditions of approval, the Planning and Zoning Commission may recommend denial and the City Council may reject a request for a subdivision with private streets if in the Commission's and Council's judgment the private streets would negatively affect traffic circulation on public streets, impair access to properties or future developments that are either on-site or off-site to the subdivision, impair access to or from public facilities such as schools, parks and libraries, etc., or delay the response time of emergency vehicles.
- C. Private Street, Sidewalks and Drainage Design and Construction Standards - Private streets and sidewalks must conform to the same standards regulating the design and construction of public streets and sidewalks contained in this Land Development Code. The drainage system must meet all the requirements of public facilities in this Land Development Code.
- D. Traffic Signs - All traffic regulatory signs along private streets must conform to the Texas Manual of Uniform Traffic Control Devices and be maintained by the Homeowner's Association (HOA).
- E. Homeowners Associations (HOA) Required - A subdivision developed with private streets must have a mandatory HOA which includes all properties served by the private streets. The association shall own and be responsible for the maintenance of the private streets and appurtenances. The association's document must indicate that the streets and drainage systems within the development are private, owned and maintained by the association, and that the City has no obligation to maintain the private streets and drainage systems. The documents shall be filed of record prior to the approval of the final plat. A notation shall be included on the final plat stating that the HOA shall own and be responsible for all costs associated with the maintenance and reconstruction of the private streets, drainage facilities, sidewalks and related appurtenances, and that the City has no obligation to maintain the private streets and

drainage systems. Lot deeds must convey membership in the association and provide for the payment of dues and assessments required by the association. The association must not be dissolved without the prior written consent of the City. No portion of the association's documents pertaining to the maintenance of the private streets and assessments thereto shall be amended without the written consent of the City.

- F. Private Street Inspections. The City shall have authority to inspect all streets, drainage facilities, and related appurtenances on a periodic basis to determine the need for repairs to these capital facilities. The HOA shall repair all drainage and street facilities when instructed to do so by the City, subject to appeal to the City Council. Failure by the HOA to make repairs to streets or drainage facilities which impact drainage up or downstream from the development may result in the completion of needed repairs by the City with an assessment of all costs plus interest accrued from the time the City installs the improvements until all funds are collected. HOA documents must detail this City authority and shall not be amended without City approval.
- G. Private Street Lot - Private streets must be constructed within a separate lot owned by the HOA. This lot must conform to the City's standards for public street and alley right-of-way. An easement covering the street lot must be granted to the City providing unrestricted use of the property for utilities and the maintenance of same. This right shall extend to all utility providers including telecable companies operating within the City. The easement must also provide the City with the right of access for any purpose related to the exercise of a governmental service or function, including but not limited to fire and police protection, inspection and code enforcement. The easement shall permit the City to remove any vehicle or obstacle within the private street lot that impairs emergency access.
- H. Construction and Maintenance Cost - The City shall not pay for any portion of the cost of constructing or maintaining a private street.
- I. City Utilities - Water, sanitary sewer, storm drainage facilities placed within the private street and alley lot shall be installed to city standards. After completion and acceptance of such facilities, the water and sanitary sewer facilities shall be dedicated to the city. All storm drainage facilities in the subdivision shall remain within the ownership and maintenance responsibilities of the HOA. All city regulations relating to infrastructure financing, performance bonds, developer cost participation and capital cost recovery shall apply to developments with private streets. Any and all city executable maintenance bonds covering subdivision construction shall be transferred to the HOA upon approval of the private street subdivision by the City Council.
- J. Plans & Inspections - Proposed subdivision with private streets must submit to the City the same plans and engineering information required to construct public streets, utilities and related appurtenances. Requirements pertaining to inspection and approval of improvements prior to the City's acceptance of the subdivision shall apply. Fees charged for these services shall also apply. The City shall have the right to inspect the private streets and related appurtenances at any time, and require the HOA to provide the repairs needed to ensure emergency access. The City Council shall be the final judge of whether such repairs are needed.
- K. Access Restrictions - Guard houses, access control gates and cross arms may be constructed. All restricted access entrances must be manned 24 hours every day, or provide an alternative means of ensuring access to the subdivision by the City and other utility service providers with appropriate identification. If the HOA fails to maintain reliable access as required to provide city or utility services, the City shall have the right to enter the subdivision and remove any gate or device which is a barrier to access at the sole expense of the HOA, subject to approval by the City Council. The HOA's documents must contain provisions in conformity with this paragraph which must not be amended without the written consent of the City.
- L. Restricted Access Entrance Design Standards - Any private street which has an access control gate or cross arm must have a minimum uninterrupted pavement width of 24 feet at the location of the access control device. If an overhead barrier is used, it must have a minimum height above the road surface as required by the Fire Code for fire lanes. The design of all gates, cross arms and access control devices, including automatic opening systems and manual backup systems, must meet City guidelines or policies and must be approved by the City prior to installation. The gates, cross arms and opening devices must be tested and accepted by the City prior to being put into operation. Gate designs may incorporate one

or two gate sections to meet the required minimum width of 24 feet. If the entrance is to incorporate a median, guard shack, or similar structure that necessitates a divided gate arrangement, the gate and street pavement widths may be reduced if approved by the City, but in no case shall any single gate or street pavement have a clear opening of less than 18 feet in width nor fourteen (14) feet in height. (O-00-1261 / 12/19/00)

All restricted access entrances shall be equipped with the Opticom gate opening system. The system shall be maintained by the HOA in good working condition at all times.

- M. Visitor Entrance Design Standards - At least one entrance per subdivision with private streets must be equipped for visitor access. In addition to the above Restricted Access Entrance Design Standards, said visitor entrance must be equipped with a call or code box located at least 50 feet from the boundary of the subdivision to provide for visitors calling in and automobile queuing. The City reserves the right to require the developer to provide a detailed study to determine if the traffic generated by the proposed development will warrant the call or code box to be set back greater than the 50 foot minimum requirement in order to ensure sufficient vehicle storage or queuing space. A turn-around space with a minimum outside radius of 30 feet must be located between any call or code box and access control gate or cross arm to allow vehicles denied access to safely exit onto public streets in a "head out" position. A sign must be erected next to the edge of such turn around space to prohibit vehicle parking in such space. Residents entrance used in combination with a visitor entrance shall comply with the requirements of this paragraph.
- N. Resident Only Entrance Design Standards - In addition to the above Restricted Access Entrance Design Standards, an access control gate or cross arm that requires residents to use a key, card or code to gain access must be set back a minimum of 50 feet from the boundary of the subdivision to provide for automobile queuing. Resident entrances equipped with an electronic opener that allows residents to remotely open the control access gate or cross arm and enter the subdivision without having to stop are exempted from this requirement. A sign must be erected next to any resident entrance that does not meet the 50 feet setback requirement of this paragraph and does not provide a turn-around space with a minimum outside radius of 30 feet to indicate that it is for resident use only and not for visitors.
- O. Hold Harmless - The subdivision final plat and the HOA's documents must contain language whereby the HOA, as owner of the private streets and appurtenances, agrees to release, indemnify, defend and hold harmless the City, its officers, agents, licensees, servants and employees, from and against any and all claims or suits for property damage or loss and/or personal injury, including death, to any and all persons, of whatsoever kind of character, whether real or asserted, arising out of or in connection with, directly or indirectly: a) the reasonable use of the private streets, emergency access, utility easements, entrance gate or structure by the City, its officers, agents, licensees, servants and employees; b) the condition of the private streets, private street lights, private entrance gates or structures, private walls or fences, private pedestrian access, private storm drainage systems and emergency access; or c) any use of the subdivision with private streets by the City, its officers, agents, licensees, servants and employees for any purpose related to the exercise of a governmental function or service, whether or not caused, in whole or in part, by alleged negligence of officers, agents, servants, employees, contractors, subcontractors, licensees or invitees of City. The HOA shall be responsible for carrying liability insurance to meet the requirements in this paragraph. Those portions of the HOA's documents pertaining to the subject matter contained in this paragraph must not be amended without the written consent of the City.
- P. Revocation of Private Street Permit - The City Council, after giving a sixty (60) day notice to the HOA, its successors or assignees and after holding a public hearing, may revoke a private street permit issued to a subdivision with private streets if the Council finds that the private street permit was obtained by fraud or deception, or if the HOA fails to provide reliable emergency access. The revocation of a private street permit shall give the City the right to inspect the private streets and levy an assessment upon each lot on a pro-rata basis for the expense of needed repairs. Said assessment shall constitute an assessment lien upon the lot against which each assessment is made. The City Council shall be the final judge of whether repairs are needed. The City shall also have the right to require, at the HOA's expense, the removal of guard houses, access control devices, landscaping or other aesthetic amenities located within the street lot. If the permit is revoked, the HOA will be assessed the cost for appropriate maintenance. The HOA's documents must provide for the City's right to require said assessment and removal of improvements.

Those portions of the HOA's documents pertaining to the subject matter contained in this paragraph must not be amended without the written consent of the City.

- Q. Petition to Convert to Public Streets - The HOA may petition the City Council to accept private streets as public streets and rights-of-way upon written notice to all HOA members and upon receipt of the notarized signatures of 100% of the HOA's membership indicating approval. However, in no event shall the City be obligated to accept the private streets as public. Should the City Council elect to grant the petition, the City shall have the right to inspect the private streets and estimate the expense of repairing the private streets and removing gates, guard houses, access control devices, landscaping or other amenities located within the private street lot. The City shall be the final judge of whether repairs are needed to the private streets prior to acceptance. Before approval by the City Council, the petitioners or their designee must contract with the City for payment of 100% of the City's estimated expenses.

- R. Petition to Convert to Private Streets - The homeowners may petition the City Council to convert public streets to private streets upon written notice to all the neighborhood's members and upon receipt of the notarized signatures of 100% of the neighborhood's homeowners indicating approval. A subdivision petitioning to have private streets must have a mandatory HOA which includes all properties proposed to be served by the private streets. However, in no event shall the City be obligated to convert public streets to private streets. Upon receipt of a request to convert a public street subdivision to a private street subdivision, the petitioner shall provide an analysis of the long term maintenance and reconstruction obligation for the subdivision. This analysis shall be prepared and stamped by a private engineering firm and shall be submitted to the City of Colleyville.

The homeowner's association will be responsible for the repair or replacement of any public facilities damaged during the maintenance and reconstruction of the private streets and drainage facilities. Public facilities include, but are not limited to, sanitary sewer and water facilities.

A notation within the homeowner's association documents stating that all costs associated with the maintenance and reconstruction of the private streets, drainage facilities, sidewalks and related appurtenances shall be the responsibility of the homeowner's association.

- S. City Attorney Review - All HOA's documents must be reviewed and approved by the City Attorney to ensure that they conform to this and other applicable City policies prior to being filed of record at the County. The developer of a new subdivision shall pay for the cost of the City Attorney's review.

- T. Subdivision Plat Requirements - The plat dedication certificate and conditions of approval shown in the attached Exhibits "10-A" and "10-B" must be provided in all final plats for subdivisions with private streets."

- U. Permit Fee - To defray the cost of processing the application, and maintaining City owned electronic emergency equipment, an application fee of \$700 shall be paid prior to scheduling the application for public hearing."

EXHIBIT "10-A"

PLAT DEDICATION CERTIFICATE

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENT:

THAT _____, acting by and through the undersigned, its duly authorized agent, does hereby adopt this plat designating the hereinabove described real property as _____, an addition to the City of Colleyville, Tarrant County, Texas, and does hereby dedicate to the public's use the emergency access and utility easements shown thereon subject to the conditions of approval stated herein.

WITNESS MY HAND at Colleyville, Tarrant County, Texas, this _____ day of _____, 20__.

(provide name and title)

EXHIBIT "10-B"

CONDITIONS OF APPROVAL:

1. Lot 1, Block A denotes the private access and private drainage easement owned by the Homeowners Association (HOA) of _____. No building permit will be issued for Lot 1, Block A.
2. The landowners and any subsequent owners of lots shown herein (the Lot Owners), jointly and severally, shall be responsible and liable for the construction, operation and maintenance of any private common areas or facilities in the addition created herein (the Addition), including but not limited to private streets, private entrance gates or structures, private walls and fences, private pedestrian access, private storm drainage systems, private lake, private open space and landscaping, and emergency access.
3. A HOA shall be established by the subdivider or developer to operate and/or maintain the aforementioned private common areas or facilities.
4. The City of Colleyville, Texas (the City) shall not be responsible for maintaining any of the aforementioned private common areas or facilities. The City will maintain only the public water and sanitary sewer systems in utility easements accepted by the City.
5. The HOA, lot owners, and landowners shall not seek maintenance from the City except for the aforementioned public water and sanitary sewer systems in utility easements accepted by the City.
6. Any public utility entities, including the City, shall have the right at all times of ingress and egress to and from and upon the utility easements shown herein for the purpose of construction, reconstruction, inspection, patrolling, maintaining, and adding to or removing all or part of its respective systems. Except for private storm drainage systems, private streets and related entrance gates or structures that are approved by the City, no buildings, fences, structures, trees, shrubs, or other improvements or growths shall be constructed or placed upon, or across said public utility easements. Any public utility entity, including the City, shall have the right to remove and keep removed all or parts of any buildings, fences, structures, trees, shrubs, or other improvements or growths which may in any way endanger or interfere with its respective systems within said utility easements.
7. The City shall have the right at all times to remove and keep removed any vehicle or obstacle that impairs emergency access in the emergency access easements shown herein.

8. Any governmental entities, including the City, shall have the right at all times of ingress and egress to and from and upon the private access easements shown herein for any purpose related to the exercise of a governmental service or function.
9. If the HOA or lot owners fail to maintain reliable access to any public utility or governmental entities for purposes stated hereinabove, the City may enter the Addition and remove any entrance gate or structure which is a barrier to access at the sole expense of the HOA or lot owners on a pro-rata share formula.
10. The construction, reconstruction or repair of any private streets within the Addition must meet the approval of the Director of Public Works and comply with the specifications of the City for public streets at the time of construction, reconstruction or repair. The construction, reconstruction or repair of any entrance gate and structure for the Addition must meet the approval of the Engineering Department and Fire Department of the City.
11. The installation or replacement of all traffic regulatory signs along the private streets must conform to the Texas Manual of Uniform Traffic Control Devices.
12. THE HOA AND LOT OWNERS AGREE TO RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS THE CITY, ITS OFFICERS, AGENTS, LICENSEES, SERVANTS AND EMPLOYEES, FROM AND AGAINST ANY AND ALL CLAIMS OR SUITS FOR PROPERTY DAMAGE OR LOSS AND/OR PERSONAL INJURY, INCLUDING DEATH, TO ANY AND ALL PERSONS, OF WHATSOEVER KIND OF CHARACTER, WHETHER REAL OR ASSERTED, ARISING OUT OF OR IN CONNECTION WITH, DIRECTLY OR INDIRECTLY: (A) THE REASONABLE USE OF THE PRIVATE STREETS, EMERGENCY ACCESS, UTILITY EASEMENTS, ENTRANCE GATE OR STRUCTURE BY THE CITY, ITS OFFICERS, AGENTS, LICENSEES, SERVANTS AND EMPLOYEES; (B) THE CONDITION OF THE PRIVATE STREETS, PRIVATE ENTRANCE GATES OR STRUCTURES, PRIVATE WALLS AND FENCES, PRIVATE PEDESTRIAN ACCESS, PRIVATE STORM DRAINAGE SYSTEMS AND EMERGENCY ACCESS; OR (C) ANY USE OF THE ADDITION BY THE CITY, ITS OFFICERS, AGENTS, LICENSEES, SERVANTS AND EMPLOYEES FOR ANY PURPOSE STATED HEREINABOVE, WHETHER OR NOT CAUSED, IN WHOLE OR IN PART, BY ALLEGED NEGLIGENCE OR OFFICERS, AGENTS, SERVANTS, EMPLOYEES, CONTRACTORS, SUBCONTRACTORS, LICENSEES OR INVITEES OF CITY. THE HOA SHALL BE RESPONSIBLE FOR CARRYING LIABILITY INSURANCE TO MEET THE REQUIREMENTS IN THIS PARAGRAPH.

Section 10-135 Amendments to This Chapter

Reserved for listing of amendments to this Chapter.

Ord. Number	Date	Subject
O-00-1261	12/19/00	Restricted Access Entrance Design Standards
O-05-1513	03/01/05	Revisions to entire Chapter
O-08-1655	02/05/08	Revisions to Reserve Fund Requirement