

## **ARTICLE IX.1. PRIVATE STREETS**

### **SECTION A. GATED COMMUNITIES.**

*(Entire Article Established by Ord. 2524, 06/06/00)*

1. Residential subdivisions may be developed with private streets and alleys in lieu of public streets and alleys upon approval of a Planned Development District and if the development complies with the requirements of this Article. The term private street shall include alleys, if provided.

### **SECTION B. DESIGN AND CONSTRUCTION STANDARDS**

1. Private streets shall be designed in accordance with the Design Standards of this ordinance, and all other applicable standards as prescribed by the city of Carrollton.
2. All streets, alleys, sidewalks, drainage ways, water and sewer line and improvements shall be designed, placed and constructed in accordance with the General Design Standards of the city of Carrollton, as amended.

### **SECTION C. STREETS EXCLUDED**

1. Streets designated on the Thoroughfare Plan as an arterial or collector shall not be used, maintained or constructed as private streets.
2. The Planning and Zoning Commission and or the City Council may deny the creation of a private street if it makes a finding of fact, based upon the evidence provided, that it would:
  - a. Negatively affect traffic circulation on public streets; or
  - b. Impair access to property either on-site or off-site of the subdivision; or
  - c. Impair access to or from public facilities including schools, parks and libraries, or
  - d. Delay the response time of emergency vehicles.

### **SECTION D. HOMEOWNERS ASSOCIATION**

1. Residential subdivisions developed with private streets shall establish a mandatory Homeowners Association. The Association shall own and be responsible for the maintenance of the private streets. Lot deeds shall convey membership in the Association and provide for the payment of dues and assessments required by the Association.

2. The manager shall be required to maintain and file a Fidelity Bond. The name of the Association's president shall be submitted to the Public Works Department and updated as needed.

The following notice shall appear in bold print on each deed to property in the subdivision, on the plat of the subdivision and on each contract on the sale of land within the subdivision:

***Notice: The lots within this subdivision are governed by a Homeowners Association requiring the payments of fees. Failure to pay such fees are subject to attachment of a lien on your property by the Association or by the city of Carrollton.***

3. The Association documents shall establish a reserve fund for the maintenance of streets and other improvements, and contain provisions for reliable access to provide city services and to other utility service providers with appropriate identification. The Association may not be dissolved, and no portion of the Association documents pertaining to this section may be amended without the written consent of the city.
4. A reserve fund balance report shall be submitted to the Public Works Department annually to ensure that adequate fund reserves are being maintained for future repairs and/or replacement costs of the private streets.
5. In the event the Association fails to maintain the streets in accordance with city standards, the City may repair and maintain the streets and charge the cost to the Association. If the Association fails to pay for the maintenance cost, after notice to the property owners, the costs shall be filed as a lien on all property within the subdivision.
6. The Association documents shall be reviewed and approved by the City Attorney and the Director of Planning to ensure that they conform to this and other applicable city ordinances, and shall be filed of record prior to the approval of the final plat.

#### **SECTION E. PRIVATE STREETS AND EASEMENTS**

1. Private streets shall be constructed within a designated separate lot owned by the Homeowners Association. Every lot shall have frontage on, and access to, said lot in lieu of a public street.
2. An easement encompassing the lot shall be granted to the city providing unrestricted use of the property for utilities and their maintenance. The right shall extend to all utility providers, including telecommunication companies operating within the city. The easement shall also provide the city with the right of access for any purpose related to the exercise of a governmental service of function, including but not limited to fire and police protection, inspection, animal control and code enforcement. The easement shall permit the city to remove any vehicle or obstacle within the lot that impairs emergency access.

**SECTION F. CONSTRUCTION AND MAINTENANCE COST**

1. The city shall not pay for any portion of the cost of constructing or maintaining a private street.
2. All city regulations relating to shared improvements costs shall be in accordance with Article XI., Section I of the Comprehensive Subdivision Ordinance, with the exception of those applying to street construction.

**SECTION G. UTILITIES**

1. Water, sewer, drainage facilities, and water meters shall be placed within the “street lot” and shall be dedicated to the city upon final acceptance of the subdivision by the city. Installation of touch read water meters shall be required.

**SECTION H. IMPROVEMENTS AND INSPECTIONS**

1. Developments proposed with private streets shall comply with Article XI, Construction and Improvements, of the Comprehensive Subdivision Ordinance. In lieu of the two (2) year maintenance bond provided to the city of Carrollton from the contractor in the amount of 100 percent of the contract price for the street, such period measured from the date of the issuance of a Letter of Acceptance by the City Engineer, the bond shall be issued to the Homeowners Association.
2. The city may periodically inspect private streets and require repairs necessary to insure emergency access.

**SECTION I. SIGNS**

1. All private traffic signs and markings shall conform to the Texas Manual on Uniform Traffic Control Devices. The entrances to all private streets shall be marked with a sign stating that it is a private street.

**SECTION J. ACCESS PROVISIONS**

1. Guard houses, access control gates and cross arms may be constructed within the “street lot”. All restricted access entrances must be manned 24 hours every day, or provided with an alternative means of ensuring access to the subdivision by the city and other utility service providers with appropriate identification.

2. If the Association fails to maintain reliable access as required to provide city services, the city may enter the subdivision and remove any gate or device, which is a barrier to access at the sole expense of the Association, as provided for in the Association documents.

#### **SECTION K. ENTRANCE DESIGN STANDARDS**

1. Any private street with an access control gate shall have a minimum uninterrupted pavement width of twenty-four (24) feet at the location of the access control device. All restricted access gates shall be approved by the Fire Department and meet access requirements for emergency vehicles.
2. Overhead barriers shall not be allowed.
3. Internal storage for three (3) vehicles shall be provided between the right-of-way line and the point of the access control device. An additional setback between the point of the access control device and the access gate shall be required to allow a vehicle which is denied access to safely turn around and exit onto a public street.
4. On lots adjacent to access gates, screening walls may exceed thirty (30) inches in height, up to a maximum of eight (8) feet within the front yard setback of the adjacent lot. Such wall shall be constructed of wrought iron with brick columns. Solid fencing panels shall not be allowed.

#### **SECTION L. WAIVER OF SERVICES**

1. The subdivision final plat, property deeds and property owner Association documents shall note that certain city services shall not be provided on private streets. Among the services, which will not be provided, are: street maintenance, routine police patrols, enforcement of traffic and parking ordinances and preparation of accident reports. Depending on the characteristics of the proposed development other services may not be provided.

#### **SECTION M. PETITION TO CONVERT TO PUBLIC STREETS**

1. The Homeowners Association documents shall allow the Association to request the city to accept private streets and alleys and the associated property as public streets and right-of-way upon written notice to all Association members and upon the favorable vote of 51% of the membership.
2. In no event shall the city accept private streets as public unless said streets have been maintained to city standards. Should the city elect to accept private streets as public, the city may inspect the private streets and assess the lot owners for the expense of needed repairs concurrent with the city's acceptance of the streets and alleys.

3. The city shall be the sole judge of whether repairs are needed. The city may also require, at the Association's expense, the removal of guard houses, access control devices, landscaping or other aesthetic amenities located within the street lot. The Association documents shall provide for the city's right to such assessment. Those portions of the Association documents pertaining to the subject matter contained in this section shall not be amended without the written consent of the city.

#### **SECTION N. HOLD HARMLESS**

1. Language shall be placed on the subdivision final plat whereby the Homeowners Association, as owner of the private streets and appurtenance, agrees to release, indemnify, defend and hold harmless the city, any governmental entity and public utility for damages to the private street occasioned by the reasonable use of the private street by the city, governmental entity or public utility; for damages and injury (including death) arising from the condition of said private street; for damages and injury (including death) arising out of the use by the city, governmental entity or public utility of any restricted access gate or entrance; and for damages and injury (including death) arising out of any use of the subdivision by the city, government entity or public utility.

Further, such language shall provide that all lot owners shall release the city, governmental entities and public utilities for such damages and injuries. The indemnification contained in this paragraph apply regardless of whether or not such damages and injury (including death) are caused solely by the negligent act or omission of the city, governmental entity or public utility, or their representative officers, employees or agents.

2. The Homeowners Association shall provide general liability insurance in the amount of not less than \$300,000 per occurrence and \$500,000 aggregate. Such insurance shall protect the Homeowners Association and city of Carrollton from any claim, suit or demand resulting from any activity by the City within the subdivision, including the operation, maintenance or repair of water, sewer and drainage facilities. The insurance shall be occurrence based and name the city of Carrollton an additional insured. The insurance shall not include any exclusions that would deny coverage from the operation of sewer lines.

A signed Certificate of Insurance, satisfactory to the city of Carrollton, showing compliance with the requirements of this section shall be furnished to the city of Carrollton at the time all improvements are accepted by the city. Such Certificate shall provide thirty (30) day written notice to the city of Carrollton prior to the cancellation or modification of any insurance referred to therein. Language shall be placed on the subdivision final plat indicating that a signed Certificate of Insurance shall be furnished to the city of Carrollton which complies with Article IX.1, Section N (2) of the Comprehensive Subdivision Ordinance.

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