

ORDINANCE NO. 19- 16

AN ORDINANCE OF THE CITY OF COMMERCE, TEXAS, AMENDING THE SUBDIVISION REGULATIONS OF THE CITY OF COMMERCE, APPENDIX B "SUBDIVISIONS" OF THE CITY OF COMMERCE CODE OF ORDINANCES BY ADOPTING THIS ORDINANCE PROVIDING AMENDMENTS TO COMPLY WITH NEW STATE LEGISLATION AFFECTING PROCEDURES FOR APPROVING PLATS, REPLATS AND RELATED SITE PLANS; PROVIDING FOR THE INCORPORATION OF PREMISES; PROVIDING A CONFLICT/SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND SETTING AN EFFECTIVE DATE

WHEREAS, the 2019 Legislature enacted HB 3167, revising procedures for approval of subdivision plat and related site plans, and HB 3314 procedures for approval of replats; and

WHEREAS, HB 3167 and HB 3314 have an effective date of September 1, 2019; and

WHEREAS, HB 3167 and HB 3314 contain identical language with respect to procedures for approval of replats; and

WHEREAS, it is the intent of the City Council of the City of Commerce, Texas, to fully comply with the provisions of the City's ordinances affected by HB 3167 and HB 3314, while maximizing the public health, safety and general welfare of its citizens; and

WHEREAS, HB 3167 did not amend laws affecting procedures for approval of zoning-related plans, plans required for approval of building permits, or procedures for determining the completeness of subdivision applications; and

WHEREAS, there is insufficient time before HB 3167 and HB 3314 take effect to amend specific provisions of the City's subdivision regulations that may conflict with the provisions of those laws; and

WHEREAS, the City Council finds that it is necessary to change certain procedures in the subdivision ordinance to comply with HB 3167 and HB 3314; and

WHEREAS, the City Council further finds that it is necessary to delegate certain responsibilities of the Planning and Zoning Commission under HB 3167 to administrative officials in order to assure compliance with the timelines in the statute, subject to a right of appeal to the Commission; and

WHEREAS, it is the intent of this Ordinance to supersede the procedures for approval of plats, replats and related site plans that conflict with the provisions of HB 3167 and HB 3314; and

WHEREAS, the City has given notice of the amendments to the subdivision regulations contained in this Ordinance in accordance with all provisions of state law, City Charter and the City's ordinances; and

WHEREAS, a public hearing on this Ordinance before the Planning and Zoning Commission was convened on September 3, 2019, at which testimony was taken, and the hearing was closed on the date of the same; and

WHEREAS, at least 24 hours prior to being considered for passage by members of the City Council, the Ordinance was published upon the official internet website of the City of Commerce; and

WHEREAS, a public hearing and first reading on the provisions of this Ordinance before the City Council was conducted on September 17, 2019; and

WHEREAS, a second reading on the provisions of this Ordinance was conducted before the City Council on October 15, 2019.

WHEREAS, the City Council finds that this Ordinance substantially advances the public health, safety and general welfare of the citizens of Commerce, Texas;

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COMMERCE, TEXAS:

SECTION 1. INCORPORATION OF RECITALS. The foregoing recitals hereby are incorporated by reference and made a part hereof as if fully set forth.

SECTION 2. DEFINITIONS. The following definitions apply to the provisions of this Ordinance:

(a) "Administrative Official" or "Official" means the administrative official(s) designated by the Subdivision Ordinance, or otherwise designated by the City, as the person(s) responsible for reviewing and evaluating Plats, Subdivision Plans, and Subdivision Applications under this Article, the City's Subdivision Ordinance, and other applicable City ordinances and state law, including such person(s) authorized designee.

(b) "City" means the City of Commerce, Texas.

(c) "City Council" means the City Council of the City of Commerce, Texas.

(d) "Design Standards" means the Subdivision Design Standards adopted as part of Appendix "B", "Subdivisions" of the Code of Ordinances of the City of Commerce, Texas.

(e) "Planning Commission" means the Planning and Zoning Commission of the City of Commerce as designated by the City and is also referred to herein as "Commission".

(f) "Plat" means a preliminary plat, general plan (including a master plan or plat), final plat, and replat. The terms preliminary plat, general plan, final plat and replat may be referred to individually, and each shall have the meaning set forth in the Subdivision Ordinance.

(g) "Subdivision Application" means a request for approval of a Plat or Subdivision Plan required to initiate the division or development of land pursuant to Tex. Loc. Gov't Code Ch. 212, Subchapters A and/or B, as amended.

(h) "Subdivision Plan" means a subdivision development plan, subdivision plan, subdivision construction plan, land development application, site development plan or site plan required for approval of a Plat, which is authorized under Tex. Loc. Gov't Code Ch. 212, Subchapters A and/or B. A Subdivision Plan excludes a Zoning Plan. A Subdivision Plan does not include a site plan required for a Zoning Plan or for building permit approval.

(i) "Subdivision Ordinance" or "Subdivision Regulations" means the Commerce Subdivision Ordinance duly adopted by the Commerce City Council and codified as Appendix "B", "Subdivisions" of the Code of Ordinances of the City of Commerce, Texas, as amended, prior to the effective date of this Ordinance.

(j) "Zoning Plan" means a concept plan, site plan or similar document required to determine compliance with land use regulations which are authorized under Tex. Loc. Gov't Code, Ch. 211, as amended.

SECTION 3. APPLICABILITY.

(a) This Ordinance applies to the procedures for approval of Plats and Subdivision Plans for the division or development of property pursuant to Tex. Loc. Gov't Code Ch. 212, Subchapters A and/or B.

(b) This Ordinance does not apply to the procedures for approval of Zoning Plans or plans required to accompany applications for building permits.

(c) This Ordinance does not apply to any Subdivision Application, as defined herein, that is filed before September 1, 2019.

SECTION 4. STAGES OF PLAT APPROVAL. Notwithstanding any other provision of the Subdivision Ordinance to the contrary, the stages of plat approval shall be as follows:

(a) Except for minor plats, as allowed, replats and amending plats, all applications for Plat approval shall consist of an application for preliminary plat approval, followed by an application for final plat approval. Applications for preliminary plat approval and final plat approval shall not be submitted nor processed simultaneously. Each plat application shall require the approval of the Planning Commission and the City Council, as hereinafter provided.

(b) Any procedure in the Subdivision Ordinance that provides for a different time period or process for approval of a Subdivision Application than that required for approval of a

Subdivision Application under this Ordinance is superseded by the procedures of this Ordinance, and all other provisions not superseded by this Ordinance shall remain in full force and effect, shall be interpreted as complimentary to, and shall work in concert with the provisions adopted in this Ordinance.

(c) Except as hereinafter provided, the procedure for any appeal from a Planning Commission decision on a Subdivision Application to the City Council is superseded by the procedures of this Ordinance.

(d) Procedures for review of a Subdivision Application for completeness authorized by the Subdivision Ordinance or to be undertaken pursuant to Tex. Loc. Gov't Code sec 245.002(e) are superseded by the procedures in Sections 5 and 6 of this Ordinance, except as otherwise provided in Section 7 of this Ordinance.

(e) A Subdivision Plan must be submitted for approval with an application for preliminary or final Plat approval, unless approval of the Subdivision Plan is required prior to submittal of a Plat application. Any procedure for approval of a Subdivision Plan before the Commission or City Council approves or disapproves a Plat application is superseded by the procedures of this Ordinance, and all other provisions not superseded by this Ordinance shall remain in full force and effect, shall be interpreted as complimentary to, and shall work in concert with the provisions adopted in this Ordinance.

(f) Conditional approval of a preliminary Plat application shall mean that each such condition must be satisfied prior to final Plat approval. Such conditions are not subject to the procedures in Section 6 of this Ordinance.

(g) Because the technical requirements for submittal of a Plat or Subdivision Plan application are essential for determining whether the application should be approved, conditionally approved, or disapproved, any deficiency in the submittal requirements for such application shall be grounds for disapproval of the application, unless the Plat or Subdivision Plan application is to be reviewed under the alternative procedures in Section 7 of this Ordinance.

SECTION 5. PROCEDURES FOR APPROVAL OF PLATS AND SUBDIVISION PLANS.

(a) Initial Approval by Commission. The Planning Commission shall approve, approve with conditions, or disapprove a preliminary plat, final plat or Subdivision Plan application within thirty (30) days after the date the Plat or Subdivision Plan application is filed. A Plat or Subdivision Plan application is deemed approved by the Commission unless it is conditionally approved or disapproved within that period in the manner provided in subsection (e).

(b) Initial Approval by Council. The City Council shall approve, approve with conditions, or disapprove a preliminary plat, final plat or Subdivision Plan application within 30 days after the date the Commission approves the Plat or Subdivision Plan application. A Plat or Subdivision Plan application is deemed approved by the City Council unless it is conditionally approved or

disapproved within that period and in the manner provided in this Subsection and documented pursuant to Subsection (e) of this Section.

(c) Extension by Agreement. The applicant may request in writing and the Planning Commission or the City Council, as applicable, may approve the request for an extension of the time for Plat or Subdivision Plan approval required by subsections (a) or (b) for a period not to exceed thirty (30) days. The written request must be made within fifteen (15) days of the date the application is filed and approved by the Commission or City Council prior to the time for a decision on the application required by subsections (a) or (b).

(d) Limitation on Submittals. Following the filing of the Plat or Subdivision Plan application, the applicant may not submit additional materials in support of the application during the initial thirty (30) day period during which the Commission or the City Council must decide the application, unless the applicant withdraws the original application and submits a new application with the additional materials. If an extension is sought and granted under subsection (c), the applicant may submit additional materials in support of the application no later than fifteen (15) days from the date the Commission or City Council is scheduled to review the application without filing a new application.

(e) Documentation for Conditional Approval or Disapproval. The Planning Commission or the City Council, as applicable, shall provide the applicant a written statement of the conditions for the conditional approval or reasons for disapproval that clearly articulates each specific condition for the conditional approval or reason for disapproval. Each such condition or reason shall be directly related to the requirements of the Subdivision Regulations, Zoning Regulations, and/or Design Standards and shall include a citation to the applicable law, including a state law or City ordinance, that serves as the basis for the conditional approval or disapproval. The conditions or reasons shall be consistent with this Section and may not be arbitrary.

SECTION 6. POST-DECISION PROCEDURES.

(a) Applicant's Response. After the conditional approval or disapproval of a Plat or Subdivision Plan under Section 5, the applicant may submit to the Commission or the City Council, as applicable, that conditionally approved or disapproved the Plat or Subdivision Plan, a written response that satisfies each condition for the conditional approval or that remedies each reason for disapproval provided. Neither the Commission nor the City Council may establish a deadline for an applicant to submit the response authorized by this Subsection.

(b) Reply to Applicant's Response. The Commission or City Council, as applicable, that receives an applicant's response in accordance with Subsection (a) of this Section shall determine whether to approve, conditionally approve or disapprove the applicant's previously conditionally approved or disapproved Plat or Subdivision Plan not later than the fifteenth (15th) day after the date the response was submitted by the applicant. The Commission or City Council, as applicable, may further conditionally approve or disapprove the application for a specific condition or reason that is provided to the applicant in the manner prescribed in Section 5(e) of this Article. The Commission or City Council, as applicable, shall approve the Plat or Subdivision Plan application

if the response adequately addresses each condition of the conditional approval or each reason for the disapproval.

(c) Delegation to Administrative Official. The Administrative Official(s) is hereby delegated the authority to reply to an applicant's response in the manner provided in section 5(e). The applicant may appeal the administrative official's decision within 15 days thereof to the Planning Commission or the City Council, as the case may be, which shall hear the appeal at its next scheduled regular meeting. The applicant may also request a delay in the reply in order to have the response considered and decided by the Planning Commission or City Council, as the case may be, at its next scheduled regular meeting.

(d) Failure to Timely Reply. If the response meets the criteria in subsection (a) and the administrative official, or the Planning Commission or City Council, as the case may be, fails to act upon the response within the time provided in subsections (b) or (c), the plat or Subdivision Plan application shall be deemed approved.

(e) New Application Required. In the event that the administrative official, or the Planning Commission or City Council, as the case may be, timely disapproves the Plat or Subdivision Plan application, a new application and fees shall be required.

SECTION 7. ALTERNATIVE REVIEW PROCEDURES. In lieu of the procedures set forth in Sections 5 and 6, every applicant for approval of a Subdivision Application may request in writing to follow the procedures in this Section if the request is made at the time such Subdivision Application is first submitted for filing. Election of approval under this Section does not waive the procedures in Sections 5 and 6 of this Ordinance, which shall commence as provided in subsection (c).

(a) Within ten (10) business days of the time the Subdivision Application is submitted for filing, the Administrative Official shall make a determination whether such Application meets the technical requirements for submittal. The Administrative Official shall notify the applicant in writing not later than the tenth (10th) business day after the Subdivision Application is submitted whether the Application is complete or incomplete. If the Subdivision Application is incomplete, the notice shall specify the documents or information that are necessary to complete the Application and shall also state that the application is subject to expiration, as provided in subsection (b).

(b) Following the receipt of written notice, the applicant shall have forty-five (45) days from the time the Subdivision Application was submitted for filing to submit the necessary documents or information to render such Application complete. If the applicant fails to do so, the Subdivision Application shall expire on the forty-fifth (45th) day after such Application was submitted for filing. An applicant may request a conference with the Administrative Official to assist in completing the Application. If the Subdivision Application expires, the applicant may submit a new Subdivision Application without prejudice. If the new Application is submitted within ten (10) days after the expiration of the original application, review fees will be waived.

(c) The procedures for review of an application for Plat or Subdivision Plan approval in Sections 5 and 6 of this Article shall commence on one of the following dates:

- (1) The date of the notice required by subsection (a) if the application is determined to be complete.
- (2) The date the applicant submits documents or information necessary to complete the application within the forty-five (45) day period specified in subsection (b).
- (3) The date the applicant submits a new application in the event the original application has expired.

SECTION 8. PROCEDURES FOR APPROVAL OF REPLATS. Notwithstanding any other provision of the Subdivision Ordinance to the contrary, the procedures for replats as set forth in the Subdivision Ordinance are hereby amended as follows:

(a) A replat of a subdivision or part of a subdivision may be recorded and is controlling over the preceding Plat without vacation of the Plat if the replat is (1) signed and acknowledged by only the owner of the property being replatted, (2) is approved by the Planning Commission and (3) does not attempt to amend or remove any covenants or restrictions. A public hearing is not required before approval of the replat.

(b) A replat without vacation of the preceding plat must conform to the requirements of Tex. Loc. Gov't Code section 212.015(a), in addition to the provisions of section 212.014, as amended. If such replat requires a variance or exception, a public hearing must be held by the Planning Commission or the City Council. If such replat does not require a variance or exception, the City shall, not later than the fifteenth (15th) day after the date the replat is approved, provide written notice by mail of the approval of the replat to each owner of a lot in the original subdivision that is within two hundred (200) feet of the lots to be replatted according to the most recent municipal or county tax roll. The notice must include (1) the zoning designation of the property after the replat; and (2) a telephone number and e-mail address that an owner of a lot may use to contact the City about the replat. This requirement does not apply to a proposed replat if the City holds a public hearing and gives notice of the hearing pursuant to Tex. Loc. Gov't Code section 212.015(b).

SECTION 9. CONFLICT/SAVINGS CLAUSE. In the event of a conflict between the provisions of this Ordinance and the Subdivision Ordinance of the City of Commerce or any other regulation or rule prescribed by charter, another ordinance, resolution or other authorization of the City, the provisions of this Ordinance shall control, and all other provisions of the Subdivision Ordinance not in conflict herewith shall remain in full force and effect. Notwithstanding the foregoing, all rights and remedies of the City are expressly saved as to any and all complaints, actions, claims, or lawsuits, which have been initiated or have arisen under or pursuant to such conflicting Ordinance, or portion thereof, on the date of adoption of this Ordinance shall continue to be governed by the provisions of that Ordinance and for that purpose the conflicting Ordinance shall remain in full force and effect.

SECTION 10. SEVERABILITY CLAUSE. It is hereby declared by the City Council of the City of Commerce that if any of the sections, paragraphs, sentences, clauses, phrases, words,

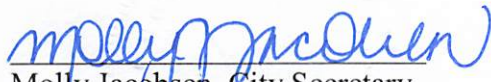
or provisions of this ordinance should be declared unconstitutional or otherwise invalid for any reason, such event shall not affect any remaining sections, paragraphs, sentences, clauses, phrases, words, or provisions of this ordinance.

SECTION 11. PUBLICATION AND EFFECTIVE DATE. This Ordinance shall take effect upon its passage and publication as required by law as prescribed by City Charter and the provisions herein shall become effective on September 1, 2019. The applicability of an exemption specified by Sections 4 and 5 of this Ordinance that is hereafter adopted or established by ordinance shall take effect on the effective date of such ordinance.

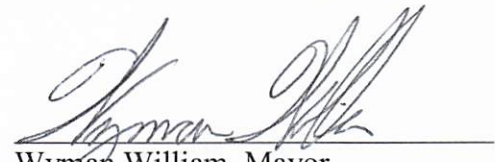
PRESENTED ON FIRST READING THIS 17TH DAY OF SEPTEMBER, 2019.

PRESENTED ON SECOND READING AND APPROVED THIS 15TH DAY OF OCTOBER, 2019 BY A VOTE OF 5 AYES, 0 NAYS, 0 ABSTENTIONS, AT A REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF COMMERCE, TEXAS.

ATTEST:


Molly Jacobsen, City Secretary

CITY OF COMMERCE:


Wyman William, Mayor

APPROVED AS TO FORM:


Charles Anderson, City Attorney