

**ORDINANCE NO. O-2019-01**

**AN ORDINANCE OF THE CITY OF AZLE, TEXAS, AMENDING SUBSECTION (F) OF SUBSECTION 6.2 “PROCESSING” OF SECTION 6 “FINAL PLATS” AND SECTION 8, “PERFORMANCE GUIDELINES” OF EXHIBIT A TO SECTION 10.02.001 “ADOPTED” OF ARTICLE 10.02 “SUBDIVISION ORDINANCE” OF CHAPTER 10 “SUBDIVISION REGULATIONS” OF THE CODE OF ORDINANCES, CITY OF AZLE, TEXAS TO AMEND TO AUTHORIZE PAYMENTS IN LIEU OF CONSTRUCTION IN CERTAIN CIRCUMSTANCES; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A PENALTY FOR VIOLATIONS HEREOF; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR PUBLICATION IN THE OFFICIAL NEWSPAPER; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City of Azle is a home rule city acting under its Charter adopted by the electorate pursuant to Article XI, Section 5 of the Texas Constitution and Chapter 9 of the Local Government Code; and

**WHEREAS**, Chapter 212 of the Texas Local Government Code authorizes a municipality to adopt rules and regulations governing plats and the subdivisions of the land within the municipality’s jurisdiction to promote the health, safety, morals and general welfare of the municipality and the safe, orderly and healthful development of the municipality; and

**WHEREAS**, the City Council has previously adopted the Subdivision Ordinance of the City of Azle, Texas, codified in Chapter 10 of the Code of Ordinance of the City; and

**WHEREAS**, after due and careful consideration, the City Council has determined it to be necessary to amend Subsection 6.2(F) and Section 8 of the Subdivision Ordinance; and

**WHEREAS**, the Planning and Zoning Commission of the City of Azle, Texas held a public hearing on November 1, 2018 and the City Council of the City of Azle, Texas, held a public hearing on February 5, 2019 with respect to the proposed Subdivision Ordinance amendment; and

**WHEREAS**, the City Council has complied with all requirements of Chapter 212 of the Texas Local Government Code, and all other laws dealing with procedural requirements for the amendment of the Subdivision Regulations.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AZLE, TEXAS THAT:**

**SECTION 1.**

Subsection (F) of Subsection 6.2 “Processing” of the City of Azle’s Subdivision Ordinance is hereby amended to read as follows:

- “(F) After the final plat has been finally approved and either:
- (i) the developer has constructed all the required improvements and such improvements have been approved, and a maintenance bond filed as provided in this Ordinance;
  - (ii) the developer has filed the security and maintenance bonds provided in this Ordinance; or
  - (iii) the developer has made a payment in lieu of construction as provided in this ordinance,

the commission shall cause the final plat to be recorded with the county clerk or clerks in the county or counties in which the subdivision lies. The Commission shall also cause the check or checks for the recording fee or fees deposited at the time the final plat was filed for approval to be delivered with the final plat to the county clerk.”

**SECTION 2.**

Section (8) “Performance Guarantees” of the City of Azle’s Subdivision Ordinance is hereby amended by adding a new Section 8.3 to read as follows:

“8.3 Payments in lieu of construction.

*A. Payments in lieu of construction.* Payment in lieu of constructing improvements or providing the required security as outlined in Subsection 6.2F for required perimeter streets, sidewalks, or storm water systems, is permitted only under the following circumstances:

1. Due to safety, connectivity, size of the project, the improvements being a part of an upcoming public improvement project, the improvements being a part of a multi-phased project, or other reasonable factors, the city determines it would be more feasible to defer the actual construction of the required public improvements to a later date; or

2. The planning and zoning commission finds that the existing conditions are such that it will not be hazardous to defer the construction of such public improvements to a later date.

B. *Deposit and determination of payment amount.* When payments in lieu of construction are permitted by these regulations, payments shall be deposited by the owner with the city at the time of final plat approval. Such amount shall be roughly proportional to the impact of the development and shall equal to the cost of the design and construction of the required improvements. The city engineer shall determine the amount of the payment by using the average of comparable bids awarded by the city in the preceding six (6) months, or if none exists, then in the preceding year, or if none exists, the current market value of construction as determined by an estimate of the city engineer. The design fee estimate shall be calculated at a minimum of six (6) percent of the construction costs.

C. *Disbursement of deposited funds.* The deposited funds, together with accrued interest, may be disbursed by the City for the payment of the design and construction of any public improvements for which the funds were deposited.

D. *Refunds.* In the event the city has not authorized the preparation of plans and specifications for the construction of public improvements for which funds have been deposited within (10) years after such funds have been deposited with the city, upon written request from the owner, or its successors or assigns, the city shall refund the funds, with accrued interest. If public improvements for which funds are deposited are constructed by another governmental entity at no cost to the city, the funds and accrued interest shall be refunded to the owner after completion and acceptance of the public improvements. In the event a portion of the cost is borne by the city and the other portion is borne by another governmental entity, the city will refund any unused portion after completion and acceptance of the public improvements.

E. *Interest limitation.* If deposit funds are refunded within six (6) months of deposit, only the principal will be refunded. Funds returned after that date will be refunded with accrued interest, calculated at one (1) percent less than the rate of actual earnings. Actual earnings is the rate of return on the actual investment of the deposited funds by the city.

F. *Owner's option.* Payments in lieu of construction are not impact fees. The owner shall have the option to construct the required street, sidewalks or storm water systems improvements.”

### **SECTION 3.**

This ordinance shall be cumulative of all provisions of ordinances and of the Code of the City of Azle, Texas, as amended, except where the provisions are in direct conflict with the provisions of other ordinances, in which event the conflicting provisions of the other ordinances are hereby repealed.

### **SECTION 4.**

Any person, firm or corporation who violates, disobeys, omits, neglects, refuses or fails to comply with, or who resists the enforcement of any provision of this ordinance shall be fined not more than five hundred (500.00) for each offense. Each day that a violation is permitted to exist shall constitute a separate offense.

#### **SECTION 5.**

All rights and remedies of the City of Azle are expressly saved as to any and all violations of the provisions of the Azle Municipal Code, or any other ordinances affecting zoning which have accrued at the time of the effective date of this ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this ordinance but may be prosecuted until final disposition by the court.

#### **SECTION 6.**

It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs and sections of this ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

#### **SECTION 7.**

The City Secretary of the City of Azle is hereby directed to publish the caption, the penalty clause and effective date clause in the official newspaper at least once within ten (10) days after the passage of this ordinance.

#### **SECTION 8.**

This ordinance shall be in full force and effect from and after its passage and publication as provided by law, and it is so ordained.

**DULY PASSED AND APPROVED** by the City Council of the City of Azle, Texas, on this the 5th day of February, 2019.

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Mayor, Alan Brundrett

ATTEST:

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Yael Forgey, City Secretary

APPROVED AS TO FORM:

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City Attorney