

TOWN OF ADDISON, TEXAS

ORDINANCE NO. 006-036

AN ORDINANCE OF THE TOWN OF ADDISON, TEXAS AMENDING THE CODE OF ORDINANCES OF THE CITY BY AMENDING APPENDIX B, SUBDIVISIONS THEREOF (THE SAME BEING ORDINANCE NO. 261, AS AMENDED) BY ADDING A NEW SECTION VII-A REGARDING PRIVATE STREET REGULATIONS AND STANDARDS; PROVIDING FOR CERTAIN ADMINISTRATIVE PROCEDURES; PROVIDING GUIDELINES FOR A PRIVATE STREET DEVELOPMENT; PROVIDING CERTAIN GENERAL AND SPECIFIC REQUIREMENTS; PROVIDING FOR THE CREATION OF A PROPERTY OWNERS' ASSOCIATION AND REGULATIONS RELATED THERETO; PROVIDING PROCEDURES FOR CONVERSION OF PRIVATE STREETS TO PUBLIC STREETS, AND PUBLIC STREETS TO PRIVATE STREETS; PROVIDING FOR OTHER MATTERS RELEVANT TO PRIVATE STREETS; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS:

Section 1. Amendment. The Code of Ordinances ("Code") of the Town of Addison, Texas ("City") is hereby amended by amending Appendix B – Subdivisions thereof (the same begin Ordinance No. 261, as amended) in the following particulars, and all other chapters, sections, subsections, paragraphs, sentences, phrases and words of the Code are not amended but are hereby ratified, verified, approved and affirmed:

A. Appendix B – Subdivisions is hereby amended by adding thereto a new Section VII-A regarding private streets as set forth on Exhibit A attached hereto and incorporated herein.

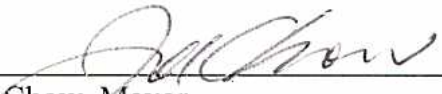
Section 2. Savings. This Ordinance shall be cumulative of all other ordinances of the City and shall not repeal any of the provisions of those ordinances or of the Code except in those instances where the provisions of those ordinances or of the Code are in direct conflict with the provisions of this Ordinance.

Section 3. Severability. The sections, paragraphs, sentences, phrases, clauses and words of this Ordinance are severable, and if any section, paragraph, sentence, phrase, clause or word in this Ordinance or application thereof to any person or circumstance is held invalid or unconstitutional by a Court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this Ordinance, and the City Council hereby declares that it would have passed such remaining portions of

this Ordinance despite such invalidity, which remaining portions shall remain in full force and effect.

Section 4. Effective Date. This Ordinance shall take effect immediately from and after its passage.

PASSED AND APPROVED by the City Council of the Town of Addison, Texas this 8th day of August, 2006.



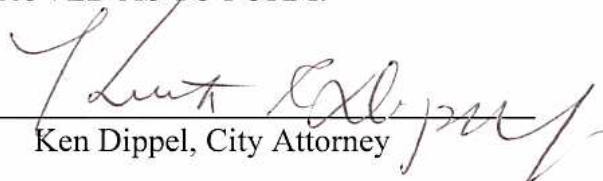
Joe Chow, Mayor

ATTEST:

By: 

Carmen Moran, City Secretary

APPROVED AS TO FORM:

By: 

Ken Dippel, City Attorney

Published:
08/17/06

EXHIBIT A
to Ordinance No. 006-036

Section VII-A. Private Street Regulations.

A. *Planned Development Districts.* Private streets shall be prohibited except in Planned Development zoning districts ("PD District") approved by the City Council. The location of each private street development will be subject to the approval of the City Council on a case-by-case basis, based on, among other matters, the criteria described in this Section. An applicant who meets the criteria set forth in this Section will not be entitled to private streets within a PD District as a matter of right, but shall only obtain approval for the private streets at the sole discretion of the City Council.

B. *Definitions.* For purposes of this Section, the following words, except where the context clearly indicates otherwise, shall be defined as follows:

1. *Applicant* means the owner(s) of all of the lots in the proposed subdivision or property owners' association, as the context allows.
2. *Private street* means a platted street providing limited local traffic circulation among adjacent lots which is privately owned and maintained, contained within a private street lot, and constructed in accordance with the requirements of this Section and all other applicable ordinances, standards, and regulations. The term "private street" shall be inclusive of private alleys.
3. *Private street lot* means a separate tract, typically termed a common area, owned by the property owners' association whereupon a private street is constructed.

C. *Qualifying Criteria.* The area to be considered for private streets:

1. may not impede the current or future street circulation needs of the area or other portions of the City, especially, without limitation, any needed collector or arterial street route, or adequate access to any adjoining tract;
2. may not disrupt an existing or proposed public pedestrian pathway, hike and bike trail or park; and
3. must have direct access to an undivided collector (C2U) with a minimum fifty (50) foot right-of-way.

D. *General Requirements.*

1. A private street system must comply with all design, construction, and other standards of the Town of Addison including, without limitation, this Appendix B – Subdivisions of the Code of Ordinances applicable to streets and alleys generally (including the provisions of Section XVI of this Appendix B – Subdivisions). Without limiting the foregoing, all references in this Appendix B – Subdivisions and other applicable regulations to "street," "public street," "right-of-way," "public right-of-way," or "alley" shall apply to a private street system.
2. A private street system must provide access for emergency vehicles, public and private utility maintenance and service personnel, the U.S. Postal Service, and government employees in pursuit of their official duties.
3. A proposed private street subdivision should not result in an over-concentration of such developments as determined by the City Council in its sole discretion.
4. A proposed private street subdivision will be evaluated to assess its impact on the efficiency, convenience, and safe function and implementation of the City's Master Thoroughfare Plan. Conflicts with the Master Thoroughfare Plan will require changes to the proposed private street subdivision and may result in the denial or revocation of a PD (planning development) zoning district.
5. The City shall not pay for any portion of the cost of constructing, maintaining, repairing, or replacing a private street.

E. *Specific Requirements.* Each area being considered for private streets shall comply with the following:

1. Each plat containing any private street shall contain the following wording on the face of the plat: "The streets have not been dedicated to the public, for public access, nor have been accepted by the Town of Addison, Texas as public improvements, and the streets shall be maintained by the property owners' or property owners' association within the subdivision, and the streets shall always be open to emergency vehicles, public and private utility maintenance and service personnel, the U.S. Postal Service, and governmental employees in the completion of their official duties."

Private streets, leading into a private subdivision, may not contain a gate or a controlled access mechanism at the entrance or exit of the private subdivision preventing free flow of traffic.

2. All building lines as required by zoning shall, in the case of private streets, be measured from the public utility and storm sewer easement.

3. Private streets and alleys shall be located in a "public utility and storm sewer easement." The width of the easement shall be the same as the required right-of-way for a public street, unless specifically approved at a lesser width by the City Council upon a recommendation by the City's Director of Public Works..
4. Easements – private street developments shall provide the following easements:
 - (a) "public utility and storm sewer" easements containing private streets and public utilities.
 - (b) Additional public utility easements required by public agencies.
 - (c) Pre-existing easements unaffected by the platting process.
 - (d) Such private service easements, including but not limited to, utilities, fire lanes, street lighting, government vehicle access, mail collection and delivery access, and utility meter reading access, as may be necessary or convenient.
5. Access – except where substantial existing natural or man-made barriers would render the requirement unreasonable as determined by the City, each such development should have direct access to a two-lane collector street (40-foot pavement width), unless a lesser width two-lane collector is determined adequate by the City due to an absence of the need for on-street parking (but in no case shall the pavement width be less than 24 feet without the express written approval of the City's Fire Chief), in addition to any access to one or more arterial streets that may be proposed. Any private street development of such limited size that it does not require direct collector street access for appropriate traffic service may instead, as determined by the City, have access to a collector street within the neighborhood by way of another local street.
6. Site Plan – for each private street development and in connection with the review and consideration of approval thereof, a site plan shall be submitted to the City Council, which shall include the information and materials required for a development plan as set forth in Article XV, Section 5 of the Zoning Ordinance of the Town (contained in Appendix A – Zoning of the Code of Ordinances), as amended or superseded, and shall further include the following:
 - (a) illustration of fencing, the entryway, and the location of any other items within the private street development, and a rendering of the elevation of any other proposed structures, including a description

of proposed building materials, roof pitches, signage, and such other items as the City staff may request (said rendering of elevation of proposed structures does not refer to residential structures, but rather to other structures that are components of the private street development);

- (b) illustration of items outside the private street development such as, but not limited to, entrance area, barriers, perimeter walls, exterior landscaping, and other elements as required by City staff;
- (c) illustrate the relationship of the development to the qualifying criteria set forth in this Section;

7. A private street and alley shall include and be subject to all public utility (including, without limitation, water and sanitary sewer) and storm sewer easements in favor of and reserved unto the Town of Addison, the width of which shall be the same as the entire width of the street or alley right-of-way. In addition, a private street or alley shall include and be subject to all additional public utility easements required by any utility company (including, without limitation, any electric, telephone, gas, or cable television companies or providers) or public agency, as well as any easements existing at the time of the creation of the private street or alley. Additionally, there shall be reserved other easements, including but not limited to easements for fire lanes, street lighting, government vehicle access, mail collection and delivery access, and utility meter reading access, as may be necessary or convenient. The easement shall also provide the City with the right of access for any purpose related to the exercise of a governmental service or function, including but not limited to fire and police protection, inspection and code enforcement. The easement shall permit the City to remove any vehicle or obstacle within the street lot that impairs emergency access. Private streets and alleys may be required to have fire lane markings as determined by the City's Fire Marshal.

8. In connection with the approval of a subdivision with private streets or alleys, the applicant shall provide, in form and content acceptable to the City, an agreement to be recorded in the appropriate records of Dallas County, whereby the applicant or the property owners' association, as the case may be, as the owner of the private streets and alleys, agrees to release, defend, indemnify, and hold harmless the Town of Addison, its officials, officers, employees, and agents, and any other governmental entity and public utility, and their respective officials, officers, employees or agents, for any damage to the private street or alley occasioned by the use thereof by the City, governmental entity or public utility (or their respective officials, officers, employees, and agents), and for damages and injury (including death) arising from the condition of said private street or

alley; and for damages and injury (including death) arising out of any use of the subdivision by the City, government entity or public utility (or their respective officials, officers, employees, and agents). Further, such language shall provide that all lot owners shall release and forever discharge the Town, governmental entities and public utilities (and their respective officials, officers, employees, and agents) for such damages and injuries. The indemnifications contained in this subsection apply regardless of whether or not such damages and injury (including death) are caused by the negligent act or omission of the City, governmental entity or public utility, or their respective officials, officers, employees or agents.

F. *Property Owners' Association.*

1. *Property Owners' Association Required.* Subdivisions with private streets shall have a property owners association.
 - (a) The property owners' association shall own and be responsible for the maintenance, repair, and replacement of private streets, alleys, and appurtenances, which shall be maintained, repaired, and replaced in accordance with the ordinances, codes, standards, rules, and regulations of the City for public streets, alleys, and appurtenances.
 - (b) The Town of Addison has no obligation to inspect, maintain, repair, or replace a private street or alley, but repair, maintenance, and replacement plans shall, prior to repair, maintenance or replacement work being performed, be submitted to the Town for review, and the approval of the same, if given by the Town, shall not constitute nor be deemed a release of the responsibility and liability of the property owners' association or any of the owners of property within the subdivision or area, nor of the engineer or other design professional that prepared or approved the same, and their employees, contractors, subcontractors, agents and engineers for the accuracy and competency of such designs, working drawings, specifications or other documents and work, nor shall such approval be deemed to be an assumption of or an indemnification for such responsibility or liability by the Town for the designs, working drawings, specifications or other documents or work or for any defect, error or omission therein.
 - (c) Inspection fees will apply to all repair, maintenance, and replacement work.
 - (d) The property owners' association shall provide for the payment of dues and assessments required to maintain, repair, and replace the private streets and alleys. Lot deeds must convey membership in

the property owners' association and provide for and require the payment of dues and assessments required by the property owners' association. The property owners' association documents must be acceptable to the City Council, after review by City staff, and after the recommendation of the Planning and Zoning Commission, at the time of final plat approval. The approved documents must be filed for record contemporaneously with the filing of the final plat in the appropriate County records.

2. *Reserve Fund.* The property owners' association documents must establish a reserve fund for the maintenance, repair, and replacement of private streets and other improvements such as common greenbelts, walls, fences and other barriers, and other significant property owners association infrastructure ("Reserve Fund"). This Reserve Fund shall not be commingled with any other property owners' association funds. The balance of the Reserve Fund shall at all times be equal to the total replacement cost of the private streets and other improvements divided by the average life expectancy of those improvements times the age of the improvements. The life expectancy for a subdivision with concrete streets shall be a minimum of twenty (20) years.
 - (a) The property owners' association shall have an annual review performed by an independent certified public accounting firm verifying the amount in the Reserve Fund. The replacement cost will be updated each year to current costs. A copy of this review shall be promptly provided to the Town upon its completion.
 - (b) If for any reason the private streets are converted to public streets, the Reserve Fund shall become the property of the Town, and the property owners' association documents shall so provide.
3. *Allowance.* The property owners' association's covenants shall contain provisions that allow the Town of Addison, at its sole election, to assume the duty of performing the maintenance, repair, or replacement obligations of the streets, alleys, and appurtenances should the property owners' association dissolve or in any way fail or refuse to maintain its obligations regarding the private streets, alleys, and appurtenances. The covenants shall further provide that the City may use the outstanding balance in the Reserve Fund for maintenance, repair or replacement or in addition thereto and/or in the alternative, levy an assessment upon each lot on a pro rata basis for the cost of such maintenance, repair, or replacement and to collect the same, whether by foreclosure or otherwise. To this extent, the City shall be made a third party beneficiary of and party to the property owner association's covenants.

4. *Membership Requirements.* Every lot owner within the private street development shall be a member of the property owners' association, and every lot shall be subject to covenants and/or restrictions pertaining to the subdivision and to the property owners' association.
5. *Required Disclosures.* The property owners' association documents shall address and include, but shall not be limited to, the following:
 - (a) The property owners' association documents must indicate that the streets, alleys, and appurtenances within the development are private, owned and maintained by the property owners' association, and that the Town of Addison has no obligation or duty to construct, maintain, repair, or reconstruct the private streets, alleys, and appurtenances.
 - (b) The property owners' association documents shall include a statement indicating that the Town of Addison may in its sole discretion, but is not obligated to, inspect private streets and require repairs or replacement necessary to insure that the same are maintained to City standards.
 - (c) The property owners' association documents shall include a statement that the property owners' association may not be dissolved without the prior written consent of the City; nor may the property owners' association stop collection of fees or assessments for the Reserve Fund without such consent.
 - (d) The section called "Mandatory Conversion" of this Section shall be included in the property owners' association documents, to increase the opportunity for awareness of mandatory conversion of private streets to public streets.
 - (e) Assessment for Repairs – Assignment of property owners' association lien rights: The property owners' association declaration shall provide that should the property owners' association fail to carry out its duties as specified in these regulations and as further specified in the property associations documents, the Town of Addison and/or its lawful agents, shall have the right and ability, in their sole discretion, after due notice to the property owners' association, to perform the responsibilities of the property owners' association if the property owners' association fails to do so in compliance with any of the provisions of the regulations set forth in this Section (as amended or superseded) or of any applicable City ordinances, codes, regulations, standards, rules, or agreements with the City and to assess the property owners' association and/or the lot owners for all costs incurred by the City in performing said responsibilities if the

property owners' association fails to do so, and the City shall further have any and all liens and lien rights granted to the property owners' association to enforce the assessments required by the declaration; and/or to avail itself of any other enforcement actions available to the City pursuant to state or city codes, ordinances, and regulations. The property owners' association documents (declaration) shall further provide that the City may also in such an instance use the outstanding balance in the Reserve Fund for maintenance, repair or replacement. No portion of the property owners' association documents pertaining to the maintenance, repair, or replacement of the private streets, alleys, and appurtenances may be amended without the written consent of the Town of Addison.

- (f) **Services Not Provided.** The property owners' association documents, all property deeds, and the final plat shall note that certain Town of Addison services shall not be provided on private streets. Among the services which will not be provided include: routine police patrols, enforcement of traffic and parking ordinances, and preparation of accident reports. All private traffic regulatory signs shall conform to the Texas Manual of Uniform Traffic Control Devices. Depending on the characteristics of the proposed development other services may not be provided, as determined by the Town. However, any portion of a private street or alley marked as a fire lane shall be subject to enforcement of applicable laws, ordinances, codes, and regulations relating to fire lanes.
- (g) **Access Required.** The property owners' association documents shall contain a provision that requires access to emergency vehicles, utility personnel, the U.S. Postal Service, and governmental employees in pursuit of their official duties.

G. *Conversion of Private Streets to Public Streets.*

- 1. *Voluntary conversion.* The City may in its sole discretion, but is not obligated to, accept private streets and alleys for public ownership, access and maintenance. The procedure to convert private streets and alleys to public streets and alleys must conform to all of the following provisions and such other standards as the City may determine:
 - (a) The property owners' association must submit a petition signed by at least seventy-five percent (75%) of its members (or a greater number of signatures if required by the property owners' association document).

- (b) All of the infrastructure to be converted from private to public status must be in a condition that is acceptable to the City, in the City's sole discretion.
 - (c) All monies in the Reserve Fund must be delivered and paid to the City.
 - (d) The subdivision plat covering the area which is the subject of the conversion must be submitted as a replat, and upon approval shall be re-filed to dedicate the streets, alleys, utility, storm sewer easements, and other appurtenances to the City or other appropriate entity, as determined by the City.
 - (e) The property owners' association documents must be modified and re-filed to remove requirements specific to private street subdivisions.
2. *Mandatory conversion.* The City will notify the property owners' association of violations of the private street regulations, including the standards and provisions set forth in this Section. Failure to bring the subdivision into compliance with the regulations may cause the City to revoke, amend, or modify the PD District zoning for the area covered by the private streets and alleys, including, without limitation, an amendment to remove the allowance for private streets and alleys under the PD District zoning.

If the PD District zoning is so amended, modified, or revoked, the City may correct all remaining violations and unilaterally re-file the subdivision plat thereby dedicating the streets, alleys, and appurtenances to the public. All monies in the Reserve Fund will become the property of the City and will be used to offset any costs associated with converting the private streets to public streets. In the event the balance is not sufficient to cover all expenses, the property owners' association and/or the property owners will be responsible for the amount of unpaid work, and the City shall have the right, in addition to any other rights it has or may have to collect such amounts from the property owners' association and/or the property owners, to levy an assessment upon each lot on a pro rata basis for the cost of such work and to collect the same, and the City shall further have any and all liens and lien rights granted to the property owners' association to enforce such assessments; and/or to avail itself of any other enforcement actions available to the City pursuant to state or city codes, ordinances, and regulations. Provisions to this effect shall be included in the property owners' association documents, all property deeds, and the final plat.

H. *Conversion of public streets to private streets.* For the streets and alleys of an existing platted subdivision to become private:

1. The property owner association for such subdivision must submit to the City a written petition signed by 100% of its members and all property owners within the subdivision or area requesting the conversion of public streets and alleys within the subdivision to private streets and alleys (the form for such petition shall be approved by the City Secretary);
2. An applicant must purchase installed infrastructure and right-of-way from the Town of Addison, and establish a Reserve Fund in accordance with this Section; and
3. The applicant must comply with such other requirements or conditions as may be required by the City Council in its sole discretion.