

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE AMENDING TITLE XI, "PLANNING AND DEVELOPMENT", CHAPTER 2, "PLATS AND SUBDIVISIONS", OF THE CITY CODE OF MIDLAND, TEXAS, SO AS TO ADD A NEW SECTION 11-2-8, "DEVELOPMENT PLATS"; PROVIDING A DEFINITION OF "DEVELOPMENT"; REQUIRING THE APPROVAL OF A DEVELOPMENT PLAT AS A PRECONDITION OF DEVELOPMENT WITHIN THE CITY OF MIDLAND AND ITS EXTRATERRITORIAL JURISDICTION; PROVIDING FOR EXCEPTIONS TO THE DEVELOPMENT PLAT REQUIREMENT; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF FIVE HUNDRED DOLLARS (\$500.00); ESTABLISHING AN EFFECTIVE DATE OF DECEMBER 1, 2009; AND ORDERING PUBLICATION.**

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

**WHEREAS**, the City of Midland has adopted Subdivision Ordinance Regulations, to regulate the platting and development of properties within the City and its extraterritorial jurisdiction (ETJ); and

**WHEREAS**, the City Council of the City of Midland has now determined that it is in the public interest to amend the Subdivision Regulations to require, with certain exceptions, the approval of a development plat as a precondition to development of property within the territorial limits of the City and its ETJ; and

**WHEREAS**, the regulations set forth herein are adopted pursuant to Subchapter B of Chapter 212 of the Texas Local Government Code; and

**WHEREAS**, the City Council finds that the regulations set forth herein are necessary to promote the health, safety, morals, or general welfare of the City and the ETJ and the safe, orderly, and healthful development of the City and the ETJ; and

**WHEREAS**, the City Council has given published notice and held public hearings concerning this amendment of the Subdivision Ordinance as required by law;

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

**SECTION ONE.** That the preambles stated above are hereby adopted, approved, and incorporated into this ordinance by reference and made applicable hereto with the same force and

effect as if the same were copied fully in this ordinance.

**SECTION TWO.** That Title XI, "Planning and Development," of Chapter 2, "Plats And Subdivisions," of the City Code of Midland, Texas, is hereby amended by adding a new Section 11-2-8, "Development Plats," which shall read as follows:

**11-2-8            Development plats**

(A) *Authority.* This section is adopted pursuant to Texas Local Government Code, Chapter 212, Subchapter B, Sections 212.041 to 212.050, as amended.

(B) *Applicability.* For purposes of this section, the term "development" means the construction of any building, structure or improvement of any nature (residential or nonresidential), including, but not limited to, any activity governed by Title VI, Chapter 1, Section 21 of the City Code, or the enlargement of any external dimension thereof. Except as provided herein, this section shall apply to any land lying within the City or within its extraterritorial jurisdiction.

(C) *Prohibition on development.* No development shall commence, nor shall any building permit, utility connection permit, electrical connection permit or similar permit be issued, for any development or land division subject to this section, until a development plat has been approved by the Planning and Zoning Commission and City Council and filed with the City Secretary.

(D) *Exceptions.* No development plat shall be required where the land to be developed:

1. has previously received final plat approval in the manner prescribed by this Chapter;
2. is located entirely outside the territorial limits of the City and the first one half (1/2) mile of its extraterritorial jurisdiction; or
3. is located within the first one half (1/2) mile of the extraterritorial jurisdiction of the City, has received final permitting approval from the Texas Railroad Commission for the drilling of an oil and gas well on or prior to the effective date of this Ordinance, and commencement of drilling operations for the well occurs within six months from the effective date of this Ordinance. Each oil and gas well shall be considered separately for purposes of this exception. For the purposes of this subsection, the "commencement of drilling operations" means penetration of the surface with a drilling rig capable of drilling to the anticipated total depth of the well.

(E) *Standards of approval.* The development plat shall not be approved until the proposed development:

1. conforms to all City plans, including, but not limited to, the Comprehensive Plan (2025) of the City;
2. conforms to the requirements of the zoning ordinance (for property located within the City);
3. is adequately served by public improvements, facilities and services in conformance with this Chapter;
4. conforms to the design and improvement standards contained in the City's subdivision regulations, design construction manuals and other applicable ordinances; and
5. conforms to the requirements of Title XI, Chapter 2, Section 4 of the City Code, with regard to the construction and dedication of necessary on-site and off-site public improvements.

(F) *Conditions.* The Planning and Zoning Commission and City Council may impose such conditions on the approval of the development plat as are necessary to assure compliance with the standards in subsection (E) above.

(G) *Land Study Requirement.* Whenever a property owner proposes the development of property greater than five (5) acres in size, the developer shall submit a study defining the layout of streets, utilities, drainage, lots, open spaces, easements, and other elements required to produce a developable addition together with his application for approval of a development plat. However, this subsection applies to all applications for an oil and gas permit no matter if the size of the development is less than five (5) acres.

(H) *Approval Procedure.* The application for a development plat shall be acted upon by the City Council following review and action by the Planning and Zoning Commission. Upon approval the development plat shall be filed in the Office of the City Secretary.

(I) *Submittal requirements.*

1. Each development plat shall:
  - (a) Be prepared by a registered professional land surveyor;
  - (b) Clearly show the boundary of the development plat;

- (c) Show each existing or proposed building, structure or improvement or proposed modification of the external configuration of the building, structure or improvement involving a change therein;
- (d) Show all easements and rights-of-way within or adjacent to the development plat;
- (e) Show those activities described in Title VI, Chapter 1, Section 21 of the City Code, including the location of the proposed drill site, access roads, flow lines and other lease facilities, regardless of whether the activities are located within the territorial limits of the City or the first one half (1/2) mile of its extraterritorial jurisdiction;
- (f) Be signed by the surface owner(s) and the owner(s) of at least 67% of the mineral estate, and accompanied by a title opinion prepared by an attorney licensed by the State of Texas, or a take-off prepared by a certified petroleum landman or a title commitment prepared by an abstract company, indicating that the purported mineral owners in fact own the requisite interest in the mineral estate required by this subsection.

2. A development plat application shall not be considered "filed" with the City, for purposes of Section 212.009 of the Texas Local Government Code, until the minimum submittal requirements set forth above are met. Any development plat not meeting the minimum submittal requirements shall be rejected as administratively incomplete.

3. A developer who is unable to comply with Subsection 1(f), above may petition the City Council to waive this requirement upon a showing that: (1) a diligent effort has been made to secure the required signature(s) and (2) that forty-five days have elapsed since a written request to sign the development plat was made to the surface or mineral owners, as applicable, and the request has been ignored or refused.

After hearing from the developer the City Council may:

- (1) waive or modify the requirements in Subsection 1(f) and determine that the plat is filed for the purpose of Section 212.009 of the Texas Local Government Code;

- (2) refuse to waive or modify the requirements of Subsection 1(f) and require further negotiation by the parties; or
- (3) refuse to waive or modify the requirements of Subsection 1(f) leaving parties to seek a judicial remedy.

Based on a recommendation by the Oil and Gas Advisory Committee of the City of Midland, the City Council may propose a surface location for those activities governed by Title VI, Chapter 1, Section 21 of the City Code.

(J) *Plat.* The filing and approval of a Development Plat does not exempt the owner from having to file and get approval of a preliminary or final plat where required by the Midland City Code. A Development Plat does not constitute a "plat" for the purposes of Title XI, Chapter 2, Section 1 of the Midland City Code.

**SECTION THREE.** The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

**SECTION FOUR.** If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

**SECTION FIVE.** The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding five hundred dollars (\$500.00). Each day a violation occurs constitutes a separate violation.

**SECTION SIX.** The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by law as an alternative method of publication.

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member \_\_\_\_\_, seconded by Council member \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, A.D., 2009, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS \_\_\_\_\_ day of \_\_\_\_\_, A.D., 2009.

\_\_\_\_\_  
W. Wesley Perry, Mayor

ATTEST:

\_\_\_\_\_  
Kaylah J. McCord, City Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
Keith Stretcher, City Attorney