

## TITLE XII

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## CHAPTER 1

### Local Improvements

#### **Sec. 12-1-1. Eminent domain; as provided by state law.**

All proceedings brought by the City in the nature of eminent domain for the condemnation of private property for streets, alleys, public parks or other public use shall be brought in the form and manner provided by the laws of the State existing at the time such proceeding is begun. (1957 Code, §22-1)

#### **Sec. 12-1-2. Power conferred.**

The City shall have power to make local improvements, which improvements shall confer special benefits on the real property within such districts, and general benefits to the City at large, and to assess the cost thereof wholly or in part upon the property especially benefited. In consideration of general benefits conferred thereby on the City at large, the City Council may levy taxes and disburse monies for the purpose of paying for such benefits, and for the purpose of paying bonds and interest thereon, issued for special or local improvement districts created hereunder, as by Charter made and provided. The City Council may disburse monies to pay the costs of constructing such improvements and assess, in whole or in part, the costs thereof and interest thereon upon the property within such districts especially benefited for the purpose of repaying to the City the costs of such improvements and interest thereon. All public improvements shall be constructed in accordance with the Charter and ordinances and specifications prescribed by the City Council, and shall be authorized by ordinance. (1957 Code, §22-2; Ord. No. 5111, 12-12-83)

#### **Sec. 12-1-3. Definitions.**

(a) *Street*, as used in this Chapter shall be construed to mean any street, alley, avenue, boulevard or public thoroughfare.

(b) *Property* shall be held to mean all land, whether platted or unplatted, regardless of improvements thereon and regardless of lot or land lines. It shall also include in its meaning the franchise of any railroad whose tracks lie, either lengthwise or crosswise, within any street improved under this Chapter. Lots may be designated in accordance with any recorded map or plat thereof, unplatted lands by any definite description thereof, and franchises by the name of the corporation owning the same.

(c) *District*, when used in this Chapter, means the geographical division or divisions of the City within which any local improvement may be made, or when so declared by the City Council may include the entire area of the City. One (1) or more noncontiguous parts or sections of the City may be included in one (1) district.

(d) *Engineer* shall be construed to be the Director of Public Works. (1957 Code, §22-3; Ord. No. 4018, 5-12-75)

**Sec. 12-1-4. Initiating; rules and regulations; determination of necessity; procedure.**

The improvements hereby authorized may consist of grading, paving, curbing, guttering, parking or otherwise improving the whole or any part of any street, alley or streets and alleys in the City, or any one (1) or more of such improvements, including the reconstruction, replacement, renewal or extension of the same. Such improvements may also consist of any local improvement and renewals or extension thereof which benefit the land abutting on such improvements, such as sidewalks, water mains or the necessary construction and appliances for the installation of a system of artificial lighting. Such improvements may also consist of the construction of sewers, sewage disposal works and renewals or extensions thereof, and such other public works as may be considered necessary and authorized by the City Council; provided that:

(1) Any public work or improvement, the cost of which is to be assessed in whole or in part to the property benefited thereby, whether or not requested by property owners affected thereby, may be initiated by the City Council upon finding that the public health, safety and welfare in addition to benefits to the property to be assessed, require the building of such improvement.

(2) The City Council shall advertise for and receive bids for such construction and, so far as possible, shall describe all materials by standard or quality in the specifications.

(3) Before contracting for or ordering any work to be constructed, a preliminary order shall be made by the City Council, adopting full details and specifications in conformity with a petition for the same, generally describing (by description therein or by reference to documents on file) the improvement, determining the number of installments and time in which the assessment shall be payable, the rate of interest to be paid on unpaid and deferred installments (or stating that such rate shall be the same as the highest rate of interest on the bonds to be thereafter determined upon the sale of the bonds), and the property to be assessed for the same, as provided in this Chapter; and requiring an estimate of the cost to be made by the City Engineer, together with a map of the district in which the improvement is to be made, and a schedule showing the approximate amounts to be assessed upon the several lots or parcels of property within the district. No contracts shall be let for any amounts exceeding the estimate so made, except that the cost of collection, engineering, inspection, financing, incidentals and interest may be added thereto.

(4) The Director of Public Works shall give notice to the owners of the property to be assessed by personal service as provided by Subsection 1-1-11(5) of this Code or by mail as provided by Subsection 1-1-11(6) of this Code, the same as though the owner were outside the City, and by one (1) publication as by Charter provided, setting forth the following:

- a. The kind of improvements proposed;
- b. The number of installments in which the cost will be payable;
- c. The time in which the cost will be payable;
- d. The rate of interest to be paid on unpaid and deferred installments to be stated as aforesaid;
- e. The extent of the district to be improved;

f. The probable cost per front foot, or in case of sewers, per square foot of district area; or the probable cost on such other basis as the City Council may prescribe, as shown by the estimates of the City Engineer;

g. The time, not less than twenty (20) days after the publication, when an ordinance authorizing the improvements will be considered;

h. That such map, estimate and schedule showing the approximate amounts to be assessed, and all resolutions and proceedings are on file and can be seen and examined by any person interested, at the office of the City Engineer at any time within such period of twenty (20) days; and

i. That all complaints and objections that may be made in writing concerning the proposed improvement by the owners of any real estate to be assessed will be heard and determined by the City Council before final action thereon.

(5) The finding of the City Council, to be evidenced by ordinance, that such improvements were duly ordered after notice duly given, and after hearing duly held, shall be conclusive of the facts so stated, in every court or other tribunal.

(6) Any resolution or order in the premises may be modified, confirmed or rescinded at any time prior to the passage of the ordinance authorizing the improvements.

(7) Specifications for paving may include sidewalks, curbs, gutters and grading and sufficient culverts, sewers or drains necessary to carry off the surface waters across or along the line of the street improved, and such other incidentals to paving as, in the judgment of the City Council may be required. The specifications may also provide that bidders shall agree to enter into a contract to do the work and maintain the same in good repair for a period of five (5) years; and the contract may be entered into in accordance therewith.

(8) If, before any such improvements are made, any piece of real estate or any railway company to be assessed already has an improvement conforming to the general plan or satisfactory to the City Council, an allowance may be deducted from the owner's assessment and from the contract price. (1957 Code, §22-4; Ord. No. 3387, 10-12-70; Ord. No. 4018, 5-12-75; Ord. No. 4604, 5-14-79; Ord. No. 5111, 12-12-83)

**Sec. 12-1-6. Liability for assessment; railroad property.**

(a) Whenever any grading, paving or other kind of street improvement district shall be created under this Chapter, the City Council may include in the area to be so improved the entire width of street from lot line to lot line as shown by plat or other description, or any part thereof, including the portion of such street occupied by, or required by franchise obligation to be paid by, or chargeable or assessable to, any railway company whose railroad runs through or across any street in such district, and shall charge to assess and collect the proper proportion of the cost of the improvement from such railway company in the same manner as is provided for in case of other property, and shall issue bonds for the same, which bonds shall be issued and made payable in like manner as bonds issued for the improvement to be assessed against the real estate specially benefited.

(b) In the meaning of this Section, in the absence of a franchise obligation to grade or pave or otherwise improve, a railway company shall be held to occupy, and shall be liable for, the grading, paving or other improvement of that part of the street lying between the rails of each track and two (2) feet outside of each rail; and every railway company, whether street, railway or otherwise, shall be assessed for the cost of such improvement of any part of any street or alley occupied by or required by franchise obligation to be so improved, and the assessment levied for the cost of such improvements chargeable to a railroad company shall be a perpetual tax lien against the entire franchise and property of the company, both within and without such district, but within the limits of the City, and such improvement lien is made superior to all other liens except general tax liens. All the terms, conditions and provisions contained in this Chapter relative to the collection of the amounts chargeable against property specially benefited shall be applicable in the enforcement and collection of such assessment against such railway company. The property of such railway company, in case of default in payment of such assessment, shall be sold as in cases of default in payment of general taxes levied thereon; but railway trackage shall not be considered or computed as assessable frontage in determining the sufficiency of petitions. (1957 Code, §22-6)

**Sec. 12-1-7. Property benefited.**

(a) In case of the improvement of any street or alley, the cost of such improvement, or such part thereof as may be assessed against the property specially benefited, including the intersections of streets and alleys, but excepting the share to be assessed against railway companies, may be assessed on land to a substantially equal depth from the street or alley improved, and its intersections, without regard to lot or land lines, on a frontage, zone or other equitable basis, in accordance with benefits, as the same may be determined by the ordering authority. Whenever any lot or parcel of land is V-shaped or of any irregular form, such allowance may be made by ordinance in any assessment as may be equitable and just, or any allowance may be refused.

(b) In the discretion of the City Council, the cost of district sewers may be assessed upon all the land in said sewer districts, in any of the following methods:

(1) In proportion as the area of each piece of land in the district, or in the part improved, is to the area of all the land in the district, exclusive of public highways;

(2) To a substantially equal topographical elevation from the sewer catch basin without regard to lot or land lines, on a zone or other basis, in accordance with benefits as the same may be determined by the City Council;

(3) A combination of methods (1) and (2) above; or

(4) Any other basis that shall appear just and equitable to the City Council; provided, however, that, in no event shall such assessment exceed the benefit accruing to the land so assessed. (1957 Code, §22-7)

**Sec. 12-1-8. District sewers; determination of necessity; subdistricts; work included.**

Whenever the City Council shall declare the same as necessary for sanitary reasons, it may order the construction of district sanitary sewers in districts to be prescribed by ordinance, so as to connect with any public or district sewer or disposal plant. The City Council may order the construction of

district sewers for storm drainage in districts to be known as storm sewer districts, the same to be prescribed by ordinance. At the time of ordering the construction of district sanitary or storm sewers, or at any time thereafter, the construction may be ordered in like manner in subdistricts, so as to connect the subdistricts or such part thereof with the district sanitary or storm sewer for the purpose of sanitary or storm drainage. Combined sewers for sanitary and storm drainage may be authorized and constructed in the same manner as provided for the construction of sanitary or storm sewers. The contract for district sewers may include all necessary manholes, inlets and appurtenances, and such mains of such reasonable extent outside the district as may be necessary to connect the district with a public sewer or some natural drainage or disposal plant. The cost of any district or subdistrict sewer, including inlets, manholes, connecting mains and appurtenances, with interest and incidentals, may be assessed by ordinance upon all the real estate in the district, in proportion as the area of each piece of real estate is to the area of all real estate in the district or subdistrict, exclusive of public highways, or as hereinabove set forth. (1957 Code, §22-8)

**Sec. 12-1-9. Statement of costs; preparation; filing.**

Upon completion of any local improvement or upon completion from time to time of any part thereof and upon acceptance thereof by the City Council, or whenever the total cost of any improvement or any such part thereof can be definitely ascertained, the City Council shall cause to be prepared a statement showing and including: (1) the total cost of the improvement, including but not limited to cost of construction, engineering, inspection and right-of-way or property acquisition; (2) the portion, if any, of the total cost thereof to be paid by the City; (3) an amount not exceeding six percent (6%) additional for costs of collection, financing and other incidentals; (4) interest at a rate to be fixed by the City Council but not less than on the bonds, if any, issued to the time the first installments of the assessments is made payable in such statement; and (5) apportioning such costs, after deducting the amount if any, to be paid by the City, upon each lot or tract of land to be assessed for the same. Such statement shall be filed in the office of the City Clerk. If the City Council shall deem the basis of assessments to be inequitable in any case, a just and equitable assessment shall be made upon the basis of benefits accruing to the property assessed by reason of the improvements made. (1957 Code, §22-9; Ord. No. 4018, 5-12-75; Ord. No. 4285, 2-28-77; Ord. No. 5111, 12-12-83)

**Sec. 12-1-10. Publishing notice; contents.**

Upon the filing of the statement of expenses provided for in the preceding Section hereof, the City Clerk shall notify by mail as provided by Subsection 1-1-11(6) of this Code, the same as though the owner were outside the City, and by one (1) publication as by Charter provided, the owners of the property to be assessed that such improvements have been or are about to be, completed and accepted, therein specifying:

- (1) The whole cost of the improvement;
- (2) The portion, if any, to be paid by the City;
- (3) The share apportioned to each lot or tract of land;
- (4) That any complaints or objections which may be made in writing by the owners to the City Council, and filed in the office of the City Clerk within twenty (20) days from the mailing and

publication of such notice, will be heard and determined by the City Council before the passage of any ordinance assessing the cost of such improvements; and

(5) The date when and the place where such complaints or objections will be heard. (1957 Code, §22-10)

**Sec. 12-1-11. Complaints; hearing on; Council action.**

At the time and place specified in such notice, or at some adjourned time, the City Council shall hear and determine all such complaints and objections, and may thereupon make such modifications and changes as may seem equitable and just, or may confirm the first apportionment. The City Council shall thereupon by ordinance assess the cost of such improvements, and passage of such ordinance shall be prima facie evidence of the fact that the property assessed is benefited in the amount of the assessments, and that such assessments have been lawfully levied. (1957 Code, §22-11)

**Sec. 12-1-12. Lien; assessment constitutes; new assessments.**

All assessments made in pursuance of this Chapter, together with all interest thereon and penalties for default in payment thereof, and all costs in collecting the same, shall constitute, from the date of the publication of the assessing ordinance, a perpetual lien in the several amounts assessed against each lot or tract of land, and shall have priority over all other liens excepting general tax liens. As to any subdivisions of any land assessed in pursuance of this Chapter, the assessment shall in each case be a lien upon all the subdivisions in proportion to their respective areas. No delays, mistakes, errors or irregularities in any act or proceeding authorized by this Chapter shall prejudice or invalidate any final assessment, but the same may be remedied by subsequent amending acts or proceedings, as the case may require. When so remedied, the same shall take effect as of the date of the original act or proceeding. If, in any court of competent jurisdiction, any final assessment made in pursuance of this Chapter is set aside, then the City Council, upon notice as required in the making of an original assessment, may make a new assessment in accordance with the provisions of this Chapter. (1957 Code, §22-12)

**Sec. 12-1-13. Assessment roll; contents; delivery for collection.**

The engineer shall prepare a local assessment roll in book from showing in suitable columns each piece of land assessed; the total amount of assessment; the amount of each installment of principal and interest, if, in pursuance of this Chapter, the same is payable in installments, and the date when each installment will become due, with suitable columns for use in case of payment of the whole amount or of any installment or penalty; and deliver the same, duly certified, to the Director of Finance for collection. (1957 Code, §22-13)

**Sec. 12-1-14. Special assessment; date due.**

All special assessments for local improvements shall be due and payable within thirty (30) days after the date of the final passage by the City Council of the assessing ordinance without demand; provided that all such assessments may be paid, at the election of the owner, in installments with interest as provided in Section 12-1-16 herein. (1957 Code, §22-14; Ord. No. 4018, 5-12-75)

**Sec. 12-1-15. Installments; election to pay; effect.**

Failure to pay the whole assessment within the period of thirty (30) days shall be conclusively considered and held to be an election on the part of all persons interested, whether under disability or otherwise, to pay in such installments. All persons so electing to pay in installments shall be conclusively held and considered as consenting to such improvements. Such election shall be conclusively held and considered as a waiver of any right to question the power or jurisdiction of the City to construct the improvements, the quality of the work, the amount of benefit accruing to the land from the improvements, the regularity or sufficiency of the proceedings, the validity or the correctness of the assessments, or the validity of the lien thereof. (1957 Code, §22-15)

**Sec. 12-1-16. When payable; manner of division.**

In case of such election to pay in installments, the assessments shall be payable in two (2) or more equal installments of principal, the first of which installments shall be payable as prescribed by the City Council, in not more than two (2) years, and the last in not more than fifteen (15) years, with interest in all cases on the unpaid principal, payable annually at a rate to be fixed by the City Council, which rate shall not be less than the interest rate on the bonds, if any, issued to finance the construction of the improvement. The number of installments, the period of payments and the rate of interest shall be determined by the City Council and set forth in the assessing ordinance. (1957 Code, §22-16; Ord. No. 333, §1, 2-23-70; Ord. No. 4136, 2-9-76; Ord. No. 5110, 12-12-83)

**Sec. 12-1-17. Missing payment; acceleration; limitations.**

Failure to pay any installment, whether of principal or interest, when due, shall cause the whole of the unpaid principal to become due and collectible immediately, and the whole amount of the unpaid principal and accrued interest shall thereafter draw interest at the rate of one percent (1%) per month or fraction of a month until the day of sale; but at any time prior to the day of sale, the owner may pay the amount of all unpaid installments, with interest at one percent (1%) per month or fraction of a month, and all penalties accrued, and shall thereupon be restored to the right thereafter to pay in installments in the same manner as if default had not been suffered. The owner of any property not in default as to any installment or payment may at any time pay the whole of the unpaid principal with the interest accruing to the maturity of the next installment of interest or principal. Provided, always, that no statute of limitations shall apply until the last installment of assessments shall become due and payable. (1957 Code, §22-17)

**Sec. 12-1-18. Advance payments.**

Advance payment in full of all or any part of an anticipated assessment may be made by any property owner at any time subsequent to the mailing and publication of the notice of intent to create a special improvement district. Such payment, if made prior to the actual construction and installation of the improvements or prior to any sale of bonds necessary to finance the construction of the sewer, shall be computed upon the engineer's estimated cost, including all incidental costs as set forth in Section 12-1-9 of this Code, without interest. Advance payment of an anticipated assessment may be made at any time subsequent to the actual construction and installation of the improvements or to any sale of bonds necessary to finance the construction of the improvement, but prior to the assessment of the costs, computed upon the engineer's estimated costs, including all incidental costs as stated above and interest at the rate shown in the notice of intention to create the district to the date

of payment. At the time of assessment, all advance payments made in anticipation shall be adjusted to reflect the final computation of actual costs, plus incidentals. Any overpayments owing by the property owner will be added to the assessment roll with a notation stating "Partially Paid in Advance." Any such balance owing shall bear interest only from the date of the sale of bonds or the date of advance payment, whichever is later. The City shall not be responsible for the refund of overpayments to the property owner except upon demand of the property owner. All advance payments shall be kept in a separate fund until required to pay the cost of construction. All overpayments remaining in the fund for a year after the date of publication of the assessing ordinance shall thereafter be transferred into the surplus and deficiency fund provided by Charter. For a period of two (2) years following such transfer, but not thereafter, claims for the refund of such overpayment may be honored from the surplus and deficiency fund when substantiated to the satisfaction of the Director of Finance. (1957 Code, §22-17; Ord. No. 5111, 12-12-83)

**Sec. 12-1-19. Collection; certification to County Treasurer.**

Payment may be made to the Director of Finance at any time within thirty (30) days after publication of the assessing ordinance. At the expiration of such thirty-day period, the Director of Finance shall deliver the local assessment roll showing all payments made thereon, with the date of each payment, certified by him or her under the seal of the City, attested by the City Clerk to the County Treasurer, with his or her warrant for the collection of the same. The County Treasurer shall receipt for the same, and all such rolls shall be numbered for convenient reference. (1957 Code, §22-18)

**Sec. 12-1-20. Sale; advertisement.**

The County Treasurer shall receive payment of all assessments appearing upon the assessment roll, with interest. In case of default in the payment of any installment of principal or interest when due, the County Treasurer shall advertise and sell any and all property concerning which such default is suffered, for the payment of the whole of the unpaid assessments thereon. Such advertisements and sales shall be made at the same times, in the same manner, under all the same conditions and penalties and with the same effect as are provided by general law for sales of real estate in default of payment of general taxes. (1957 Code, §22-19)

**Sec. 12-1-22. Accounting and payment; time.**

All collections made by the County Treasurer upon such assessment roll in any calendar month shall be accounted for and paid over to the Director of Finance on or before the tenth day of the next succeeding calendar month, with separate statements for all such collections for each improvement. (1957 Code, §22-21)

**Sec. 12-1-23. Bonds; issuance authorized; form; cancellation and payment; reserve fund.**

For the purpose of paying all or such portion of the cost of any improvement constructed under the provisions of this Chapter as may be assessed against the property specially benefited and not paid by the City, special assessment bonds of the City may be issued, of such date and in such form as may be prescribed by the City Council, bearing the name or number of the street, alley or district improved, and payable to the bearer in a sufficient period of years after the date to cover the period of payment provided, but subject to call as provided in Section 12-1-25 and in convenient denominations of not

more than five thousand dollars (\$5,000.00) each. All such bonds shall be issued upon estimates approved by the City Council, and the Director of Finance shall preserve a record of the same in a suitable book kept for that purpose. All such bonds shall be manually subscribed by the Director of Finance, and shall bear the engraved, printed, stamped or otherwise reproduced facsimile of the signature of the President of the City Council, the Corporate Seal of the City and the attestation of the City Clerk. Such bonds shall be payable out of the monies collected on account of the assessments made for such improvements. Whenever a special or local improvement district has paid and cancelled three-fourths ( $\frac{3}{4}$ ) of its bonds issued, and for any reason the remaining assessments are not paid in time to take up the remaining bonds of the district and interest due thereon, and there is not sufficient money in the special surplus and deficiency fund, then the City shall pay the bonds when due and interest due thereon, and reimburse itself by collecting the unpaid assessments due the district. All monies collected from such assessments for any improvements shall first be applied to the payment of the bonds issued, and interest thereon, and then in the event the City shall have paid any of such bonds when due, to the repayment of the City, until payment in full is made of all monies advanced by the City. Where all outstanding bonds of a special or local improvement district have been paid and all monies which may have been advanced by the City have been repaid, and any monies remain to the credit of the district, such monies shall be transferred to the special surplus and deficiency fund. Whenever there is a deficiency in any special or local improvement district fund to meet the payment of outstanding bonds and interest due thereon, the deficiency shall be paid out of such surplus and deficiency fund, if there are sufficient monies in such fund for such purpose. The ordinance under which any special assessment bonds are issued shall not be repealable until all such bonds and interest thereon are paid in full, and such ordinance may include a general tax levy to maintain current payments of interest and equal annual payments of the principal amount of bonds issued thereunder, as by Charter made and provided. Such bonds shall be issued and sold, in such manner, of such date and in such form as may be prescribed by the City Council. (1957 Code, §22-22)

**Sec. 12-1-24. Registration; negotiability; maximum interest coupons.**

All such bonds may be registered or unregistered bonds as may be prescribed by the City Council and shall be negotiable in form, shall bear interest as may be fixed by City Council, with interest payable semiannually and evidenced by coupons signed with the facsimile signature of the City Clerk. (1957 Code, §22-23; Ord. No. 5111, 12-12-83)

**Sec. 12-1-25. Calling in; notice.**

Whenever the Director of Finance has funds in the treasury to the credit of any improvement district bond fund exceeding six (6) months' interest on the unpaid principal of the bonds issued therefor and outstanding, he or she shall call in, by at least one (1) publication as by Charter provided a suitable number of such bonds for payment on the next interest payment date or at such other time as the City Council shall provide in the ordinance creating the district. On the date specified in such notice, but not earlier than the expiration of thirty (30) days from the first or only publication of such notice, interest on the bonds so called shall cease. The notice shall specify by number the bonds so called, and all such bonds shall be paid in their numerical order. The holder of any such bonds may at any time furnish his or her post office address to the Director of Finance, and in such case, a copy of the publication shall be mailed by the Director of Finance to the bondholder, at such address, on or before the date of such publication. (1957 Code, §22-24; Ord. No. 4018, 5-12-75)

**Sec. 12-1-26. Contracts; letting; regulations; contractor's bond; remedies; advertisement; performance by City.**

(a) Except as provided in this Section, all local improvements made under the provisions of this Chapter shall be constructed by independent contract, and all contracts shall be let by the City Council. All such contracts shall be let to the lowest reliable and responsible bidder. If it is determined by the committee of awards that the bids are too high, or that the proposed improvement can be made by the City for less than the bid of the lowest reliable and responsible bidder, the City may provide for doing the work by hiring labor by the day or otherwise, and to arrange for purchasing necessary material, all under the supervision of the City Engineer.

(b) Except when the City does the work, no contract shall be made without a surety bond for its faithful performance, with sufficient sureties, to be approved by the City purchasing agent. No surety other than a corporate surety company shall be approved unless he or she is the owner of real estate in the State, free and clear of all encumbrances, in double the amount of his or her liability on all bonds upon which he or she may then be a surety. Upon default in the performance of any contract, the City Council may advertise and re-let the remainder of the work in like manner, without further ordinance, and deduct the cost from the original contract price, or advance any excess out of the funds of the City and recover the same by suit on the original bond. In all advertisements, the right shall be reserved to reject any or all bids, and upon rejecting all bids, if deemed advisable by the committee of awards, other bids may be advertised for. (1957 Code, §22-25)

**Sec. 12-1-27. Contents.**

Every contract shall provide that it is subject to the provisions of the Charter of the City, this Chapter and the ordinance authorizing the improvement; that the aggregate payment thereon shall not exceed the estimates of the City Engineer; that upon ten (10) days' written notice by the City Manager to the contractor, the work under such contract, without cost or claim against the City, may be suspended for substantial cause; and that upon complaint of any owner of land to be assessed for the improvement stating the improvement is not being constructed in accordance with the contract, the City Council may consider the complaint and make such order in the premises as shall be just, and such order shall be final. (1957 Code, §22-26)

**Sec. 12-1-28. Connections with gas and water; may be required; costs; assessments; sale.**

Before paving in any district, pursuant to this Chapter, the City Council may order the owners of the abutting property to connect their several premises with the gas or water mains, or with any other utility in the street in front of their several premises. Upon default of any owner for thirty (30) days after such order to make such connections, the City may contract for and make the connections at such distance, under such regulations, and in accordance with such specifications as may be prescribed by the City Council. The whole cost of each connection shall be assessed against the property with which the connection is made, and the cost shall be paid upon the completion of the work, and in one (1) sum. The cost shall be assessed, shall become a lien and shall be collected in the same manner as is provided in this Chapter for the assessment and collection of the cost of other special improvements. Upon default in the payment of any such assessment, the property shall be sold in like manner and with like effect. (1957 Code, §22-27)

**Sec. 12-1-29. Treasurer's sale; purchase by City; sale by City.**

(a) At any sale by the County Treasurer of any property for the purpose of paying any special assessment for local improvements made under the provisions of this Chapter, the Director of Finance, having written authority from the City Council, may purchase any such property without paying for the same in cash; and shall receive certificates of purchase therefor in the name of the City. The certificates shall be received and credited at their face value, with all interest and penalties accrued, on account of the assessments in pursuance of which the same were made. The certificates may thereafter be sold by the Director of Finance at their face value, with all interest and penalties accrued, and by him or her assigned to the purchaser in the name of the City, and the proceeds credited to the fund created by ordinance for the payment of such assessments respectively. In the event that all bonded indebtedness incurred in payment for such local improvements has been discharged in full, such certificates may be sold by the City Council for the best price obtainable at public sale, at auction or by sealed bids in the same manner and under the same conditions as is provided in Subsection (c) of this Section, and the proceeds credited to the special surplus and deficiency fund. Such assignments shall be without recourse, and the sale and assignments shall operate as a lien in favor of the purchaser and assignee as is provided by law in the case of sale of real estate in default of payment of general taxes.

(b) The City as such purchaser shall have the right to apply for tax deeds on such certificates of purchase, at any time after the date of issuance of such certificates.

(c) Cumulatively with all other remedies, the City, being the owner of property by virtue of a tax deed, or being the owner of property otherwise acquired, in satisfaction or discharge of the liens represented by such certificates of sale, may sell such property for the best price obtainable at public sale, at auction or by sealed bids. Such sale shall be after public notice by the City Clerk to all persons having or claiming any interest in the property to be sold or in the proceeds of such sale, by publication three (3) times, a week apart, as by Charter provided. Such notice shall describe the property and state the time, place and manner of receiving bids. The time fixed for the sale shall be greater than ten (10) days after the last publication. The City may reject any and all bids. Any interested party, at any time within ten (10) days after the receipt of bids for the sale of the property, may file with the City a written protest as to the sufficiency of the amount of any bid made or the validity of the proceedings for the sale. If the protest shall be denied, and no action to enjoin or restrain the City from completing the sale shall be instituted within ten (10) days thereafter, all protests or objections to the sale shall be deemed to have been waived and the City shall then convey the property to the successful bidder by quitclaim deed.

(d) In addition to all other remedies, the City may bring a civil action for foreclosure thereof, joining as defendants all persons holding record title, and the persons having or claiming any interest in the property or in the proceeds of foreclosure sale, and all governmental taxing units having taxes or other claims against such property. Any number of certificates may be foreclosed in the same proceeding. In such proceeding, the City, as plaintiff, shall be entitled to all relief provided by law in actions for an adjudication of rights with respect to real property.

(e) The proceeds of any such sale of property shall be credited to the appropriate special assessment fund. The City shall deduct therefrom the necessary expenses in securing deeds and taking proceedings for the sale or foreclosure. (1957 Code, §22-28; Ord. No. 5111, 12-12-83)

**Sec. 12-1-30. Reinstatement of property struck off to or purchased by City for delinquent assessment.**

(a) Any property struck off to or purchased by the City for a delinquent assessment may be reinstated upon the assessment roll by the owner thereof, his or her agent, assignee or attorney, or by any person having a legal or equitable claim therein, provided that the certificate of purchase issued by the County Treasurer has not been assigned by the City to another.

(b) Such reinstatement may be made at any time before the execution of the County Treasurer's deed to the City, upon payment to the Director of Finance of the total amount of annual assessments which would have been paid if the property had remained upon the assessment roll, with interest upon the total face amount of the certificate of purchase issued, including all penalties and fees from the date of sale at the rate of eighteen percent (18%) per annum for the first six (6) months and twelve percent (12%) per annum for the remaining period.

(c) Upon receipt of such payment, the Director of Finance shall endorse upon the back of the certificate of purchase held by him or her the legend "Delinquent Assessments Paid--Reinstated as of \_\_\_\_\_," and insert the date of reinstatement. The Director of Finance shall forthwith hold the certificates of purchase and shall thereafter collect all remaining annual installments of principal and interest as the same shall become due and payable. Upon payment to all such installments, the certificate of purchase shall be returned to the County Treasurer for cancellation. Upon failure to make subsequent payments as they shall become due, the Director of Finance shall proceed to the issuance of a tax deed or take such other action as may be provided in all respects the same as though no reinstatement has taken place.

(d) Any person requesting and obtaining reinstatement of any property in which he or she has any right, title or interest upon the assessment roll shall be conclusively deemed to have waived all objections to the assessment which he or she may have on any grounds whatsoever and may not thereafter be heard to complain that such assessment is invalid or unenforceable against the property so reinstated in any manner whatsoever. (1957 Code, §22-28.1)

**Sec. 12-1-31. Notices; requirements.**

In all proceedings and notices authorized by this Chapter, figures may be used instead of words, and in districts of extended areas, it shall not be necessary to designate each piece of land separately. In such case, general descriptions and quantities may be used, except in the assessment rolls. Except in such rolls, the cost may be stated as being of probable or certain amount per front foot, per square foot or per lot of given size. (1957 Code, §22-29)

**Sec. 12-1-32. Right of action; prerequisites.**

No legal or equitable action shall be brought or maintained except to enjoin the collection of assessments levied under this Chapter. Such action may be brought only upon the following grounds:

(1) That notice of a hearing upon the amount of the assessment was not given as required in this Chapter. Any person presenting objections to the City Council at or before the hearing on assessment shall be deemed to have waived this ground.

- (2) That the hearing upon the amount of the assessment as provided in this Chapter was not held;
- (3) That the improvement ordered was not one authorized by law of this Chapter;
- (4) That the assessment levied exceeds the benefits received by the property assessed.

No action shall be brought on grounds (3) or (4) *above* unless the objections on which such action is based shall have been presented to the City Council in writing as required in this Chapter. Any action brought under this Chapter shall be commenced within thirty (30) days after the passage of the assessing ordinance or else be thereafter perpetually barred. (1957 Code, §22-30; Ord. No. 5111, 12-12-83)

## CHAPTER 2

### Municipal Contracts

#### **Sec. 12-2-1. Contractors bonds.**

Any person entering into a contract with the City for the construction of any public building or the prosecution or completion of any public work shall be required, before commencing work, to execute, in addition to all bonds that may now or hereafter be required of him or her, a payment bond, with good and sufficient surety or sureties, to be approved by the Director of Finance, conditioned that such contractor shall promptly make payments of all amounts lawfully due to all persons supplying or furnishing the contractor, or the contractor's subcontractor, with labor and materials, or with labor and materials used or performed in the prosecution of the work provided for in such contract. (1957 Code, §22-31; Ord. No. 4476, 5-8-78)

Editor's Note: Sections 12-2-2 and 12-2-3 were repealed in their entirety by Ord. No. 5229, passed and approved June 10, 1985.

## CHAPTER 3

### Streets and Sidewalks

#### *Article I In General*

#### Division 1. Streets

#### **Sec. 12-3-1. Surveys and grades; street map; furnishing plans.**

It shall be the duty of the City Engineer to promptly make all necessary surveys of streets, alleys, avenues, public squares and all other surveys required in the City and also, when required by the City Council, to make the line of any lot on any private or public property or the grade of any street, alley or avenue, and mark the same in some substantial permanent manner; to make correct levelings of the streets, alleys and avenues the grade whereof is not yet established, and report plans and estimates of

any street, alley or avenue, the grading whereof shall be changed or altered, making such land marks either for the surveying or leveling, by planting stones or otherwise as he or she shall deem necessary or useful; to superintend all surveys authorized by the ordinances of the City; to mark out all streets, alleys or avenues, authorized by ordinance to be opened; to construct and keep in his or her office a correct map of the City, showing thereon the several additions thereto, the streets, alleys, avenues, public squares, public buildings and City property, bridges and generally all such conspicuous and permanent topographical objects as are necessary, and promptly correct, and alter the same as circumstances may require; to furnish the City Council with all plans and specifications for laying out, grading and regulating streets, public ways, bridges and culverts, and the location and construction of sewers, sewer inlets and other improvements; and to inspect and pass upon the construction of all public works ordered by the City, and make out plans, specifications and estimates thereof. He or she shall keep in his or her office certified copies of all the records and plans relating to surveys, etc., connected with the City, and an accurate record of all surveys and adjustments of party lines and also other parts of the City, and in such a form and with such details as shall from time to time be required for official purposes, and all of which shall be the property of the City. (1957 Code, §24-1)

**Sec. 12-3-2. In additions; re-surveys; deposits.**

The City Engineer shall from time to time make a test of additions to the City heretofore filed and recorded without a proper survey, or where the survey was so badly executed that great inaccuracy exists in respect to the lines of streets and alleys, or where there has been no official resurvey made by the City of the entire addition. Until a proper resurvey of such addition is made and the lines of streets and alleys accurately determined, for all surveys in such additions the City Engineer shall charge and collect in advance a sum estimated to cover the proper cost and expense of such survey. Upon ascertaining such cost and expense, any excess thereof shall be repaid to the applicant, and in case of surveys in such additions where the lines cannot be satisfactorily determined to agree with the recorded plat thereof, the City Engineer may refuse to give any certificate of survey. (1957 Code, §24-2)

**Sec. 12-3-3. Preference.**

The City Engineer shall from time to time, as promptly as may be practicable with the force at his or her disposal, proceed with resurveys of additions as ordered by the City Council, and as seems to him or her most important in consideration of the public requirements. (1957 Code, §24-3)

**Sec. 12-3-4. Street grade; ascertaining before construction.**

Before any person shall commence erection of any building upon the line of any street or public highway within the City where the grade has been already established, he or she shall apply to the City Engineer for the grade of such street, and thereupon it is made the duty of the City Engineer to furnish to such person the grade of such street or public highway. (1957 Code, §24-4)

**Sec. 12-3-5. Substances injurious to pavement; spilling; transportation precautions.**

It shall be unlawful for any person to pour, spill or permit to be poured or spilled, to drip or flow upon, or to deposit or place in any receptacle upon any asphalt or bituminous paving on any street or alley or public place in the City, any kerosene, benzene, gasoline, lubrication oil or other similar oil or

oily substance, or salt or salt water, except as the same may be the ordinary and natural drip from vehicles and their axles, bearings and equipments when the same are carefully handled and operated. Nothing contained herein shall prevent the City's use of salt for deicing operations during freezing weather. (1957 Code, §24-13)

**Secs. 12-3-6--12-3-10. Reserved.**

Division 2. Sidewalks

**Sec. 12-3-11. Displaying goods on sidewalks; setbacks; exception.**

It shall be unlawful for any person to place or keep goods, wares and merchandise of any kind whatsoever for show or display, upon any street or sidewalk within the corporate limits of the City beyond the front or sidelines of his or her premises or property. (1957 Code, §17-30)

**Sec. 12-3-12. By merchants receiving goods; restrictions; time.**

It shall be unlawful for any person receiving or delivering goods, wares or merchandise in this City to place, keep or permit upon any sidewalk in this City any goods, wares or merchandise which he or she may be receiving or delivering without leaving a clear passageway six (6) feet in width for the use of pedestrians; and no person receiving or delivering such goods shall suffer the same to be or remain upon such sidewalk, subject nevertheless to the foregoing restrictions, for a longer period than five (5) hours. (1957 Code, §17-62)

**Sec. 12-3-13. Sidewalks, driving across.**

It shall be unlawful for any person to push, draw or drive any vehicle over any sidewalk, or to lead, ride or drive any horse or other animal thereon, unless to go to a yard or lot where no suitable crossing or means of access is provided. (1957 Code, §17-78)

**Sec. 12-3-14. Snow and ice removal; required.**

Whenever any portion of a sidewalk is covered with snow or ice, which has fallen or been deposited during the night, the tenant or occupant of the building or land abutting on such sidewalk, or, in case there is no occupant of such building or of such land, the owner or person having the care of the same shall cause such snow or ice to be removed before 8:00 a.m., and in case such snow or ice has fallen or has been deposited during the daytime, the same must be removed within two (2) hours after the formation of such ice or the cessation of the snowfall. (1957 Code, §24-5)

**Sec. 12-3-15. Depositing by a person; removal.**

No person shall throw, place or deposit any snow or ice on any crosswalk in the City, and where snow or ice has been accidentally thrown, placed or deposited on any pedestrian crosswalk through the cleaning or removal of snow or ice from any sidewalk or from the car track or right-of-way of any railroad company, the person so throwing, placing or depositing snow or ice on such crosswalk shall remove or cause the same to be removed immediately. (1957 Code, §24-6)

**Sec. 12-3-16. Hanging icicles.**

No tenant or occupant or, in case a building is not occupied, no owner or person having the care of any building, shall permit icicles to hang from any roof, shed or awning overhanging any street, sidewalk or public place in the City. (1957 Code, §24-7)

**Secs. 12-3-17--12-3-20. Reserved.**

*Article II*

*Curbs, Gutters, Sidewalks and Driveways: Construction and Repair*

**Sec. 12-3-21. Definitions.**

(a) *Owner* shall mean any person in whom the record fee title is vested, although subject to liens or encumbrances. The holder of a bona fide recorded contract of purchase shall be considered the owner for the purposes hereof.

(b) *Agent* shall mean any person other than the owner in charge of or having the control and supervision of the premises. An occupant or tenant of the premises, except hotels, apartment houses, office buildings and other multi-unit dwellings, and business buildings, shall for all purposes of this Chapter (Sections 12-3-1 through 12-3-15 of this Code) be considered an agent.

(c) *Construct* shall include the word *reconstruct* and the word *repair* unless the context otherwise clearly indicates.

(d) *Director* shall mean the Director of Public Works or his or her designee. (1957 Code, §22-36)

**Sec. 12-3-22. Notices.**

(a) All notices required by this Article shall be in writing, signed by the Director, and shall be served as provided in Section 1-1-11 of this Code.

(b) If a person shall secure judgment against the City for damages by reason of a defect in a sidewalk, driveway, curb, gutter or any combination thereof, which damages shall have been suffered after the service of notice as herein provided, the City may recover the amount thereof from the owner of the premises abutting upon such sidewalk, driveway, curb, gutter or any combination thereof, and the agent upon whom such notice shall have been served. (1957 Code, §22-37)

**Sec. 12-3-23. Permit and fee.**

(a) It shall be unlawful for any person to (a) construct, remove, repair or in any manner disturb any sidewalk, driveway, curb, gutter or any combination thereof on the public right-of-way without first obtaining a permit so to do from the Director. Such permit shall specify the work to be done, and any violation of the terms of such permit shall render the same null and void.

(b) The fee for such permit shall be set by the Director, which fee schedule shall be approved by the City Council and posted for public inspection in the office of the Director. Where work for which a permit is required by this Article is started or proceeded with prior to obtaining such permit, the fees so specified shall be doubled, but the payment of such double fee shall not relieve any person from fully complying with the requirements of this Article in the execution of the work or from any other penalties prescribed herein.

(c) Where sidewalk, driveway, curb or gutter are constructed simultaneously, only one (1) permit and fee shall be required.

(d) Each permit issued hereunder shall expire sixty (60) days from the date of issuance of such permit. (1957 Code, §22-38)

**Sec. 12-3-24. Construction; location; materials.**

It shall be unlawful for any person to construct any sidewalk, driveway, curb, gutter or any combination thereof of any size, location or material except according to the specifications pertaining to the same prepared by the Director and approved by the City Council. (1957 Code, §22-39)

**Sec. 12-3-25. Line and grade established by Director.**

It shall be unlawful for any person to construct any sidewalk, driveway, curb, gutter or any combination thereof except according to the line and grade furnished by the Director, whose duty it shall be to establish the same. (1957 Code, §22-40)

**Sec. 12-3-26. Nonconformity; notice to reconstruct.**

If any sidewalks, driveways, curbs, gutters or any combination thereof hereafter constructed shall not be laid at the official lines or grades, it shall be the duty of the person laying the same, upon notice from the Director, so to alter and reconstruct the same as to conform to the official lines and grades within thirty (30) days after service of such notice. (1957 Code, §22-41)

**Sec. 12-3-27. Change; notice to reconstruct.**

If there shall be a change in the official line or grade of any sidewalk, the Director shall cause notice thereof to be served upon the owner or agent in charge of the premises abutting upon said sidewalk to construct said sidewalk upon the official line or grade last established within thirty (30) days after the service of such notice. (1957 Code, §22-42)

**Sec. 12-3-28. Notice to repair.**

When any sidewalk in front of any premises shall be out of repair, the Director shall cause notice to be served upon the owner or agent in charge of the premises to repair such sidewalk within thirty (30) days. (1957 Code, §22-43)

**Sec. 12-3-29. Sidewalk; new construction.**

(a) The City Council by resolution may order the construction of sidewalks otherwise than in local improvement districts whenever in its opinion it shall be proper because sufficient sidewalks have been laid in the vicinity to make it reasonable that intervening areas should be provided with sidewalks, or existing sidewalks should be reconstructed.

(b) In all such cases, the Director shall notify the owner or agent in charge of the premises to construct such sidewalks within thirty (30) days from the date of the service of the notice in accordance with plans and specifications to be determined by said Director and stated in said notice. (1957 Code, §24-44)

**Sec. 12-3-30. Penalties; construction by City; assessment.**

(a) It shall be unlawful for any owner or agent in charge of any premises to fail, refuse or neglect to construct any sidewalk, driveway, curb, gutter or any combination thereof as required in any notice given under this Article, and within the time specified in such notice. Such failure, neglect or refusal shall be punishable as provided in Section 1-2-1 of this Code.

(b) Upon such failure, refusal or neglect of the owner or agent to construct such sidewalk, driveway, curb, gutter or any combination thereof within the time specified in such notice, the Director shall construct the same by day's work or by contract.

(c) Upon completion of any such construction, the Director shall prepare a statement showing the whole cost of such construction, including an amount not exceeding fifteen percent (15%) additional for cost of inspection, collection, financing and other incidentals, and shall institute proceedings causing the same to be assessed against the property benefited or improved by such construction. (1957 Code, §22-45)

**Sec. 12-3-31. Contractors; guarantee of work.**

(a) Any contractor shall expressly warrant and guarantee all sidewalks, curbs, gutters or driveways he or she shall construct for a period of two (2) years after acceptance of the work by the sidewalk inspector, and shall agree to maintain the work and make all necessary repairs on the same during the said period of two (2) years, without additional cost or charge to the property owners or the City, as a condition precedent to the issuance of a permit to such contractor to construct any sidewalk, curb, gutter or driveway or any combination thereof.

(b) Such warranty shall extend to and include repairs made necessary by imperfections or unsuitability of material or composition, too great or too little moisture defects of workmanship, or settling of fills or excavations, nor any damage done to the curb by the expansion of said walks, either by breaking, cracking or pushing out of said curb, and in general, for failure to comply with the provisions of this Code and the specifications promulgated hereunder.

(c) The determination of the necessity for repairs shall rest entirely with the Director, whose decision upon the matter shall be final and obligatory upon such contractor.

(d) The warranty herein stipulated shall extend to the whole body of the sidewalk, driveway, curb or gutter, base, subbase and wearing surface.

(e) The repairs required under said warranty may extend to a total reconstruction of the whole body of the sidewalk, driveway, curb or gutter, base, subbase and wearing surface, if in the judgment of the Director such total reconstruction shall be necessary.

(f) Any contractor who shall apply for a permit to construct, remove, repair or in any manner disturb any sidewalk, driveway, curb, gutter or any combination thereof on the public right-of-way shall post a bond in the penal sum of five thousand dollars (\$5,000.00) with the Director of Public Works. The condition of such bond shall be that the permittee shall comply with all ordinances of the City and specifications of the Director of Public Works pertaining to the construction, removal, repair or modification of sidewalks, driveways, curbs, gutters or any combination thereof. Such bond shall be approved as to sufficiency by the Director of Public Works and by the City Attorney as to form, and each permit shall remain in full force and effect for the period from the date of the bond to two (2) years after the acceptance of the work by the Director of Public Works.

(g) In the event of the breach of any condition of the bond, the Director of Public Works shall give notice of such breach to the permittee and surety on the bond and shall cause the condition whereby the bond is breached to be remedied. The City Attorney shall bring action in the name of the City to recover the penalty of the bond, or so much thereof as may be necessary to reimburse all costs and expenses incurred to correct or remedy the breach. (1957 Code, §22-46; Ord. No. 6778 §1, 2-11-02)

**Sec. 12-3-32. Notice to reconstruct; default.**

If at any time within the period of such warranty, any contractor shall fail or refuse to begin repairs or reconstruction within ten (10) days from the date the Director shall mail written notice to such contractor at the address shown on such contractor's license to make such repairs or reconstructions, and fail thereafter to diligently prosecute the same to completion, then the Director may proceed to have such repairs or reconstruction performed by day's work or by contract and charge the cost of the same to the contractor, to be recovered by the City and the property owner from the contractor or from the contractor's surety, by action at law in any court of competent jurisdiction. (1957 Code, §22-47)

**Sec. 12-3-33. Suspension and revocation of license.**

(a) The Director may recommend to the Board of Examiners the suspension or revocation of any contractor's license for unskillfulness, carelessness or violation of any of the provisions of this Article, or the specifications promulgated and approved hereunder relative to the laying, constructing or reconstructing of sidewalks, driveways, curbs or gutters or any combination thereof, including failure to reconstruct after having been notified.

(b) Upon such recommendation, the Board of Examiners shall, upon ten (10) days' notice to the contractor stating the contemplated action and in general the grounds therefor, give the contractor reasonable opportunity to be heard. If the Board finds the contractor has knowingly or negligently violated any of the terms hereof, it shall suspend or revoke such license. (1957 Code, §22-48)

**Sec. 12-3-34. Curb cuts; standards of necessity.**

The Director is hereby authorized to determine the necessity for the location and width of curb cuts, taking into consideration the location of the property affected; the extent of vehicular and pedestrian traffic along the same; the demand and the necessity for parking spaces; the means of ingress and egress to and from said property; and generally the health, safety and welfare of the public. (1957 Code, §22-49)

**Sec. 12-3-35. Director may require alteration; notice.**

(a) Where the use, convenience and necessity of the public require, the Director is hereby authorized to order the owners or agents of the property adjacent to which curb cuts are maintained to repair, alter, construct or reconstruct, or close or replace said curb cut or to change the width and location thereof.

(b) In all such cases, the Director shall notify the owner or agent of said property to repair, alter, construct, reconstruct, close or replace said curb, or to change the width or location thereof in accordance with the plans and specifications promulgated hereunder within thirty (30) days from the date of said notice. (1957 Code, §22-50)

## **CHAPTER 4**

### **Plats and Subdivisions**

**Sec. 12-4-1. Title.**

This Chapter shall be known and may be cited as the "Subdivision Chapter of the City of Pueblo, Colorado." (Ord. No. 3512, §2, 1-10-72)

**Sec. 12-4-2. Purpose.**

It is the purpose and intent of this Chapter to promote the health, safety, convenience and general welfare of the citizens of the City, by:

- (1) Establishing standards of subdivision design which will encourage the development of sound, economical, stable neighborhoods and create a healthy living environment for the City.
- (2) Providing for lots of adequate size, configuration and appropriate design for the purpose for which they are to be used.
- (3) Allowing for design flexibility and imaginative site planning.
- (4) Assuring adequate development of established lots.
- (5) Providing for streets of adequate capacity and with appropriate improvements to handle anticipated traffic flow.

(6) Providing an efficient, adequate and economical supply of utilities and services to land development which will assure that governmental costs are minimized to the greatest extent possible.

(7) Insuring, at the time of subdivision, that provisions of adequate storm drainage, sewage disposal and other utilities, services and improvements needed as a consequence of subdivision of land are provided.

(8) Providing for the undergrounding of all utility lines and electrical lines up to thirty thousand (30,000) volts, except as otherwise provided in this Chapter.

(9) Minimizing traffic hazards through means of proper street design and providing for safe and convenient vehicular and pedestrian traffic circulation in land development.

(10) Providing for adequate vehicular access to abutting properties and the subdivider's remaining holdings.

(11) Assuring that street location and functional classification are in harmony with the City's official transportation plan known as the Pueblo Roadway Development Plan.

(12) Providing for pedestrian circulation for the safety and convenience of the pedestrian desiring access to community facilities and for travel throughout the community.

(13) Providing for the coordination of subdivision development with the provisions of public facilities such as neighborhood parks, recreation areas, schools and other types of community facilities.

(14) Ensuring that public facilities are provided in accordance with the City's comprehensive plan standards.

(15) Providing for adequate law enforcement and fire protection facilities.

(16) Ensuring the proper development of the community through the principals of land use control, distribution of population, intensity of development, preservation of natural amenities and other elements of the City's comprehensive plan. (Ord. No. 3512, §2, 1-10-72; Ord. No. 6912 §1, 11-25-02; Ord. No. 7357 §1, 8-22-05)

### **Sec. 12-4-3. Definitions.**

For the purpose of this Chapter, certain terms and words are herewith defined as follows:

(1) *Administrative officer of the City* includes the Building Official of the Pueblo Regional Building Department or his or her authorized representative.

(2) *Hazardous substance* means any substance or combination of substances which, because of its quantity, concentration or physical, chemical or infectious characteristics, may: (a) cause or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible illness; or (b) pose a substantial present or potential hazard to human

health or the environment when improperly treated, stored, transported or otherwise managed. Additionally, the term shall include all substances and materials defined as hazardous wastes or hazardous substances under the Resource Conservation and Recovery Act (42 U.S.C. 6901 et seq.), the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. 9601 et seq.), the Clean Water Act (33 U.S.C. 1251 et seq.) or under regulations implementing said Acts, whether now in effect or hereafter adopted, including but not limited to those listed in 40 C.F.R. Part 261. The term shall also include oil, gasoline and kerosene not confined within a leakproof tank or enclosure.

(3) *Land* means and includes any lot, tract or parcel of real property situated wholly or partly within the corporate limits of the City.

(4) *Lot* means a portion of a subdivision intended for transfer of ownership or for building development.

(5) *Planning Commission* means the Planning and Zoning Commission of the City.

(6) *Plat* means a drawing on which the subdivider's plan of the subdivision is presented, and which he or she submits for approval and intends in final form to record after approval.

(7) *Pueblo Roadway Development Plan (PRDP)* means a master plan for the location of streets, street corridors or other transportation facilities as shown in the Pueblo Roadway Development Plan adopted by the Planning Commission and by the City Council. The Pueblo Roadway Development Plan shall specify the functional classification of existing and planned streets which shall be constructed in conformance with the Roadway Classification Design Standards and Policies as approved by the City Council. The Pueblo Roadway Development Plan shall be applicable to all areas within the City and within three (3) miles adjacent to the City as identified in the Pueblo Area Master Annexation Plan adopted by the City Council.

(8) *Stormwater discharge* means the discharge or flow of stormwater from or off a parcel of property through runoff, snow melt runoff, surface runoff, drainage or subsurface flow, irrespective of whether such flow is confined or unconfined.

(9) *Street* means a way for vehicular traffic, whether designated as freeway, expressway, principal arterial, minor arterial, collector, street, highway, thoroughfare, parkway, thruway, road, avenue, boulevard, lane, place or otherwise.

a. *Alleys* are minor ways which are used primarily for vehicular service access to the back or the side of properties otherwise abutting on a street.

b. *Arterial streets* and *highways* are those which are used primarily for fast or heavy traffic.

c. *Collector streets* are those which carry traffic from minor streets to the major system of arterial streets and highways, including the principal entrance streets of a residential development and streets for circulation within such a development.

d. *Minor streets* are those which are used primarily for access to the abutting properties.

e. *Marginal access streets* are minor streets which are parallel to and adjacent to arterial streets and highways; and which provide access to abutting properties and protection from through traffic.

(10) *Street width* means the horizontal distance between flow lines of gutters.

(11) *Street right-of-way width* means the horizontal distance between property lines.

(12) *Subdivider* means the owner of the premises intended to be subdivided or made into a subdivision.

(13) Subdivision:

a. The term *subdivision* includes:

1. The division, subdivision or resubdivision of any lot, tract or parcel of land located wholly or partly within the corporate limits of the City into two (2) or more lots, plats, sites, parcels, separate interests or interests in common, or other division of land for the purpose, whether immediate or future, of sale or development; or the use of land or the conversion of a building or structure for apartments or other multiple-dwelling or office units unless such land, building or structure is included in an approved subdivision and is within a zone district that authorizes the same or greater density; provided, however, that conversion of any building or structure into a residential common interest community, including condominiums, cooperatives and townhomes, shall constitute a subdivision for purposes of this Chapter.

2. The combining of two (2) or more contiguous lots, tracts or parcels of land into one (1) or more larger parcels, or more than one (1) separate interest; or

3. The construction or erection of any building or other structure, excluding, for purposes of this Subsection, light poles and appurtenances, on any parcel of land which is not included in an approved subdivision. For purposes of this Subsection, the term *construction* or *erection* includes any modification in footprint other than demolition, increase in the gross square footage of an existing building or structure, or the remodeling of an existing building or structure, the cost of which exceeds fifty percent (50%) of the replacement cost of such building or structure.

b. Unless the subdivision or method of disposition is made or adopted for the purposes of evading this Chapter, the term *subdivision* does not include the division or combination of land which:

1. Could be created by any court in this State pursuant to the law of eminent domain, by operation of law or by order of any court in this State if the City is given timely notice of any such pending action by the plaintiff and given opportunity to join as a party in interest in such proceedings for the purpose of raising the issue of evasion of this Chapter prior to the entry of the court order;

2. Is created by a lien, mortgage, deed of trust or any other security instrument;

3. Is created by a security or unit of interest in any investment trust regulated under the laws of this State or any other interest in an investment entity;

4. Creates easements or rights-of-way;

5. Creates an interest in oil, gas, minerals or water which are now or hereafter severed from the surface ownership of real property;

6. Is created by the acquisition of an interest in land in the name of a husband and wife or other persons in joint tenancy, or as tenants in common, and any such interest shall be deemed for purposes of this Subsection (13) as only one (1) interest;

7. Is created by the rearrangement of property boundaries within an approved subdivision as provided in Subsection 12-4-5(c);

8. Is created for agricultural purposes into parcels of five (5) acres or more, the average width of which is not less than three hundred (300) feet when such division: does not require the opening of any new street or the use of any new public easement of access; does not obstruct or is not likely to obstruct natural drainage; does not adversely affect or is not likely to adversely affect the establishment of any freeway, major street, primary highway or arterial street; and does not adversely affect the execution or development of any plat or any subdivision approved by the City Council, or otherwise adversely affect the orderly subdivision of contiguous property; or

9. Is created by the acquisition of an interest in land by the Board of Water Works or the City for any public facility or purpose.

10. Is created by operation of law upon the lawful vacation of adjacent alleys or streets.

11. Is created by combining no more than five (5) residential lots, including, if applicable, any adjacent vacated right-of-way in an approved subdivision for the purpose of establishing a changed building site for a single-family or two-family dwelling, provided that no dwelling or structure shall be constructed over any easement.

12. Creates a privately owned enclave within the Colorado State University-Pueblo campus for purposes of student housing.

c. Any subdivision created and recorded before February 1, 1972, which does not have improvement plans on file with the City, has not been developed in compliance with this Chapter, or within which certificates of occupancy have not been issued for structures or buildings constructed within such subdivision on or before December 31, 2004, shall be deemed abandoned. The land within such subdivision shall for the purpose of this Chapter be considered and treated as land which is not in an approved subdivision.

d. *Approved subdivision* means a subdivision which complies with the provisions of this Chapter.

(14) *Subdivision Review Committee* means a committee composed of the Director of Public Works, the Executive Secretary to the Planning Commission, the Director of Transportation, the Director of Parks and Recreation and the Director of Planning and Development, having those duties and functions as may be defined and set out in this Chapter and as may be assigned by the Planning Commission.

(15) *Subdivision regulations* means regulations adopted by the Planning Commission, as recommended by the Public Works Department or as directed by ordinance or resolution of the City Council, providing for general format and other details required for the purpose of standardizing submissions, guiding subdividers and expediting review procedure.

(16) *Utilities*, wherever used herein, includes sanitary and storm sewer, water, electrical, telephone, gas, cable T.V. and all other services of like nature. (1957 Code, §20-1; Ord. No. 3512, §2, 1-10-72; Ord. No. 3855, 4-22-74; Ord. No. 4928, 12-28-81; Ord. No. 5204, 1-28-85; Ord. No. 5676, 5-13-91; Ord. No. 5721, 12-23-91; Ord. No. 5824, 8-23-93; Ord. No. 6371, §1, 11-23-98; Ord. No. 6388, 12-28-98; Ord. No. 6912 §1, 11-25-02; Ord. No. 7286 §§1—4, 4-11-05; Ord. No. 7357 §1, 8-22-05; Ord. No. 7796 §1, 5-12-08; Ord. No. 7825 §1, 6-23-08)

#### **Sec. 12-4-4. Authority and control.**

(a) Authority. No plat of a subdivision shall be submitted to the City Council for approval or accepted by the City until it conforms to the provisions of this Chapter.

(b) Control.

(1) Any person seeking to subdivide (or resubdivide) lands located wholly or partly within the corporate limits of the City shall be subject to the provisions of this Chapter.

(2) It shall be unlawful for any owner or agent of the owner of any land located within the City to transfer, sell, agree to sell or negotiate to sell any land by reference to or exhibition of or by use of a plan or plat of a subdivision, before such plan or plat has been approved by the City Council, and recorded in the office of the Pueblo County Clerk and Recorder, or any plan or plat of a subdivision so approved and recorded which has been vacated. The description of such lot or parcel by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring shall not exempt the transaction from the operation of this Section. Each parcel of land so dealt with shall be deemed a separate violation. The City or any purchaser of such land may, by action in any court of equity jurisdiction, enjoin the transfer of, or agreement to transfer, land contrary to the provisions of this Section. In the event any such unapproved plat is recorded, it shall be deemed invalid, and the City Attorney may institute proceedings to have such plat removed from the records of the Pueblo County Clerk and Recorder.

(3) It shall be unlawful for any person to record or offer for recording with the Pueblo County Clerk and Recorder any plat or plan of a subdivision of land located outside the City but within the jurisdiction of the Planning Commission until said plat or plan shall have received final approval in writing by the Planning Commission pursuant to Section 31-23-213, C.R.S.

(4) All persons, including, without limitation, boards, public officers, utilities, telecommunication companies and authorities, shall be prohibited from accepting, laying out,

improving or authorizing utilities or telecommunication systems or equipment to be laid in any street within the territory for which the Planning Commission and the City Council have adopted the Pueblo Roadway Development Plan unless such street shall be designated and approved by the Pueblo Roadway Development Plan; or shall have received a legal status of a public street prior to the adoption of the Pueblo Roadway Development Plan; or is shown on a subdivision plat or a street plat which has been approved by and adopted by the City Council.

(5) It shall be unlawful for any person to apply for a building permit or erect a building or other improvement upon any land within the territory or jurisdiction of the adopted Pueblo Roadway Development Plan unless the requirements of this Chapter have been fulfilled and complied with.

(6) No permit shall be issued by an administrative officer of the City for a building or structure on any land which abuts a street which has not been dedicated or which is dedicated only to a portion of the width of said street required by the provisions of this Chapter, unless such street has been approved as a private street through the subdivision procedures as contained in this Chapter.

(7) No permit shall be approved by an administrative officer of the City or issued by the Pueblo Regional Building Department for the construction of any building or other improvements upon any land unless and until compliance with this Chapter shall first be met.

(8) All subdivision plats of land situated outside the corporate limits of the City shall comply with the regulations contained herein insofar as provided for in Sections 31-23-212 and 213, C.R.S.

(9) The area and dimensions of each lot in all subdivisions shall comply with the Zoning Ordinances of the City.

(10) It shall be unlawful for any person to construct any building or other improvements upon any land unless and until compliance with this Chapter shall first be met.

(11) It shall be unlawful for any person to subdivide land located wholly or partially within the corporate limits of the City without first complying with the provisions of this Chapter. (1957 Code, §§20-5, 20-7, 20-8; Ord. No. 3512, §2, 1-10-72; Ord. No. 5676, 5-13-91; Ord. No. 6388, 12-28-98; Ord. No. 6546, 5-22-00; Ord. No. 6912 §1, 11-25-02; Ord. No. 7286 §5, 4-11-05; Ord. No. 7357 §1, 8-22-05)

#### **Sec. 12-4-5. Subdivision procedures.**

(a) Overall Development Plan.

(1) When a tract of land proposed for subdivision constitutes a part of a larger tract of land owned or controlled by the subdivider, whose intention is to subdivide the remaining part or parts of the larger tract at some future date, a master development plan shall be prepared and submitted by the subdivider and approved by the Planning Commission prior to preparation and submission of the subdivision plat of the tract proposed for initial subdivision.

(2) The Overall Development Plan shall be prepared in accordance with the requirements of regulations adopted by the Planning and Zoning Commission pursuant to the provisions hereof. The Overall Development Plan shall be prepared in consultation with the City's Subdivision Review Committee and submitted in its entirety to the Planning and Zoning Commission. The Overall Development Plan shall comply with the policies of the Pueblo Regional Comprehensive Development Plan existing as of the date the Overall Development Plan is approved, and shall address development, land use, drainage, parks, utilities, traffic and other infrastructure needs and requirements and the wide range of planning and development issues involved in and with respect to the development of the land within the Overall Development Plan. The Overall Development Plan as submitted and approved by the Planning and Zoning Commission shall have the flexibility to adapt to changing conditions over the estimated time period for the development of the land within the Overall Development Plan and shall consist of the following prepared in accordance and in compliance with standards, criteria and policies therefor adopted by the City Council by resolution: development plan, including open space plans; drainage plan; sanitary sewer plan; transportation plan; and appropriate environmental studies. A Master Development Plan required by an annexation agreement shall be accepted as the required Overall Development Plan in those instances where the Master Development Plan meets all of the information requirements of the Overall Development Plan. An Overall Development Plan shall be required in those instances where a Master Development Plan is unavailable for a particular annexation or where the Master Development Plan does not meet the information requirements of the Overall Development Plan. The following processing procedures shall apply to Overall Development Plans.

a. Twenty-one (21) copies of the Overall Development Plan shall be filed with the Department of Land Use Administration at least eight (8) weeks prior to the next regularly scheduled meeting of the Planning and Zoning Commission at which the Overall Development Plan is scheduled for consideration. The Department of Land Use Administration staff shall immediately submit said proposed Overall Development Plan to the Subdivision Review Committee for review. The Subdivision Review Committee shall submit its recommendations to the Planning and Zoning Commission at the meeting at which the Overall Development Plan is being considered. Upon receipt of the Overall Development Plan, the Director of Land Use Administration shall also forthwith transmit one (1) copy of each to the franchised electrical power distributor, the franchised natural gas distributor, the Board of Water Works, appropriate school districts and any other public utility or entity which may be directly affected. Within eleven (11) days after receipt of such plan, each such public utility or entity shall by letter addressed to the Subdivision Review Committee via the Department of Land Use Administration express its approval or recommendations as such Overall Development Plan relates to its operations. Failure to object or make recommendations within the required time shall be deemed approval on the part of such public utility or entity so failing to object or make recommendations.

b. The Planning and Zoning Commission shall conduct a public hearing on the proposed Overall Development Plan after notice of the time and place of the public hearing is given to the subdivider and to owners of land immediately adjoining and within three hundred (300) feet of the area of the proposed Overall Development Plan in accordance with the certified list of owners of such land furnished by the subdivider. Notice shall be in writing and mailed by first-class mail, postage prepaid, at least fifteen (15) days before the date of the public hearing. Notice shall be deemed given upon mailing. After the public hearing, the Planning and Zoning

Commission shall set forth its findings in writing, whether of approval, approved with modification or denial. An approved Overall Development Plan may be modified from time to time at the direction and with the approval of the Planning and Zoning Commission or when tracts within the Overall Development Plan are submitted for subdivision that vary from the original Overall Development Plan.

c. The Overall Development Plan shall include uses, density, intensity and access points for the subject development.

(b) Plat. After approval of an Overall Development Plan, if such a plan is required, a subdivider shall file with the Planning and Zoning Commission in accordance with its rules and regulations and this Chapter a plat consisting of drawings indicating the subdivider's plan for the subdivision in a form suitable to, and which he or she intends in final form to, record, together with any required supportive plans, maps and profiles pursuant to the following procedures:

(1) Seven (7) prints of the plat, complete except for signatures of City officials, together with any street and sewer profiles or other plans that may be required, shall be submitted to the City Engineer by the subdivider in accordance with the provisions of this Chapter.

(2) All information, documents, drawings, profiles and plats required by this Chapter shall be submitted and filed with the subdivision plat, except that the filing and approval of required detailed plans and profiles for streets, sanitary sewers, storm sewers and other drainage facilities, off-site easements, covenants or subdivision improvements agreement, described in a written instrument mutually acceptable to the subdivider and the Director of Public Works and submitted with the subdivision plat may be deferred for up to one (1) year from the date the final subdivision plat is conditionally approved by ordinance adopted by the City Council (the "Deferred Filings"). If a complete set of such Deferred Filings are for any reason not filed with and approved by the Director of Public Works within said one-year period, or within any extended period granted by resolution of City Council, the ordinance conditionally approving the final subdivision plat shall automatically be rescinded and repealed thirty (30) days after written notice of such rescission and repeal is given to the subdivider. Upon request of the Subdivision Review Committee, City Council may by resolution extend said one-year period not to exceed six (6) months.

(3) No final subdivision plat of a subdivision shall be recorded in the office of the County Clerk and Recorder and no building permit shall be issued for any structure or building within such subdivision until all information, documents, drawings, profiles and plats required by this Chapter with respect to such subdivision, including without limitation Deferred Filings, have been filed with and approved by the Director of Public Works.

(4) Upon receipt in official session of the prints of the plat, if said plat shall comply with provisions of this Chapter, the Planning and Zoning Commission shall thereupon set a date for hearing and shall notify the subdivider by first class mail with postage prepaid of the time and place of the public hearing, not less than five (5) days before the date set for such hearing. Similar notice shall be sent by first class mail with postage prepaid not less than five (5) days prior to the public hearing to owners of land immediately adjoining and within three hundred (300) feet of the area proposed to be platted, in accordance with the certified list of owners of such land furnished by the subdivider.

(5) Notification shall be deemed complete upon mailing. Said public hearing shall be held within thirty (30) days of, but not less than ten (10) days after, the day when the Planning and Zoning Commission in official session received the plat.

(6) Upon receipt of the plat by the Planning and Zoning Commission in official session, the prints shall be transmitted to the Subdivision Review Committee which shall forthwith transmit one (1) copy each to the franchised electrical power distributor, the franchised natural gas distributor, the Board of Water Works and any other public utility which may be directly affected. Within seven (7) days after receipt of such plat, each such public utility shall by letter addressed to the Subdivision Review Committee express its approval or recommendations as such plat relates to its operations. Failure to object or make recommendations within the required time shall be deemed approval on the part of such public utility so failing to object or make recommendations.

(7) The Subdivision Review Committee shall review the proposed subdivision to check its compliance with the provisions of this Chapter, with adopted subdivision regulations, with relationship to the comprehensive plan, with the Pueblo Roadway Development Plan and with pertinent ordinances of the City.

(8) The City Engineer shall certify that one (1) of the alternatives, as listed in Subsection 12-4-7(j) of this Code has been complied with by affixing his or her signature to the original and duplicate tracings. The Subdivision Review Committee shall report to the Planning and Zoning Commission at the time of the hearing and shall make its findings and recommendations known to the Planning and Zoning Commission at that time.

(9) Within thirty (30) days after receipt of the plat in official session and following the hearing before the Planning and Zoning Commission, the Planning and Zoning Commission shall approve or disapprove the plat subject to modifications. If the Planning and Zoning Commission approves the plat, the Chairman shall so attest on the reproducible tracing of the plat, and a duplicate tracing of the plat shall be submitted for that purpose by the subdivider at said meeting. In the case of approval subject to modifications, the plat shall be considered disapproved until such time as the modifications are completed, and such completion attested to by signature of the Chairman of the Planning and Zoning Commission. In the event of disapproval, the grounds for disapproval shall be stated in the records of the Planning and Zoning Commission. If the Planning and Zoning Commission fails to act within a thirty-day period after the receipt of the plat in official session, the plat shall be deemed approved unless a waiver of the thirty-day time period is agreed to in writing by the subdivider. The Planning and Zoning Commission by an affirmative vote of four (4) of its members at a public hearing on the plat may continue the hearing for an additional period, not to exceed sixty (60) days after receipt of the plat in official session, to hear additional relevant evidence on specific matters deemed necessary to render its decision.

(c) Rearrangement of Property Boundaries to Establish Building Sites.

(1) After approval and recording of a final subdivision plat, owners of lots therein may file with the Zoning Administrator, in accordance with rules and regulations adopted by the Planning and Zoning Commission and this Chapter, a request to rearrange property boundaries to establish changed building sites, together with a plat of said proposed rearrangement. The Subdivision Review Committee shall have the authority to approve rearrangements of property boundaries that do not involve more than five (5) lots or consist of more than five (5) acres and do not result in a

part of the subdivision becoming insufficient in size, area or location to meet the minimum requirements of the zone district in which the lots are located. The Subdivision Review Committee shall find as a condition of approval that any such rearrangement of property boundaries will not require a change in any of the required subdivision improvements including, but not limited to, streets, alleys, storm drainage facilities, sanitary sewer facilities, water distribution systems, public easements and rights-of-way. More than one (1) rearrangement of lots in a block may be approved by the Subdivision Review Committee. No lot may be included in more than one (1) rearrangement.

(2) All other proposed rearrangements of property boundaries or alterations, or of changes to a subdivision plat, are hereby declared to be resubdivisions and shall be subject to the subdivision requirements of this Chapter. The City shall not issue a building permit for any building site resulting from the rearrangement of property boundaries until such rearrangement is approved as herein provided.

(3) Upon the approval of a rearrangement of property boundaries by the Subdivision Review Committee, a plat of the changed area showing the rearranged building sites shall be filed with the Pueblo Regional Building Department, and shall have the Committee's approval attested to by signature of the Zoning Administrator.

(4) This Subsection shall not be applicable to combining no more than five (5) residential lots, including, if applicable, any adjacent vacated right-of-way in an approved subdivision for the purpose of establishing a changed building site for a single-family or two-family dwelling, provided that no dwelling or structure shall be constructed over an easement but may be constructed over an interior lot line of the combined lots, notwithstanding any prohibition against building over lot lines contained in this Code. (1957 Code, §20-2; Ord. No. 3512, §2, 1-10-72; Ord. No. 3855, 4-22-74; Ord. No. 4827, 12-22-80; Ord. No. 5260, 10-28-85; Ord. No. 6192, 5-27-97; Ord. No. 6912 §1, 11-25-02; Ord. No. 7286 §§6—8, 4-11-05; Ord. No. 7357 §1, 8-22-05)

#### **Sec. 12-4-6. Required information.**

(a) Overall Development Plan. The Overall Development Plan shall be prepared to a scale and accuracy commensurate with the purpose of setting forth the subdivider's intentions regarding:

- (1) General street pattern with particular attention to collector or higher classification streets and future neighborhood circulation and interconnectivity.
- (2) Location of schools, parks or recreational areas or other public uses.
- (3) Sanitary sewers, storm water disposal and water supply.
- (4) Proposed land uses such as: semipublic, commercial, multifamily residential, single-family residential and all other proposed land uses.

(b) Plat. The plat shall consist of the drawing intended to be filed and recorded, depicting the subdivision of land into parcels and supportive plats, plans and profiles as are necessary to meet the requirements of this Chapter and related regulations. Said drawings shall show:

(1) Drawing to be recorded:

a. Tract boundary lines, right-of-way lines of streets, easements and other rights-of-way, and property lines of residential lots and other sites. Linear dimensions shall be shown to the nearest one-hundredth ( $1/100$ ) of a foot. Bearings or deflections, angles, radii, arcs and central angles of all curves and dimensions shall be shown to the nearest minute.

b. The necessary functions for all curve or linear lines in the streets, and radii for all rounded corners.

c. All survey monuments together with their description.

d. All lot lines, and an identification system for all lots and blocks, with figures showing their dimensions.

e. Easements for any rights-of-way provided for public use, services or utilities, with figures showing their dimensions.

f. Name of the subdivision, location and extent of property subdivided, north point, legal description of area to be subdivided, acreage of area to be subdivided, scale, date and name of registered land surveyor preparing the plat.

g. Certification of title showing that the subdivider is the owner of the entire tract and a dedication by such subdivider of streets, rights-of-way and other sites for public use. Where improvements as herein defined are required to be installed, the plat shall also show a dedication to the City for municipal or public use by such subdivider of all such required improvements.

h. Certifications on the plat by a registered land surveyor as to the accuracy of the survey and plat.

i. Certification by the Director of Public Works that the subdivider has complied with Sections 12-4-5(b) and 12-4-7(j) of this Chapter.

j. Protective covenants, when desired by the subdivider, shall either be placed directly on the final plat or attached thereto in form or recording. Where protective covenants appear on a previously recorded separate instrument, reference to such instrument shall be made on the plat.

k. A place for certification on the plat by the City Clerk that the plat has been approved for recording in the office of the County Clerk.

l. Such other detail as may be required by the Planning and Zoning Commission.

(2) Information to be shown on supportive documents, plans, profiles or maps.

a. The correct location of buildings, watercourses, tree masses and other existing features which may affect the plat.

b. The name and location of all adjoining subdivisions and the names and owners of adjoining unplatted land.

c. Zoning on and adjacent to the tract.

d. Vicinity map showing location of all streets and roads within an area of at least one-half (1/2) mile from each property boundary.

e. Contours with intervals of two (2) feet or less referred to the City datum.

f. The scale, date and north point. All plats to be recorded shall be submitted on sheet sizes of eighteen (18) by twenty-four (24) inches or twenty-four (24) by thirty-six (36) inches.

g. Plans and profiles of streets, sanitary sewers and storm sewers showing grades shall be submitted on separate drawings of sheet size twenty-four (24) by thirty-six (36) inches and shall be drawn in accordance with standards established by the City Engineer and adopted by the City Council.

h. A list of names and addresses of all owners of land immediately adjoining and within three hundred (300) feet of the area proposed to be platted. Said list of names and addresses shall be certified by the subdivider as being correct according to the records of the County Clerk and Recorder.

i. No plat for land to be subdivided or resubdivided shall be approved by the City Council unless at the time of the approval of platting a subdivider provides certification from the County Treasurer's office that all ad valorem taxes and assessments applicable to such land, for years prior to the year in which approval is to be granted, have been paid.

(3) Other information.

a. Based upon the location or prior use of the land to be subdivided or resubdivided, the Planning and Zoning Commission shall have the right to require the subdivider to furnish a certification that an environmental assessment has been performed commensurate with the nature and prior history of use of the subdivision property and that to the best of the subdivider's knowledge and information, no known hazardous substances are present within the subdivision except as expressly stated therein.

b. In the implementation of this Chapter, the Planning and Zoning Commission shall have the right to require further information to be submitted where such further information is deemed necessary to a determination that the proposed subdivision adequately meets City standards and will provide adequate protection to the health, safety and general welfare of the community. (1957 Code, §20-3; Ord. No. 3512, §2, 1-10-72; Ord. No. 5012, 11-22-82; Ord. No. 5721, 12-23-91; Ord. No. 5973, 5-22-95; Ord. No. 6192, 5-27-97; Ord. No. 7286 §9, 4-11-05)

**Sec. 12-4-7. Minimum standards.**

(a) Acreage Subdivision. Where the parcel of land is subdivided into larger tracts than ordinarily used for building lots, such parcel shall be divided so as to allow for the opening of major streets and the ultimate extension of adjacent minor streets. The location of all streets in a proposed subdivision shall conform in general alignment to the Pueblo Roadway Development Plan.

(b) Relation to Adjoining Street System. New subdivisions shall make provisions for the continuation of the principal existing streets in adjoining additions, or their proper projection where adjoining property is not subdivided, unless the Planning and Zoning Commission deems such extension undesirable for specific reasons of topography and/or design. Where it is desirable in the opinion of the Planning and Zoning Commission to provide street access to adjoining property, proposed streets shall be extended by dedication to the boundary of such property. In general, such streets shall be of a width as great as that of the streets so continued or projected.

(c) Streets, Alleys, Utility Easements.

(1) Dedication of Right-of-Way — New Streets. The dedication of right-of-way, measured from lot line for new streets, shall be as shown on the Pueblo Area Council of Governments (PACOG) Corridor Preservation Plan, or if not shown thereon, shall meet the standards set forth in the Roadway Classification Design Standards and Policies as approved by the City Council. Roadway classifications shall be designated and approved by the Director of Public Works or the Director's designee.

(2) Dedication of Right-of-Way — Existing Streets. Subdivisions platted along existing streets shall dedicate additional right-of-way if necessary to meet the minimum width requirements as specified by the Pueblo Area Council of Governments (PACOG) Corridor Preservation Plan, or if not shown thereon, shall meet the standards set forth in the Roadway Classification Design Standards and Policies as approved by City Council.

a. The entire minimum right-of-way shall be dedicated except where the subdivision is located on only one (1) side of an existing street.

b. Where the subdivision is located on only one (1) side of an existing street, at least that amount of right-of-way necessary to construct a street of the minimum width required in Subsection (c)(1) of this Section shall be dedicated and the entire right-of-way shall be improved by the subdivider according to the specifications set forth in Subsection (j) herein.

(2.5) Conflict. In the event of a conflict between the Pueblo Area Council of Governments (PACOG) Roadway Corridor Preservation Plan and the Roadway Classification Design Standards and Policies, the Roadway Classification Design Standards and Policies shall control to the extent of such conflict.

(3) Marginal Access Streets--Service Roads. Where a subdivision adjoins or contains an existing or proposed arterial highway on which traffic volumes and vehicular speeds warrant special safety considerations, the Planning and Zoning Commission may require marginal access streets.

(4) Street Jogs. Street jogs with center line offsets of less than one hundred twenty-five (125) feet shall not be permitted. Streets shall intersect as nearly as possible at right angles.

(5) Dead-end Streets. The right-of-way for permanent dead-end streets shall not be less than sixty (60) feet in width, shall not be longer than six hundred sixty (660) feet and shall be provided at the closed end with a turn-around having a radius at the flow line of the gutter at the outside of the pavement of at least forty (40) feet. The right-of-way around the paved area of a cul-de-sac shall be a minimum of twelve (12) feet wide at all points as measured from the gutter flow line to the property line, and assurance of adequate stormwater drainage by easement through adjoining lots shall be provided where necessary.

(6) Utilities.

a. All utilities, except electric lines in excess of thirty thousand (30,000) volts, shall be placed underground unless a waiver from the requirement is granted by the Planning and Zoning Commission at the time of subdivision, or unless a special use permit is issued by the Planning and Zoning Commission as provided in Paragraph 17-4-30(a)(1) of this Code. Transformers, switching boxes, terminal boxes, meter cabinets, pedestals, ducts and other facilities necessarily appurtenant to such underground utilities may, with the approval of the Planning and Zoning Commission, be placed above ground.

b. All utility easements shall be located and provided where and when required and necessary. Easements for sewer, water and storm drainage shall be at least twenty (20) feet in width, and all other utility easements shall be at least ten (10) feet in width.

c. In addition, a storm water easement or drainage right-of-way may be required by the Planning and Zoning Commission where necessary for proper drainage within or through a subdivision.

(7) Blocks.

a. Length. No block shall be longer than one thousand three hundred twenty (1,320) feet between the center line of street lines or as set forth in the Roadway Classification Design Standards and Policies as approved by the City Council. No block on an arterial street shall have fewer than four hundred (400) feet between center lines of an intersecting street.

b. Width. Blocks shall have sufficient width to provide for two (2) tiers of lots of appropriate depth, except where it is desirable to back one (1) tier of lots to an arterial street or highway, or where two (2) tiers of lots are not desirable in the opinion of the Planning and Zoning Commission due to the nature of the proposed development.

(8) Roadway Standards and Specifications. All streets, alleys and other roadways shall be approved and accepted in writing by the Director of Public Works, or the Director's designee, before they are accepted by the City for right-of-way and maintenance purposes. All such roadways shall be installed according to construction specifications and detail standards required by the Roadway Classification Design Standards and Policies, and the Standard Construction Specifications and Standard Details, approved by the City Council. If any other provision or requirement of this Title conflicts with such Roadway Classification Design Standards and

Policies, or the Standard Construction Specifications and Standard Details, the more restrictive or higher standard shall control and be required.

(d) Places. Where it is desired to subdivide a parcel of land which, because of its size and location, does not permit a normal street arrangement, there may be established a "place." Such "place" may be in the form of a court, a nonconnecting street or other arrangement, provided, however, that proper and easy access shall be provided for all lots from a dedicated street or court, and the size of the layout shall be such as to assure a building arrangement corresponding to the standard requirements for normal forms of subdivision of land.

(e) Dedication of Parks and Recreation Facilities.

(1) The subdivider shall dedicate to the City for use as parks and recreational facilities eight percent (8%) of the land area, exclusive of street widths, of a subdivision to be developed for residential purposes. The City, subject to funds being appropriated for such purpose and acceptance of the park site by the City Council, shall assume the responsibility to develop and maintain said land. The subdivider shall construct and install the curbs, gutters and street improvements which abut the dedicated land.

(2) If the City Council determines, after consideration of the recommendations of the Planning and Zoning Commission, that the location, arrangement or size of the proposed subdivision is not appropriate for dedication of eight percent (8%) of the land area, the City Council shall require either (a) a cash payment in lieu of land dedication, or (b) the dedication of less than eight percent (8%) of the land area; provided (1) the land area to be dedicated is sufficient to reasonably serve the proposed subdivision and the future residents thereof, and (2) the subdivider constructs and installs all required park and recreational facility improvements. All payments in lieu of land dedication shall be equal to eight percent (8%) of the fair market value of the land in such subdivision, exclusive of street widths, valued as subdivided land in the intended zone district. If the subdivider and City are unable to agree as to the fair market value of the land, the City shall have the land appraised by an independent qualified appraiser, and such appraisal shall be prima facie evidence of the fair market value of the land. The subdivider and City shall each pay one-half (½) of the cost of such appraisal.

(3) Cash payments made in lieu of land dedication shall be deposited with the City and held in an interest-bearing account to be used solely for the purpose of acquiring and developing park and recreation facilities to serve such subdivisions and future residents thereof. Any interest or other income earned on monies deposited in said interest-bearing account shall be credited to the account. Park and recreation facilities shall include pedestrian and bicycle trails and neighborhood and district parks to serve such subdivisions. The City shall be entitled to retain four percent (4%) of the cash payments made in lieu of land dedication to cover costs of collection and administration of the cash payments and income therefrom.

(4) If subdivision plats within an approved Overall Development Plan are accepted before the land for park and recreational purposes is actually dedicated, a cash deposit equal to the in-lieu-of-cash payment shall be deposited by the subdivider with the City, to be held in escrow until dedication thereof is completed.

(5) This Section shall not apply to land to be developed for business or industrial purposes. Land to be developed for nonresidential purposes, or land to be developed pursuant to a special area plan or planned unit development which includes and provides for parks for recreation facilities to serve the future residents thereof, may also be excluded from the requirements of this Section if the City Council, after considering the recommendation of the Planning and Zoning Commission, finds and determines that such dedication or cash in lieu thereof is not reasonably necessary to serve the proposed subdivision or development and the future residents thereof.

(6) In the dedication of land for parks and recreation purposes, outstanding geographic, historic or topographic features of the landscape, insofar as possible, shall be selected and preserved. Land located in a subdivision which was subject to this Section and from which land was dedicated or cash was previously contributed hereunder, shall not be subject to the requirements of this Section upon the resubdivision of such land.

(7) The City Council may, upon recommendation of the Planning and Zoning Commission, exempt from the requirements of this Section land located in a residential zone district of two (2) acres or less which is being resubdivided, provided that the City Council finds that there will neither be a substantial impact upon, nor a significant increase in usage for, existing neighborhood parks as a result of this resubdivision.

(8) No subdivider shall be required to dedicate land or pay a fee in lieu of land dedication to meet the same need for park and recreation facilities for which this Subsection (e) is imposed.

(9) All cash payments made in lieu of land dedication shall be expended by the City for the purposes approved in this Subsection (e) within twelve (12) years of the date of payment on a first in, first out basis; that is, the first fees paid shall be considered the first fees expended. Fees not so expended shall be refunded with interest at the rate of four percent (4%) from the date of payment, upon application, to the subdivider making the cash payment. Applications shall be made, in writing, to the Director of Finance within six (6) months after the expiration of the twelve-year period following the date of payment. Applications for refund shall be accompanied by a copy of the dated receipt issued for payment of the cash payment made in lieu of land dedication or evidence satisfactory to the Director of Finance that the fee was paid, when and by whom, together with proof that the applicant is the subdivider who made the payment or, if not the subdivider, that the applicant is lawfully entitled to the payment as the heir, personal representative, successor or assignee of the subdivider who made the payment.

(f) Lots.

(1) All lots shall front upon a public street or road or on a City-approved private street or road that directly connects with a public street.

(2) Side lot lines shall be substantially at right angles to straight street lines or radial to curved street lines.

(3) Lot area shall conform to the requirements of the Zoning Ordinances of the City as the same may be now or hereafter amended. A greater lot area may be required for residential lots if drainage, soil conditions or other factors would contribute to potential health problems.

(g) Street Names. Streets which are obviously in alignment with others already existing and named shall bear the name of existing streets; otherwise, names shall not duplicate existing street names. Names similar to existing or proposed names shall not be permitted. In no case shall a street be known as a "place" unless it conforms to the provisions of Subsection (d) of this Section.

(h) Easements Along Streams and Watercourses. Whenever any stream or surface watercourse is located in an area that is being subdivided, the subdivider shall at his or her own expense make adequate provisions for the proper drainage of surface water and shall also provide and dedicate to the City an easement along said streams and watercourses.

(i) Flood Hazard. Land subject to flooding shall not be subdivided for residential purposes.

(j) Improvements.

(1) Compliance with requirements--Steps. Before the plat of any subdivided area shall be approved, the subdivider shall elect and carry out one (1) of the following alternatives:

a. Alternative 1: Make and install the improvements described in this Subsection in accordance with the standards and specifications of the City in effect at the time of construction of such improvements.

b. Alternative 2: Deposit a performance and completion bond with the sufficient surety with the Director of Public Works in an amount not less than the Director's estimate for all required improvements, such bond to be conditioned upon the completion of such improvements within the required time.

c. Alternative 3: Deposit cash or other collateral in an amount not less than the Director's estimate for all required improvements with the Director of Finance, or with any bank or trust company licensed in the State subject to an escrow agreement approved by the City Attorney whereby the holder of such cash or collateral shall pay all or any remaining portion thereof to the City upon demand after the required time shall have expired, and the City shall use the amount so paid to complete all or part of the improvements.

d. The required time for completion of all such improvements by the subdivider under Alternatives 2, 3 and 5 shall be one (1) year from the date of approval of the plat by the City Council or within such additional time, not to exceed two (2) years from the date of approval of the plat by the City Council, as the City Manager shall approve and authorize in writing. Upon completion of such improvements within the required time, and payment of all costs or inspection by the subdivider, the Director of Public Works shall cause such bond, deposit, escrow agreement or letter of credit to be released. If said improvements are not completed within the required time, the Director may cause the proceeds of the bond, cash deposit or other collateral, monies in escrow or letter of credit to be used to complete the improvements. Until all improvements are completed and approved by the City, the subdivider shall remain liable and responsible therefor.

e. Alternative 4:

1. Enter into an agreement with the City in writing to be recorded and to run with the land whereby within one hundred eighty (180) days after application for a building permit to construct any building or structure upon any building site within the subdivision, or upon the issuance of a certificate of occupancy for any such building or structure, whichever is sooner, the subdivider or any subsequent owner of the land or any portion thereof shall deposit cash or other collateral with the Director of Finance, or with any bank or trust company licensed in the State subject to an escrow agreement approved by the City Attorney. The holder of such cash or collateral shall pay all or any portion thereof to the City upon demand after the time for completion of all required improvements by the subdivider or subsequent owner shall have expired. Such deposit or escrow agreement shall be hereinafter referred to as the *deposit*.

2. The amount of the deposit shall be computed as follows: The Director of Public Works shall estimate the total cost of all uncompleted improvements required by this Section within the block at the time application for building permit is made. The amount of the deposit required by this alternative shall be not less than twenty-five percent (25%) of such estimate, plus the estimated cost of extending all required sewer and water lines from the nearest existing sewer and water lines to the proposed building site for which a building permit is sought, plus the cost of extending curb, gutter, sidewalk and paving from the edge of the subdivision or existing improvements of a like nature, whichever is nearer to the proposed building site. In any case where the block, as hereafter defined, shall exceed one thousand (1,000) feet in length between intersecting streets, the estimate of the Director of Public Works under this Section may be reduced to the total cost of all uncompleted improvements in at least one-half ( $1/2$ ) of such block, and the required deposit shall be based upon such decreased estimate; provided, however, that the subdivider shall undertake to provide a turn-around of at least sixty (60) feet in diameter at the mid-block point and barricade said street so that no through traffic shall be permitted beyond the point to which the estimate of the Director of Public Works is based.

3. Within one hundred eighty (180) days after subsequent application for a building permit to construct any building or structure upon any building site within the block, or upon the issuance of a certificate of occupancy for any such building or structure, whichever is sooner, the applicant shall likewise deposit an amount not less than the estimate of the Director of Public Works for all required improvements from existing improvements to the proposed building site, less any previous deposits made hereunder upon building sites lying between the most recently proposed site and existing improvement.

4. Upon payment of each such deposit, the Director of Public Works shall release the proposed building site from the terms of the subdivider's Alternative 4 Agreement.

4.1. Failure to deposit. In the event the subdivider or any subsequent owner of the land shall fail to complete such improvements or make such deposit within the required time, no further building permits shall be issued to the subdivider or the subsequent owner or to any other person to build or construct any building or structure in such subdivision until such default is remedied. In addition thereto, the City may treat the amount of such deposit as a debt due the City from the subdivider or subsequent owner, which debt shall be a lien upon all the land in said subdivision, and notice of lien may be filed for record in the office of the

County Clerk and Recorder at any time after such default. Action upon such debt may be instituted by the City within six (6) years from the date of filing such lien for record. All remedies provided for herein are cumulative and the use of one (1) shall not prohibit the use of another.

5. The required time for completion of all such improvements by the subdivider within such block shall be one (1) year from the date of application for the first building permit issued within such block. Upon completion of such improvements within the required time and the payment of all inspection costs by the subdivider, the Director of Public Works shall cause all obligations of the Subdivider relating to such improvements within such block to be released. If said improvements are not completed within the required time, the Director of Public Works may cause the proceeds of all deposits or other collateral or monies in escrow to be used to complete the same. If insufficient monies are available at the end of the required time to complete all such improvements herein required for the entire length of such block, the Director of Public Works shall cause all collateral or monies in escrow to be reduced to cash and shall deposit the same with the Director of Finance, and such cash shall be used to complete that portion of the improvements the Director of Public Works shall determine. Until all improvements are completed and approved by the Director of Public Works, the subdivider shall remain liable and responsible therefor.

6. For purposes of this alternative, the word *block* shall mean both tiers of lots fronting or abutting upon the street which the proposed building or structure shall front to the rear property line of such lots, or the center line of the alley if there is any alley, and enclosed at either end by a street which intersects both tiers of lots, and shall include the full width of all streets upon which such lots abut.

f. Alternative 5.

1. Enter into a written agreement with the City to timely construct and complete all required public improvements in accordance with the standards and specifications of the City in effect at the time of construction of such improvements.

2. Deposit with the Director of Finance an irrevocable letter of credit approved by the City Attorney and issued by a bank or other qualified institution authorized to do business in the State. The institution issuing the letter of credit shall undertake and obligate itself to pay to the City a stated amount equal to the costs of constructing and completing the required public improvements as estimated by the Director of Public Works. If the subdivider shall fail to timely complete the required improvements, the City may present to the issuing institution a written statement from the Director of Public Works specifying the costs to then construct and complete the required public improvements and demanding payment of that amount. Upon receipt of such written demand, the issuing institution shall, without further action or notice, immediately pay to the City the amount demanded or the stated amount of the letter of credit, whichever is less. The letter of credit may not be withdrawn or reduced in amount until released in writing by the Director of Public Works, and it shall contain a specified expiration date which shall not be less than eighteen (18) months or greater than three (3) years after the date of its issuance.

g. All surety bonds, collateral in lieu of cash, escrow agreements or letters of credit shall be approved as to form and sufficiency by the City Attorney. Surety bonds shall be deemed sufficient if executed by a corporate surety licensed to do business in the State and countersigned by a resident agent of such corporate surety. Collateral in lieu of cash shall be deemed sufficient if negotiable, eligible as an investment for public funds, and have a present market value in excess of the amount of the estimate of the Director of Public Works. Letters of credit shall be deemed sufficient if issued by a qualified institution doing business in the State.

h. Upon the completion of the same, all such improvements shall be appropriately dedicated to public use.

i. Upon meeting the requirements of Alternative 1, 2 or 3 above, as to an entire subdivision or any portion thereof, the subdivider may in writing apply for and the Director of Public Works shall issue a letter of guarantee addressed to any public or private lending institution or loan guarantee agency or institution setting forth the nature of the financial guarantee supplied by the subdivider, the nature of the improvements to be made thereunder, a description of the land to be benefited by such improvements, and the anticipated date of completion. The Director of Public Works may further guarantee to the addressee that such improvements will be completed within the time stated or that the City will use the proceeds of the subdivider's financial guarantee to complete such improvements with all deliberate haste.

(2) Street grading and paving. All streets shall be filled or excavated to the grade approved by the City Engineer and paved, complete with curb and gutter. Such improvements shall be installed under the supervision of the City Engineer in accordance with the standards and specifications adopted by the City Council.

(3) Minimum pavement widths. Pavement widths shall be measured between flow lines of gutters and shall be approved by the Director of Public Works or the Director's designee and comply with the standards set forth in the Roadway Classification Design Standards and Policies approved by the City Council.

(4) Sidewalks. Sidewalks shall have a minimum width of four (4) feet fronting residential lots and a minimum width of six (6) feet fronting school, commercial and business areas. Sidewalks shall be required on both sides of streets. Thickness of sidewalks shall be in conformance with City standards.

(5) Utilities.

a. Water supply system. The subdivider shall construct a complete water distribution system, in accordance with the specifications of the Board of Waterworks, including a service for each lot and appropriately spaced fire hydrants.

b. Sanitary sewer system. The subdivider shall construct a complete sanitary sewer system, in accordance with the design criteria and specifications promulgated by the Director of Wastewater and approved by the City Council, which system shall include a building sewer to each lot. The subdivider may also be required to construct off-site, oversized or perimeter sewer collection system improvements deemed necessary to promote orderly and efficient

development of the City, subject to the cost recovery procedures specified in Chapter 5 of Title XVI of this Code.

c. Storm drainage. Adequate provisions for stormwater drainage shall be provided in accordance with standards specified by the City Engineer and approved by the City Council. The subdivider shall also be required to provide appropriate special measures and facilities with respect to any stormwater discharge from land associated with industrial activity or from sites upon which industrial activities or other activities with a potential for release of hazardous substances had been conducted in the past. Such special measures and facilities shall be designed to ensure: (1) that the discharge of any pollutants in stormwater discharge will be reduced to the maximum extent practicable; (2) that the stormwater discharge will comply with any state, federal and local effluent limitations applicable to stormwater discharges; (3) that any spill of hazardous substances or toxic material may be prevented or contained to avoid or substantially reduce entry into municipal stormwater facilities; (4) that there will not be a release or threatened release of hazardous substances or hazardous wastes; and (5) that stormwater will not be discharged into municipal facilities which may cause or contribute to a violation of a water quality standard.

d. Street illumination systems. The subdivider shall construct and install a complete street illumination system in accordance with the standards and specifications of the City Engineer.

(6) Street name signs. The installation of street signs at all intersections shall be required, such signs to be in general conformity with existing street signs as to size, lettering, durability and placement, all of which shall be approved by the Director of Transportation.

(7) Monuments.

a. A concrete monument at least eighteen (18) inches long and six (6) inches square with a lead plug one (1) inch deep and brass tack center point shall be set at the intersection of the center lines of each street right-of-way and also at the point of curvature and tangency of said center lines of curvilinear streets. Said concrete monuments shall be set one (1) foot below the established grades of the streets. Installation of monuments and monument boxes shall be considered as part of the street improvements and streets will not be accepted until these items are properly installed in locations shown on the plat.

b. Iron pin monuments one-half ( $1/2$ ) inch in diameter and at least fourteen (14) inches long shall be placed at all points on boundary lines where there is a change of direction and at all block corners.

(8) Inspection. All improvements required under this Subsection shall be constructed according to applicable City specifications and standards. All improvements shall be inspected and approved by the City Engineer. Cost of inspection shall be paid by the subdivider.

(9) Guarantee.

a. All workmanship and materials on all required improvements shall be guaranteed by the subdivider for a period of two (2) years from the date of the acceptance of the required improvements by the City Engineer; with the exception from the guarantee requirement for any

defects which are the result of public abuse, misuse or acts of God. In the event any other provision of this Code or specifications adopted pursuant thereto shall require a guarantee of workmanship, materials or both for a different period of time, that provision requiring the longer period of guarantee shall govern. City inspection shall not relieve the subdivider of such guarantee of workmanship and materials.

b. Within thirty (30) days after notice is given by City to the subdivider specifying any defect in required improvements which occurs or existed during any applicable guarantee period, or in the event of an emergency as determined by the Director of Public Works, immediately after such notice is given to the subdivider, the subdivider shall undertake the correction of such defect and thereafter diligently prosecute the correction thereof to completion in a good and workmanlike manner. If the subdivider fails to timely undertake or thereafter fails to diligently prosecute the correction of the defect to completion, the City is granted the right (but not the obligation) to correct the defect and recover all costs thereof including administrative and inspection charges of twenty-five percent (25%) together with interest thereon at the rate of ten percent (10%) per annum from the subdivider. In addition, until paid in full, all such City costs and administrative and inspection charges together with interest thereon at the rate of ten percent (10%) per annum, shall become a perpetual lien on all the land within the subdivision upon recording in the office of the County Clerk and Recorder a statement of lien setting forth the City's costs and administrative and inspection charges and a description of the land, signed and acknowledged by the Director of Public Works. Failure of the City to correct any such defect shall not subject the City to any liability to any person for such failure.

(10) The Director of Public Works is authorized to execute in the name of the City all instruments and documents relating to the alternatives described in Section 12-4-7(j)(1), or the deferral of such alternatives, provided that such deferral period does not exceed one (1) year from the date a final subdivision plat is conditionally approved by ordinance adopted by the City Council. (1957 Code §20-4; Ord. No. 3512 §2, 1-10-72; Ord. No. 4039, 6-9-75; Ord. No. 4266, 12-13-76; Ord. No. 4865, 4-27-81; Ord. No. 5013, 11-22-82; Ord. No. 5083, 9-26-83; Ord. No. 5354, 10-27-86; Ord. No. 5721, 12-23-91; Ord. No. 6192, 5-27-97; Ord. No. 6424, 4-26-99; Ord. No. 6484, 10-25-99; Ord. No. 6546, 5-22-00; Ord. No. 6663 §1, 3-26-01; Ord. No. 6855 §1, 7-8-02; Ord. No. 6912 §1, 11-25-02; Ord. No. 6944 §§1-6, 1-27-03; Ord. No. 7286 §10, 4-11-05; Ord. 7357 §1, 8-22-05; Ord. No. 7560 §1, 1-8-07)

#### **Sec. 12-4-8. Fees.**

Before any action shall be taken, the applicant seeking approval of the plat shall deposit with the Finance Department an application fee as set by resolution of the City Council. After the Planning and Zoning Commission has made its recommendations and before the preparation and presentation of an ordinance to the City Council by the planning staff, an ordinance fee as set by resolution of the City Council must also be deposited with the Finance Department to cover the approximate costs of this procedure. (1957 Code §20-6; Ord. No. 3512 §2, 1-10-72; Ord. No. 4221, 8-9-76; Ord. No. 6706 §3, 7-9-01)

**Sec. 12-4-9. Subdivision regulations.**

The Planning and Zoning Commission shall make available to subdividers regulations governing the sheet size, dimensioning, general format and other details of presentation for the purpose of standardizing submissions and expediting the review procedure. (Ord. No. 3512 §2, 1-10-72)

**Sec. 12-4-10. Modifications.**

Whenever the tract of land to be subdivided is of such unusual size or shape or is surrounded by such development or unusual conditions, or the uniqueness of a given proposal requires a modification of the design standards as specified in this Chapter or the land being developed as a special area plan or planned unit development as provided in the Zoning Ordinances of the City, or other condition under which the strict application of the requirements contained in this Chapter would result in substantial hardships or injustice, the City Council, upon recommendation of the Planning and Zoning Commission, may vary or modify such requirements to permit the subdivider to develop his or her property; provided that the public welfare and the interests of the City and surrounding area are protected and the general intent and spirit of this Chapter are preserved. (1957 Code §20-9; Ord. No. 3512 §2, 1-10-72; Ord. No. 3860, 5-13-74)

**Sec. 12-4-11. Subdivision improvements obligations.**

(a) The subdivider shall remain liable and responsible for the construction, installation, maintenance and repair of all subdivision improvements until they are completed and accepted by the Director of Public Works and or the correction of any defects occurring or existing during any applicable guarantee period. The sale or transfer of all or part of any approved subdivision or the assignment or transfer by the subdivider of any agreement to install or construct any improvement pursuant to Alternative 1, 2, 3 or 4 of Section 12-4-7(j) of this Chapter shall not release or discharge the subdivider from its obligation under such agreement or any applicable guarantee.

(b) If any subdivider shall fail to timely construct, install or provide any improvements required pursuant to Alternative 1, 2, 3 or 4 of Section 12-4-7(j) of this Chapter for any approved subdivision, or to correct any defects occurring or existing during any applicable guarantee period, no subdivision plat for any other subdivision or special area plan in which the defaulting subdivider has an interest shall be accepted by the Director of the Department of Zoning Administration. For purposes of this Section, *defaulting subdivider* means and includes not only the named subdivider if an individual, but also any person, firm, limited liability company, or corporation which has a ten-percent or greater interest in the subdivider if the subdivider is a partnership, joint venture, corporation limited liability company or other legal entity.

(c) To determine whether a subdivider may be in violation of Subsection (a) or (b) above, the Director of the Department of Zoning Administration may require the subdivider to certify by affidavit those persons or entities which have any interest in the subdivider or in any defaulting subdivider. (Ord. No. 4732, 4-28-80; Ord. No. 6663 §2, 3-26-01)

**Sec. 12-4-12. Cost recovery of street improvements by subdividers.**

(a) For purposes of this Section, certain terms and words are defined or limited as follows:

(1) *Owner* means the owner of property abutting street improvements.

(2) *Street improvements* means constructing or otherwise improving streets or widening streets and includes installation of paving, curbs, gutters and street lighting.

(3) *Incidentals* means and includes, without limitation, storm sewers and appurtenances, medians, acceleration and deceleration lanes, street signs, traffic signals, survey monuments, construction traffic control, landscaping in medians, utility relocation and other unspecified incidental costs reasonably required and related to the street improvements as determined by the Director.

(4) *Improvements* means street improvements and incidentals.

(5) *Cost recovery* means a pro rata share of the actual cost of constructing street improvements, including related engineering costs computed and allocated on a front foot basis and, if the subdivider's subdivision was first in time and incidentals would have been required to be installed by the subdivider, an equitable allocation of the cost of such incidentals.

(6) *Director* means the Director of Public Works.

(7) *Commission* means the Planning and Zoning Commission.

(8) *Existing subdivision* means an approved subdivision requiring as part of its subdivision improvements the construction and installation of all or a portion of the street improvements constructed and installed by another subdivider for which cost recovery is available under this Section.

(b) When a subdivider is required under this Chapter to construct or install improvements through or adjacent to property not in his or her subdivision, the subdivider shall pay the entire costs of the improvements and thereafter be eligible for cost recovery as provided by this Section.

(c) The subdivider shall:

(1) Enter into a contract with the City in form and content consistent with the provisions of this Section prior to construction or installation of the improvements; and

(2) File with the Director within sixty (60) days after completion of the improvements: (a) a cost recovery statement on forms furnished by the City certifying the actual cost of improvements, together with receipts and other evidence of such costs; and (b) a list of the names and addresses of the record owners and legal descriptions of property abutting the street improvements verified by the subdivider to be true and accurate, together with a certificate thereof from the office of the County Assessor.

If the subdivider fails to timely comply with both Subparagraphs (1) and (2) above, the subdivider may be ineligible for cost recovery.

(d) The Director shall determine cost recovery and allocation to abutting property based upon the subdivider's cost recovery statement and such other information concerning the improvements and

cost as he or she shall deem relevant. The Director's determination shall be final and binding upon all parties unless, upon appeal, the Commission finds that the Director abused his or her discretion. The Director shall mail by first class mail, postage prepaid, written notice of his or her determination to the subdivider and owners as shown by the subdivider's verified list. If the subdivider or any owner disagrees with the Director's determination, such party may appeal the determination to the Commission by filing written notice of appeal with the Director of the Department of Zoning Administration within thirty (30) days after the date of the mailing of the notice of determination specifying in detail his or her grounds for such disagreement. The Commission shall conduct a hearing on the appeal and sustain the determination of the Director if it finds that he or she did not exceed his or her jurisdiction or abuse his or her discretion and, if it finds that the Director exceeded his or her jurisdiction or abused his or her discretion, the Commission shall return the matter to the Director for redetermination consistent with the Commission's written finding. Upon final determination of cost recovery, the Director shall cause to be filed in the office of the County Clerk and Recorder a statement describing the property abutting the street improvements and advising the owners that if all or any portion of the abutting property is thereafter included in a subdivision, or if a building permit is obtained for all or any portion of the abutting property that is in an existing subdivision, cost recovery may be required to be paid pursuant to this Section. The cost of mailing notices and recording statements shall be paid by the subdivider.

(e) The owners of property abutting such street improvements shall (1) prior to final approval of any subdivision plat which includes all or any portion of such abutting property, or (2) prior to the issuance of a permit to build a building or structure on all or any portion of such abutting property that is in an existing subdivision, whichever the case may be, pay to the City for the use and benefit of the subdivider the cost recovery as herein determined and allocated for that portion of the abutting property included within the subdivision, or for which a building permit application has been made, together with interest thereon at the rate of eight percent (8%) per year for a period not to exceed ten (10) years computed from the date the improvements were accepted by the City. Liability for cost recovery shall be limited to fifteen (15) years after acceptance of the improvements by the City.

(f) If for any reason the cost recovery is not paid as herein required, the City shall not be liable or responsible to the subdivider. (Ord. No. 5576, 12-26-89; Ord. No. 6445, 6-28-99; Ord. No. 7598, 6-11-07)

## **CHAPTER 5**

### **Street Vacations**

#### **Sec. 12-5-1. Application for vacation of street, alley, etc.**

Any person or any public or private agency desiring the vacation of any street, alley or public way shall submit to the Planning and Zoning Commission a written application containing the following:

- (1) The applicant's name and address and the name and address of any person represented by such applicant in the application.
- (2) The interest of the applicant and the interest of the person represented by the applicant, be it legal, sales, development, operation or other interests.

(3) A statement of the facts which the applicant believes justifies the vacation, including, but not limited to:

a. A general description of the area surrounding the proposed vacation which will be thereby affected; such description including subjects of environmental effect, economic effect and traffic effect.

b. A tentative plan showing the area affected by the proposed vacation, showing existing and proposed structures, uses, open spaces, facilities for parking and loading, and arrangements for pedestrian and vehicular circulation.

c. A list of names and addresses of all persons who own property immediately adjoining and within three hundred (300) feet of the street, alley or other public right-of-way requested to be vacated. Such list of names and addresses shall be certified by the applicant to be correct according to the records of the County Assessor. (1957 Code, §24-21; Ord. No. 2733, §1, 10-8-62; Ord. No. 5403, 5-26-87)

**Sec. 12-5-2. Hearing; notice.**

The Planning and Zoning Commission shall hear applications for vacations and shall set a time for public hearing. The Commission shall cause written notice of the public hearing on the proposed vacation to be sent to real property immediately adjoining and within three hundred (300) feet of the street, alley or public right-of-way requested to be vacated. Such notice shall be given not less than fifteen (15) days before the date set for the hearing. Such notice may be served by depositing the same, properly addressed and postage paid, in the U.S. mail. Notice shall be posted in a conspicuous place at either end of each street, alley or other public way proposed to be vacated. Such posted notice shall be not less than eighteen (18) inches by twenty-four (24) inches, with letters not less than one (1) inch in height, clearly visible from the nearest street. Such notice shall be posted at least fifteen (15) days before the date of the hearing. It shall be unlawful for any person to remove, mutilate, destroy or change such posted notice prior to the hearing. (1957 Code, §24-22; Ord. No. 2733, §1, 10-8-62; Ord. No. 5403, 5-26-87)

**Sec. 12-5-3. Initiated by commission.**

The Planning and Zoning Commission may initiate proposed vacations of streets, alleys and public ways according to the preceding Section, or by giving notice by publication as required by the Charter at least fifteen (15) days before the date set for the hearing. Such publication shall appear three (3) times, on separate days, and shall state the description of the property and the time and place of the hearing. (1957 Code, §24-23; Ord. No. 2733, §1, 10-8-62)

**Sec. 12-5-4. Recommendations to Council.**

The Planning and Zoning Commission shall submit to the City Council its recommendation on proposed vacations within thirty (30) days after the hearing is concluded. (1957 Code, §24-24; Ord. No. 2733, §1, 10-8-62)

**Sec. 12-5-5. Costs; reapplying.**

(a) Before any action shall be taken as provided by this Chapter by the Planning and Zoning Commission, the applicant proposing the vacation shall deposit with the Finance Department an application fee of seventy-five dollars (\$75.00). Under no conditions shall such sums or any portion thereof be refunded for failure of such vacation to be approved by the Planning and Zoning Commission.

(b) After the Planning and Zoning Commission has made its recommendations, an ordinance shall be prepared for presentation to the City Council. An additional fee of seventy-five dollars (\$75.00) shall be charged to cover all necessary and reasonable costs incurred by the City in processing such ordinance through the City Council.

(c) No deposit of money shall be required when such action is initiated by the Planning and Zoning Commission. In the event the proposed vacation is denied by the City Council, no new or substantially similar request shall be made for the same within six (6) months after such denial thereof. (1957 Code, §24-25; Ord. No. 4221, 8-9-76)

**Sec. 12-5-6. Procedures, cumulative and exclusive.**

The procedures for vacations as prescribed in this Chapter shall be exclusive, and no vacation of a street, alley or public way shall be effective unless substantial compliance is had with all the procedures set forth herein. (1957 Code, §24-26)

**CHAPTER 6**

**Street and Sidewalk Excavations in Public Way**

**Sec. 12-6-1. Permit required; issuing authority; displaying.**

(a) Wherever in this Chapter the word *person* appears, it shall be understood to mean any person, firm, corporation, partnership, utility company, School District No. 60 or the Board of Water Works unless specifically noted otherwise.

(b) It shall be unlawful for any person to dig, open, excavate or cause to be dug, opened or excavated any street, alley, sidewalk or other public way or place in the City without having first obtained an excavation permit therefor from the Director of Public Works.

(c) Such permit shall be kept at the site of the excavation while the work is in progress and shall be exhibited upon request to any police officer or representative of the Director of Public Works.

(d) Nothing in this Chapter shall be construed to prevent the making of such emergency excavations as may be necessary for the preservation of life or property or for the location of trouble in conduit or pipe, or for making emergency repairs, provided that the person making such excavation shall immediately apply for a permit on the first working day after such work is commenced. (1957 Code, §9-126; Ord. No. 3835, 9-9-74; Ord. No. 4151, 4-12-76)

**Sec. 12-6-2. Application; information.**

Application for an excavation permit shall be made upon a form provided by the Director of Public Works and shall recite specifically and illustrate by sketch or plan the exact location, depth, extent and nature of the excavation desired to be made, together with the location of all underground utilities within a radius of ten (10) feet of the proposed excavation, the purpose for which the privilege is requested and the estimated duration of time required for the work. The application form shall further recite the posting of such bonds as shall be required by Sections 12-6-10 and 12-6-11 hereof. (1957 Code, §9-127; Ord. No. 3835, 9-9-74)

**Sec. 12-6-3. Persons entitled to.**

The Director of Public Works shall, upon filing a sufficient application and payment of the appropriate pavement impact fee or excavation permit fee, grant permits to dig, open, excavate, bore or cause to be dug, opened, bored or excavated any street, alley, sidewalk or other public way or place in the City to the following:

- (1) Any person who is licensed under the provisions of Chapter 1, Title IV of this Code to do excavation work; or
- (2) The Board of Water Works, School District No. 60, utility companies and persons authorized by the City Council by ordinance, resolution or contract to perform work in or upon any street, alley, sidewalk or other public way or place in the City. (1957 Code, §9-128; Ord. No. 3835, 9-9-74; Ord. No. 4151, 4-12-76; Ord. No. 6916 §1, 11-25-02; Ord. No. 6968 §1, 4-14-03)

**Sec. 12-6-4. Conditions.**

(a) All permits shall be issued according to the provisions of this Chapter and subject to such rules, directions and limitations regarding the time to be required for the work and the manner in which the work is to be performed as the Director of Public Works may by specifications prescribe.

(b) Such permits shall be conditioned that all work performed thereunder shall be in accordance with the specifications of the City Council or Director of Public Works, which shall provide for the proper care and protection of the streets, alleys, sidewalks and other public places of the City and persons and property thereupon.

(c) Such permits shall be conditioned that all work done thereunder shall be only such work as is allowed by the City and specified in ordinance, resolution, or contract of the City Council or the application submitted under Section 12-6-2 hereof.

(d) No permit issued under the provisions hereof shall be for more than one (1) excavation project.

(e) An excavation permit shall not be required for construction, reconstruction or repair of sidewalks, curbs, gutters or driveways or the installation of utility poles and anchors if such work is done in accordance with the terms of this Chapter relating thereto; provided, however, that no excavation for utility pole or anchor shall be left uncovered except during the actual excavating and

pole installation; and provided further that installation of utility poles and anchors shall be completed on the same day the excavation therefor is begun.

(f) Applicants shall pay a thirty-five-dollar permit fee to excavate within the public right-of-way outside of paved street or alleys, or to bore under any street or alley. Entities exempt from paying the pavement impact fee pursuant to Section 12-6-4.1(f) shall pay the thirty-five-dollar permit fee to excavate within or bore under any street, alley or public right-of-way. The fees provided for in this Subsection may be modified or amended by resolution of the City Council. (1957 Code, §9-129; Ord. No. 3835, 9-9-74; Ord. No. 4151, 4-12-76; Ord. No. 6916 §2, 11-25-02; Ord. No. 6968 §2, 4-14-03)

**Sec. 12-6-4.1 Pavement impact fee.**

(a) The provisions of this Section are intended to impose a pavement impact fee to be collected at the time of issuance of an excavation permit, in an amount calculated as shown in Subsection (b) below, but in no event less than the amounts shown in Subsection (c) below, for the purpose of recovering costs expended by the City for the reduced life expectancy of City-owned and -maintained streets caused by the expected actions of applicants for said permits in the course of completing their work. The imposition of said fee is intended to regulate the actions of permittees in limiting the damages sustained to such streets, by keeping their damage-causing activities to a minimum. The revenue from said fees shall be added to funds of the City allocated for repairs, rehabilitation or replacement of City-owned and maintained streets, in order to provide for more frequent repair, rehabilitation and reconstruction necessitated by reduction in life expectancy caused by the actions of the permittees.

(b) All applicants for street excavation permits shall pay a pavement impact fee in an amount calculated as shown below before the issuance of such permits:

Square Feet of Excavation	Fee per Square Foot
1 to 100	\$3.50
101 to 500	2.50
501 to 3,000	2.00
Over 3,000	1.50

(c) In no event shall the pavement impact fee be less than two hundred dollars (\$200.00) for excavations in collector or arterial streets, or less than one hundred dollars (\$100.00) for excavations in minor and marginal access streets.

(d) No portion of a permit fee shall be refunded.

(e) The pavement impact fee shall apply to open cuts of pavement surfaces for excavation only. Such fee shall not apply to excavations made in advance of new pavement constructions or within eighteen (18) months before pavement overlays which are included in the City's annual street resurfacing program. The Director of Public Works may reduce or waive the pavement impact fee in consideration of the permittee reconstructing or overlaying the existing pavement, or in cases where

the impact fee will create a financial hardship to individual property owners due to circumstances beyond their control. The pavement impact fee established above will be tripled for streets that have been constructed, reconstructed, overlaid or have received a seal coat within the five (5) years immediately preceding the date of the application for the permit.

(f) The City, the Board of Water Works and entities granted franchises pursuant to Article 16 of the Charter are exempt from paying a pavement impact fee, provided that this exemption shall not apply to excavation permits issued to persons hired by or contracting with the City, the Board of Water Works or utilities granted franchises pursuant to Article 16 of the Charter to perform construction work in any street, alley, sidewalk or other public way or place in the City.

(g) Streets that have been constructed or resurfaced within five (5) years immediately preceding the date of application for any excavation permit shall be resurfaced by the permittee to the extent required by the Director of Public Works. At the direction of the Director of Public Works, the permittee may also be required to mill the edge of the pavement prior to resurfacing. (Ord. No. 6916 §3, 11-25-02; Ord. No. 6968 §§3-5, 4-14-03)

**Sec. 12-6-5. Obstructing streets; limitations.**

(a) It shall be unlawful, without having first obtained written permission of the Director of Public Works and the Director of Transportation, to block more than that portion of the street running from the centerline to either street edge except where the excavation is, by necessity, to be in the street center, in which case one (1) lane of moving traffic shall be maintained.

(b) It shall be unlawful to block more than one (1) lane of traffic in each direction within an intersection without having first obtained the written permission of the Director of Public Works and the Director of Transportation.

(c) It shall be unlawful to block a driveway overnight. A permittee shall give notice to the occupant of a residence prior to blocking any driveway in a residential area.

(d) Except as may be otherwise provided in Subsection (e) hereof, any person who causes to make or who makes a street or alley cut, opening or excavation shall backfill the same and replace cut or removed pavement immediately after completion of the work for which the cut, opening or excavation was made and before leaving the site of a street or alley cut, opening or excavation.

(e) No longitudinal street or alley excavation shall be extended into the next succeeding street intersection or block until the excavation has been backfilled and all pavement removed in an intersection or in front of a driveway or entrance onto said street or alley shall be replaced. Notwithstanding the foregoing, all pavement removed from any longitudinal street or alley excavation shall be replaced within two (2) weeks after the excavation has been backfilled.

(f) All backfilling and pavement replacement shall be done in accordance and in compliance with specifications relating to street and alley excavations adopted by resolution of the City Council. (1957 Code, §9-130; Ord. No. 3835, 9-9-74)

**Sec. 12-6-6. Records; information furnished.**

(a) The Director of Public Works shall keep a record of all applications made for excavation permits and of the permits so issued.

(b) It shall be the duty of every person to furnish on request to the Director of Public Works information regarding the location in any street, alley, sidewalk or other public place of the City of any pipe or other structure installed, maintained or utilized within the City by such person. (1957 Code, §9-131; Ord. No. 3835, 9-9-74)

**Sec. 12-6-7. Warning devices required.**

(a) It shall be unlawful for any person to dig or cause to be dug any hole, drain, ditch or any other excavation in any street, alley, sidewalk or other public place within the City without providing during the nighttime sufficient flares, red lights or other suitable warning devices to be placed with a suitable barricade or temporary fence around such hole, drain, ditch or other excavation, including backfilled areas which have not been patched, in order to prevent persons, animals or vehicles from sustaining injury or damage.

(b) During the daytime, the barricade shall be maintained, but flares are not required.

(c) Every excavation shall further be protected at all times by traffic safety appliances as prescribed by the Director of Public Works and the Director of Transportation, in order to minimize the disruption of the flow of traffic in the vicinity of the excavation. (1957 Code, §9-132; Ord. No. 3835, 9-9-74)

**Sec. 12-6-8. Interfering; removing.**

It shall be unlawful to damage, displace, remove or interfere with any barricade, warning lights, flares or any other safety appliance which is lawfully placed around or about any street, alley, sidewalk or other excavation or construction work in the City. (1957 Code, §9-133)

**Sec. 12-6-9. Backfills; specifications.**

(a) Backfills shall be made in accordance with specifications furnished by the Director of Public Works, and approved by resolution of the City Council.

(b) Specifications shall be specifically adapted to the particular conditions of travel, load requirements, terrain, subsoil, moisture, etc., where the backfill is to be effected.

(c) In the event of settlement or subsidence of a particular excavation or part thereof, the permittee who performed the excavation work shall be responsible for all repaving and repair costs occasioned thereby for a period of two (2) years after the excavation is backfilled. (1957 Code, §9-134)

**Sec. 12-6-10. Bond; cost of repair; amount; term; conditions; breach.**

(a) Any person who shall apply for a permit to dig in, open or excavate any street, alley, sidewalk or other public place in the City shall post a bond in the sum of five thousand dollars (\$5,000.00) with the Director of Public Works. The condition of such bond shall be that the permittee shall comply with all the ordinances of the City and specifications of the Director of Public Works relating to the digging in, opening or excavating any street, alley, sidewalk or other public place in the City. Such bond shall be approved by the Director of Public Works as to sufficiency and by the City Attorney as to form, and for each excavation shall remain in full force and effect for a period of two (2) years from and after the date any excavation made within the twelve-month period is backfilled; provided, however, that this Section shall not apply to that class of persons designated in Subsection 12-6-3(2) hereof.

(b) In the event of a breach of any of the conditions of such bond, the Director of Public Works shall give notice of the same to the surety, shall cause to be remedied the condition wherein the bond is breached, and the City Attorney shall bring action in the name of the City to recover the penalty of the bond, or so much thereof as may be necessary to reimburse all costs and expenses incidental thereto.

(c) No permit shall be issued to any applicant whose bond or any portion thereof has been declared to forfeit unless and until such bond shall have been reinstated or a new bond filed as provided herein. (1957 Code, §9-135; Ord. No. 3835, 9-9-74; Ord. No. 4002, 4-14-75)

**Sec. 12-6-11. Insurance; additional and all-inclusive conditions; implied agreement.**

(a) Any person who shall apply for a permit to dig in, open or excavate any street, alley, sidewalk or other public place in the City shall be conclusively deemed to have agreed to indemnify and save harmless the City, its authorized agents, officers, representatives and employees from and against any and all claims, penalties, liability or loss resulting from claims or court action, whether civil, criminal or in equity, arising directly or indirectly out of any act or omission of the applicant, his or her agents, officers, representatives or employees in digging in, opening or excavating such street, alley, sidewalk or other public place.

(b) The applicant shall post with the Director of Public Works certification of general liability insurance covering such excavation work with minimum coverage commonly described as \$100,000; \$300,000; \$25,000, as shall be approved by the City Attorney as to form, to insure such indemnity. Such insurance shall remain in full force and effect for a period of two (2) years from and after the date of application for each permit issued thereunder. Failure to maintain such insurance shall not relieve any applicant from liability hereunder.

(c) Such proof of insurance shall contain a clause to the effect that the City shall be notified by the insurer not less than thirty (30) days prior to any change in or cancellation of such policy.

(d) The insurance requirements of this Section shall not apply to that class of persons designated in Subsection 12-6-3(2) hereof. (1957 Code, §9-138; Ord. No. 3835, 9-9-74; Ord. No. 4002, 4-14-75)

**Sec. 12-6-12. Obstructing operations.**

It shall be unlawful to hinder or obstruct any paving operations or excavations conducted in conformance with the provisions of this Chapter. (1957 Code, §9-137)

**Sec. 12-6-14. Underground construction; filing plat and data.**

Any person using any part of the street, alley or public grounds of this City for water mains, gas mains or other main pipes, conduits or similar construction, by virtue of franchise or otherwise, for any such structures installed, shall, within ten (10) days from and after the completion of any such construction, file in the office of the City Engineer for use of his or her office, a plat showing the location thereof in reference to the sidelines of the street or alley in which the same is located and the depth of the same below the surface of the ground, and also showing the dimensions and kind of pipe, conduit or other construction used. (1957 Code, §9-139)

**Sec. 12-6-15. Violation.**

(a) Any person convicted of a violation of this Chapter or any section or provision hereof shall be punished by a fine of not more than one thousand dollars (\$1,000.00) or by imprisonment for not more than one (1) year, or by both such fine and imprisonment.

(b) The Director of Public Works shall refuse to issue a permit under this Chapter to any person who shall have suffered a second or subsequent conviction hereunder within a period of five (5) years from the date of the first or former conviction for a period of not less than one (1) year, after such second conviction. (Ord. No. 3835, 9-9-74; Ord. No. 7937 §25, 12-8-08)

**CHAPTER 7**

**Railways in Public Thoroughfares**

**Sec. 12-7-1. Street grade between tracks.**

All railway companies operating or constructing any railway on any public thoroughfare shall construct and maintain such railway at the grade established by the City and shall grade and keep graded so much of such thoroughfares on which their track or tracks are laid, between the rails of any and all such track so that such space between tracks shall be on a level with the surface of such thoroughfare. (1957 Code, §23-1)

**Sec. 12-7-2. Planking on dirt streets.**

All railway companies mentioned in the preceding Section shall, when ordered by the Director of Public Works, place, construct and continuously maintain planking on the entire space between the rails of all of their tracks between and one (1) foot on the outside of each rail thereof, for the entire length of all of such track or tracks on any public thoroughfare, which planking shall be securely fastened to the cross ties of the track. Planking shall be of such thickness as to extend to the top of the rails of the track; provided that this Section shall not apply to paved streets. (1957 Code, 23-2)

**Sec. 12-7-3. Tracks at street grade; removal.**

Every railway company shall cause its track to be laid to the established grade of all streets upon which such track shall be laid, and shall maintain such track on a level with the street's surface. Any track not laid according to the provisions hereof shall be deemed to be a nuisance, which nuisance shall be abated by the removal of any such track not so laid to grade, such removal to be made upon the order of the Director of Public Works. (1957 Code, §23-3)

**Sec. 12-7-4. Culverts; construction under tracks; notice.**

Whenever it shall become necessary or desirable to construct any drain, sewer or culvert across and under the surface of any public thoroughfare on which are laid the tracks of any railway company, such railway company, after thirty (30) days' notice from the Director of Public Works, shall construct so much of such drain, sewer or culvert as extends and lies beneath the public thoroughfare, which such company is required to grade and keep graded, and such part of such drain, sewer or culvert shall be constructed by such company of the same material and in the same manner as the part constructed by the City and shall be joined thereto. The notice required by this Section shall contain a description of the drain, sewer or culvert to be constructed, the dimensions thereof and the materials to be used. (1957 Code, §23-4)

**Sec. 12-7-5. Removal of debris; notice.**

Whenever any railway company shall construct or repair any railway track on any public thoroughfare, such company shall, without delay, remove from such thoroughfare all earth, gravel, stone, rock, plank, timber, iron and debris, and failure or refusal to do so shall constitute a violation of this Code. (1957 Code, §23-5)

**Sec. 12-7-6. One track; over bridge.**

It shall be unlawful for any railway company to construct, use or maintain more than one (1) railroad or street railway track of two (2) rails over and across any bridge or viaduct within the City. (1957 Code, §23-6)

**CHAPTER 8**

**Extension of Underground Electrical Facilities**

**Sec. 12-8-1. Definitions.**

Whenever used in this Chapter, the following words and phrases shall have the following meaning unless the context otherwise clearly requires:

- (1) *Company* means a company or entity granted a franchise pursuant to Article 16 of the Charter of the City to furnish and sell electricity within the City.

(2) *Committee* means the committee composed of the Director of Public Works, a representative of the Company and a third person jointly selected as provided in Section 12-8-2 hereof.

(3) *Project* means electrical distribution facilities required to be placed underground by subdivision covenants or Section 12-4-7(c)(6) of this Code or as same may be subsequently amended.

(4) *Developer* means the owner of any land or the owner's authorized agent who is required by the ordinances of the City or subdivision covenants to install or caused to be installed any project.

(5) *Designated contractor* means the electrical contractor designated by the Committee pursuant to Section 12-8-3 hereof. (Ord. No. 5240, 7-22-85)

### **Sec. 12-8-2. Committee.**

There is hereby established a Committee composed of the Director of Public Works, a representative designated by the Company and a third person jointly selected by the Company's representation and the Director who shall be experienced in the electrical contracting business. If the Company fails to designate its representative or if such representative and the Director are unable for any reason to jointly select such third person, the City Council may designate the members of the Committee for such terms as the City Council may determine. (Ord. No. 5240, 7-22-85)

### **Sec. 12-8-3. Selection of a designated contractor.**

(a) The Committee shall annually select through the procedure of competitive bidding a designated contractor to install projects at the request of developers. The designated contractor shall be a qualified electrical contractor licensed to do electrical work in the State and duly registered under the ordinances of the City.

(b) The company, in cooperation with the Committee, shall on or before December 1 of each year commencing December 1, 1985, prepare specifications and bid documents for the selection of the designated contractor for the following calendar year. The Committee shall publicly advertise for bids a reasonable time prior to bid opening which will be at a public meeting at a time and place set forth in the bid documents. The company may submit a bid. All bids shall be sealed and kept confidential until bid opening. Bid documents shall be available to bidders upon payment of a reasonable fee set by the Committee. All bids shall be accompanied by such security or performance bonds and information concerning the bidder as the Committee shall determine. The Committee is not required to accept the lowest bid and may reject any and all bids, waive any informality and negotiate with any bidder. The Committee shall select the designated contractor and notify the company of its selection. The company shall have the right for ten (10) days after being notified of the Committee's selection to object to such selection in writing setting forth its grounds therefor. Upon receipt of written objections timely filed by the company, the Committee shall review its selection in light of such objections and notify the company of its decision relating thereto. The decision of the Committee shall be final and binding on the company, the Committee and all bidders. (Ord. No. 5240, 7-22-85)

**Sec. 12-8-4. Projects.**

(a) Company will design, engineer, specify materials, inspect in conformance with standard construction practices, and approve, which approval will not be unreasonably withheld, each project. At the request of a developer or the designated contractor, the company shall furnish in a timely manner the plans and specifications for a project. The company's actual costs for performing such work for a project, including but not limited to labor and transportation, are herein referred to as the "company's project costs."

(b) All projects and work performed thereon shall be subject to regulations imposed by the Colorado Public Utilities Commission (P.U.C.), the City, or both.

(c) Upon completion of a project, the company will pay over to the developer the estimated cost of providing overhead electrical distribution facilities for such project. In the event the P.U.C. makes this payment procedure inappropriate by instituting changes in its rules governing electrical distribution (presently Rule 31), then upon completion of a project, the company will pay over to the developer the amount which the P.U.C. allows the company to capitalize for the project under rules adopted and tariffs then approved by the P.U.C. The company will make such payment in cash after deducting the company's project costs. Upon such completion and payment, the developer will transfer ownership of the project to the company. (Ord. No. 5240, 7-22-85)

**Sec. 12-8-5. Use of designated contractor.**

A developer may at its option use the designated contractor or company for the installation of a project. (Ord. No. 5240, 7-22-85)

**CHAPTER 9**

**Special Districts to Provide Maintenance of Public Improvements**

**Sec. 12-9-1. Legislative intent.**

(a) The City Council declares that the organization of special improvement districts within the City to provide maintenance of public improvements as defined in this Chapter will serve a public use and will promote the health, safety, prosperity, security and general welfare of the inhabitants of such districts and of the people of the City.

(b) The City Council further declares that the procedures contained in this Chapter are necessary for the coordinated and orderly creation of special districts for maintenance of public improvements within the City. (Ord. No. 6573, 8-28-00)

**Sec. 12-9-2. Definitions.**

As used in this Chapter, unless the context otherwise requires:

(1) *Eligible elector* means a person who, at the designated time or event, is registered to vote pursuant to the Pueblo Election Code, and

a. Who has been a resident of the special district for not less than thirty (30) days; or

b. Who or whose spouse owns taxable real property situated within the boundaries of the special district or area to be included in the special district, whether said person resides within the special district or not.

(2) *Public improvements* or *improvements* means public improvements of general benefit to the residents and real property owners within a special district, whether such improvements are publicly dedicated or privately owned by an organization of residents of the special district, such as a homeowners' or merchants' association and may include parks, open spaces, trails, bicycle paths, landscaping, fencing, pillars, street medians, entry islands, utility rights-of-way, irrigation facilities and associated water system improvements, theme areas and neighborhood theme signage, which will be located primarily, but not exclusively, on and along the public streets within the district, and for which the City would not normally provide maintenance.

(3) *Special district* or *district* means a special district organized and existing pursuant to the provisions of this Chapter to provide maintenance of public improvements. (Ord. No. 6573, 8-28-00)

**Sec. 12-9-3. Purpose.**

The City Council shall have the power and authority to establish, by ordinance, special districts for the purpose of maintenance of public improvements. (Ord. No. 6573, 8-28-00)

**Sec. 12-9-4. Organization.**

The organization of a district shall be initiated only by a petition filed with the City Clerk. The petition shall be signed by not less than a majority of persons who own real property in the district. For purposes of this Section, a corporation, limited liability company, partnership or other legal entity shall be considered one (1) person. After the filing of a petition, no signer shall be permitted to withdraw his or her name from the petition. (Ord. No. 6573, 8-28-00)

**Sec. 12-9-5. Contents of petitions.**

The petition shall set forth:

(1) The name of the proposed district.

(2) A legal description of the boundaries of the district with such certainty as to enable the County Assessor and owners of property to determine whether or not specific property is within the district.

(3) A general description of the public improvements to be maintained within the district.

(4) The estimated yearly cost of maintaining the public improvements.

(5) The mill levy required by the district to meet the cost of maintaining the public improvements.

(6) A request for organization of the district. (Ord. No. 6573, 8-28-00)

**Sec. 12-9-6. Validity.**

Any petition having the requisite signatures shall be valid if in substantial compliance with the requirements of Section 12-9-5. The City Council may at any time permit the petition to be amended to correct any errors in the description of the district or in any other particular. (Ord. No. 6573, 8-28-00)

**Sec. 12-9-7. City Council action.**

(a) After the filing of the petition, the City Council shall set a date not less than thirty (30) or more than sixty (60) days after the petition is filed for a hearing thereon. The City Clerk shall cause a notice of the hearing to be published at least ten (10) days prior to the hearing. The City Clerk shall also mail a copy of the notice of the hearing to each owner of record of real property within the proposed district. The notice of hearing shall set forth the boundaries of the proposed district, the fact that all property in the district will be subject to a mill levy, and shall set forth the amount of the mill levy required to meet the cost of maintaining the improvements as set forth in the petition.

(b) If the petition is signed by one hundred percent (100%) of the persons who own real property in the proposed district, the City Council may, at its discretion, act upon the petition without the necessity for notice, publication or public hearing set forth in Subsection (a) of this Section and Section 12-9-8. (Ord. No. 6573, 8-28-00)

**Sec. 12-9-8. Hearing.**

Upon the hearing, or if the petition is signed by one hundred percent (100%) of the persons who own real property in the proposed district, without such hearing, the City Council may by ordinance establish the district if it appears that the petition has the requisite number of signatures, and that the allegations of the petition are true. If the City Council determines that the petition has not been signed by the requisite number or if in the opinion of the City Council the proposed mill levy is excessive in relation to the benefit conferred, it shall dismiss the petition. The finding of the City Council on accepting or dismissing a petition shall be final and conclusive, and no appeal shall lie from a determination to accept or dismiss the petition; provided, however, that nothing in this Section shall be construed as preventing the filing of subsequent petitions for similar improvements or a similar district. In establishing a district, the City Council shall determine the public improvements to be maintained, and shall fix a rate of mill levy which, when levied upon every dollar of the valuation for assessment of taxable real property within the district, shall raise the amount required by the district during the ensuing fiscal year to meet the cost of maintaining the public improvements. (Ord. No. 6573, 8-28-00)

**Sec. 12-9-9. Election.**

The organization of a district and the imposition of a mill levy shall not become effective until approved by majority vote in favor thereof by the registered electors of the district voting thereon at a ballot issue election held for that purpose pursuant to applicable laws. (Ord. No. 6573, 8-28-00)

**Sec. 12-9-10. Termination.**

A district so organized shall continue in effect until terminated by the City Council by ordinance initiated by resolution of the City Council or pursuant to a petition signed by not less than a majority of persons who own real property in the district requesting such termination filed with the City Clerk. The City Council shall set a date not less than thirty (30) nor more than sixty (60) days after adoption of the resolution or the petition is filed for a hearing thereon. The City Clerk shall cause a notice of the hearing to be published at least ten (10) days prior to the hearing. The City Clerk shall also mail a copy of the notice of hearing to each owner of record of real property within the district. Upon the hearing the City Council shall determine whether to dissolve the district or keep the district in effect. If the City Council determines to dissolve the district, it shall by ordinance declare the district dissolved on December 31 of the calendar year during which such ordinance is adopted, and the City Council shall not fix a mill levy for the ensuing fiscal year. The finding of the City Council on dissolving the district or keeping the district in effect shall be final and conclusive, and no appeal shall lie from such a determination. If the City Council determines to keep the district in existence, no further action to dissolve the district shall be considered for one (1) year. (Ord. No. 6573, 8-28-00)

**Sec. 12-9-11. Annual levy.**

(a) As long as the district shall remain in effect, the City Council shall, no later than December 1 of each fiscal year, determine for the ensuing fiscal year the public improvements to be maintained, the amount of money necessary to be raised by a levy of taxable real property in the district, shall fix a rate of levy which, when levied upon every dollar of the valuation for assessment of taxable real property within the district, shall raise the amount required by the district during the ensuing fiscal year to meet the cost of maintaining the public improvements. If the rate of levy so calculated for the ensuing fiscal year shall exceed the rate of levy for the current fiscal year, a ballot issue election shall be held during the state general election, the City general election or on the first Tuesday in November of odd-numbered years, as may be applicable, to determine whether the mill levy shall be increased from that of the current year to the amount calculated for the ensuing fiscal year.

(b) In accordance with the schedule prescribed by statute, the City Council shall certify to the Board of County Commissioners of the County, the mill levy rate as fixed in order that, at the time and in the manner required by law for levying of taxes, such Board of County Commissioners shall levy such tax upon the valuation of all taxable real property within the district. (Ord. No. 6573, 8-28-00; Ord. No. 7250, §1, 12-27-04)

**Sec. 12-9-12. Boundaries.**

The boundaries of any district organized under this Chapter may be changed in the manner prescribed in this Section. The owners of property proposed to be included in, or excluded from, the district, or if more than one (1) tract of property, not less than a majority of persons who own the real property sought to be included, or excluded, may file a petition with the City Clerk requesting that such property be included in, or excluded from, the district. The petition shall describe the property owned by the petitioners and shall be verified. The City Clerk shall cause a notice of hearing on said petition to be published at least ten (10) days prior to the hearing on the petition by the City Council, which notice shall state the filing of such petition, names of petitioners and descriptions of property sought to be included or excluded. The City Clerk shall also mail a copy of said notice to each owner

of record of real property sought to be included in, or excluded from, the district. The City Council, at the time and place mentioned, shall proceed to hear the petition and any objections thereto. If the petition for exclusion is granted, the City Council shall adopt an ordinance excluding the area from the district effective December 31 of the calendar year in which the ordinance is adopted. The ordinance excluding area from the district shall be final and binding. If the petition for inclusion is granted, the City Council shall adopt an ordinance to that effect. Thereafter, if the eligible electors within the area proposed to be included in the district approve such inclusion and mill levy fixed by the City Council by affirmative vote at a ballot issue election held for that purpose pursuant to applicable law, said property shall be included in the district. (Ord. No. 6573, 8-28-00)

**Sec. 12-9-13. Tax liens.**

All taxes levied pursuant to the provisions of this Chapter together with interest thereon and penalties for default in payment thereof, and all costs of collecting the same shall constitute a perpetual lien on and against the real property taxed until paid in full, and such lien shall be on a parity with the tax lien of other general taxes. (Ord. No. 6573, 8-28-00)

**Sec. 12-9-14. Governing body and advisory committee.**

The City Council shall be the governing body of any district created under this Chapter. The City Manager shall appoint an advisory committee consisting of owners of real property within the district and representatives of City's Departments to advise the City Council on the public improvements within the district to be maintained and any other matters concerned with the operation of the district. (Ord. No. 6573, 8-28-00; Ord. No. 7049 §1, 9-22-03)

**Sec. 12-9-15. Obligations of City.**

Neither the organization of any district nor any provision of this Chapter shall impose any obligation on the City to provide maintenance within any such district to a higher degree or greater than that provided elsewhere in the City or to expend funds for maintenance in excess of the revenues received from district mill levies. (Ord. No. 6573, 8-28-00; Ord. No. 7049 §1, 9-22-03)

**Sec. 12-9-16. Notice, formation of district.**

(a) When any petition for the organization of a district is filed with the City Clerk, the City Clerk shall immediately, in writing, notify the County Assessor, the Board of Commissioners and the Colorado Division of Local Government of the filing, and such notice shall specify the boundaries of the proposed district.

(b) Immediately upon the organization of the district, the City Clerk shall notify the County Assessor and the Board of Commissioners of the district's organization and provide them with the following:

- (1) A certified copy of the ordinance creating the district;
- (2) Official notice that a tax will be levied for the calendar year in which the district has been organized or the subsequent calendar year thereafter;

- (3) A legal description of the district; and
- (4) A map of the district. (Ord. No. 7065, 10-27-03)