

Model Rules (2004) Checklist - County Version

The checklist below is to be used during a county's review of a proposed residential subdivision plat to help determine whether the requirements of the Model Rules have been met. Under authority set out in § 16.343 of the Texas Water Code, the Texas Water Development Board adopted the Model Subdivision Rules to assure that residential developments have water and wastewater facilities meeting minimum state standards. As revised 2/10/2000 and updated 2/10/2004 and codified in Chapter 364 of Title 31 of the Texas Administrative Code, the rules apply in Texas counties near the Texas-Mexico border and in various economically-distressed counties elsewhere in Texas.

Many cities in these counties have also adopted the Model Rules verbatim (except for a few modifications to substitute the city for the county), and this checklist can be used, with slight modification here and there, by those cities. Other cities have instead incorporated into their subdivision ordinances provisions basically equivalent to the Model Rules (as provided in 31 TAC 364.90-.91), and pertinent parts of this checklist can be adapted for their use.

Note that this checklist is limited to requirements under the Model Rules. It does not attempt to include platting requirements under the Texas Local Government Code (see especially Chapter 232 for counties, and Chapter 212 for cities) or other state laws or local platting rules.

GUIDE TO USING THE CHECKLIST

This checklist assumes that the county has kept a list or “log” of the documents submitted during the review of the subdivision. The log should have a short description of each document, the date it was received, the logger's initials, and a unique sequential number (the log #) for that document. A form for such a log appears after the end of this checklist.

At the end of each checklist item is a reference to the section(s) of the Model Rules (as contained in 31 TAC Chapter 364) related to that item. Next to each item on this checklist are four spaces to be filled in. The status of an item is “YES,” “INC” (for “Incomplete”), “NO” (or blank), or “NA” (for “Not Applicable”). The second blank should be filled in with the log number(s) (taken from the county's log) of the document(s) submitted by the applicant containing the information pertaining to that checklist requirement. The initials of the county official making the particular status determination and the date of that determination go in the last two columns. Some checklist items apply only under specific conditions, which are italicized below for emphasis.

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- Sludge Disposal
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- Financial Guarantees: General Requirement, Alternative Guarantee with City, Amount, Form of Bond, Form of Letter of Credit
- Plat Approval: Application, Review, Further Prerequisites to Approval, Disapproval
- Extension of Operability Date

APPLICABILITY OF MODEL RULES

Landowner divides tract outside city limits in any manner that creates two or more lots of five acres or less intended for residential purposes. A lot is presumed to be for residential purposes unless the final plat and all deeds and contracts for deeds contain a restriction prohibiting residential use of the lot. 364.11, 364.15(a), 364.31.

status log # checker date

ALTERNATE CRITERIA FOR LAND SUBDIVIDED PRIOR TO SEPT. 1, 1989

If land was divided into two or more parts to lay out a subdivision before September 1, 1989, and the subdivider was obligated to but failed to have a plat prepared, approved, and recorded, then the current owner of an individual, occupied lot (other than the subdivider) may, if various conditions are met (including having available water and sewer services meeting minimum standards), seek the commissioners court's approval of a plat that does not meet some of the standard requirements for plat approval under the Model Rules. Further, a group of owners of individual lots in such an unplatted subdivision may make a joint request. The procedural and substantive requirements for such approvals are set out in 364.57.

NUMBER OF DWELLING UNITS PER LOT

The following restriction shall be placed on the final plat and in all deeds and contracts for deeds: "No more than one single family detached dwelling shall be located on each lot." 364.37

A proposal for a multi-family residential lot must include adequate, detailed planning materials as required for determination of proper water and wastewater utility type and design. 364.37

SETBACKS

If the area lacks a nationally recognized fire code (as listed in Local Govt. Code § 233.062(c)) and lacks water lines sized for fire protection, setbacks from roads and rights of ways shall be a minimum of 10 feet and setbacks from adjacent property lines shall be a minimum of five feet. If another county rule or order requires greater setbacks, it shall control. 364.36

FINAL ENGINEERING REPORT - GENERAL CONTENTS FOR ALL OPTIONS

Included on the plat or attached to the plat. 364.52

status	log #	checker	date
_____	_____	_____	_____

Signed, dated, and sealed by Texas professional engineer. 364.52

Discussion of availability and methodology of providing water facilities and wastewater treatment to lots. 364.52

_____	_____	_____	_____
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Detailed cost estimate per lot for unconstructed water and wastewater facilities necessary to serve lots. 364.52

_____	_____	_____	_____
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Construction schedule for each significant element needed to provide water or wastewater facilities, including *if financial guarantees are to be provided* start dates and completion dates. 364.52

_____	_____	_____	_____
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WATER FACILITIES:

MINIMUM STANDARDS AND ADDITIONAL FINAL ENGINEERING REPORT CONTENTS UNDER VARIOUS SERVICE OPTIONS

OPTION A. Water will be provided by connecting to an existing public water system.

Written agreement between subdivider and an existing public water system [as defined in 364.18(11)] in substantially the form of Appendix 1A. Agreement must state that utility will be able to provide water to fully developed subdivision for at least thirty years. Agreement must state that subdivider has paid the costs of water meters, membership fees, water rights fees, and all other fees associated with obtaining service. 364.32(a)(1), 364.52(1)(A)

_____	_____	_____	_____
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Approval(s), by all entities having jurisdiction (water utility, and may include in addition to the county the TCEQ and the county health department), of plans and specifications for proposed water facilities. [As to TCEQ approval, see Subchapter C of Chapter 341 of the Health and Safety Code (esp. § 341.035) and the rules in 30 TAC Chapter 290.] 364.52(1)(A)

_____	_____	_____	_____
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FINAL ENGINEERING REPORT - Additional Contents under Option A.

If groundwater is to be the source of the water supply, groundwater availability study complying with the requirements of 30 TAC §§ 230.1-230.11 for water availability for a public water supply system and certifying the long-term (30 years) quantity and quality of available groundwater supplies relative to ultimate needs of subdivision. 364.52(1)(A)

_____	_____	_____	_____
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OPTION B. Water will be provided by a utility created by the subdivider.

Retail public utility established by subdivider and certificate of convenience and necessity (CCN) obtained from TCEQ. 364.32(a)(2), 364.52(1)(B)

_____ _____
status log # checker date

Water system, water quality, and system design, construction and operation meet minimum criteria in 30 TAC §§ 290.38-290.51 and §§ 290.101-290.120. 364.32(a)(2)

Approval(s), by all entities having jurisdiction over the project, of plans and specifications for proposed water facilities. 364.52(1)(B)

FINAL ENGINEERING REPORT - Additional Contents under Option B.

Groundwater availability study complying with the requirements of 30 TAC §§ 230.1-230.11 for water availability for new public water supply systems and certifying the long-term (30 years) quantity and quality of available groundwater supplies relative to ultimate needs of subdivision *if groundwater is to be the source of the water supply*. 364.52(1)(B), 364.32(a)(2)

Evidence that sufficient water rights have been obtained and dedicated (through acquisition or wholesale water supply agreement) to provide sufficient supply to subdivision for at least 30 years *if surface water is the source of supply*. 364.52(1)(B), 364.32(a)(2)

OPTION C. Water will be provided by individual wells or other non-public systems.

Groundwater availability study complying with the requirements of 30 TAC §§ 230.1-230.11 for water availability for individual water supply wells on individual lots and certifying the long-term (30 years) quantity and quality of available groundwater supplies relative to ultimate needs of subdivision. 364.32(b)

Water quality of test well(s) meets water quality standards for community water systems set out in 30 TAC §§ 290.104, 290.106, 290.108, and 290.109, either (1) without any treatment of the water, or (2) with treatment by an identified and commercially available water treatment system. 364.32(b)

FINAL ENGINEERING REPORT - Additional Contents under Option C.

Quantitative and qualitative results of sampling from test wells in accord with 364.32. (Aside: the Model Rules also require that these results be made available to prospective property owners.) 364.52(2)

status log # checker date

If the water quality of test well does not meet standards in 364.32(b) without treatment, the type of treatment system that will treat the well water to the specified water quality standards, the location of at least one commercial establishment in the county at which the system can be purchased, the cost of such system, the cost of installation of the system, and the estimated monthly maintenance cost of the treatment system. 364.52(2)

Groundwater availability study complying with the requirements of 30 TAC §§ 230.1-230.11 for water availability for individual water supply wells on individual lots and certifying the long-term (30 years) quantity and quality of available groundwater supplies relative to ultimate needs of subdivision. 364.52(2)

Description of the required sanitary control easement (minimum separation distances of wells and water lines from various OSSF facilities - see Table X at 30 TAC 285.91(10)). 364.52(2)

WASTEWATER FACILITIES:

MINIMUM STANDARDS AND ADDITIONAL FINAL ENGINEERING REPORT CONTENTS UNDER VARIOUS SERVICE OPTIONS

OPTION X. Wastewater will be treated by existing retail public utility.

Written agreement between subdivider and wastewater utility in substantially the form of Appendix 1B. Agreement must state that utility will be able to treat the total wastewater flow from the fully developed subdivision for at least thirty years. Agreement must state that subdivider has paid the costs of all fees associated with connection to the wastewater collection and treatment system. 364.33(a)(2), 364.52(3)(A)

Engineering plans for proposed collection lines comply with 30 TAC Chapter 317. 364.33(a)(2)

Permit from TCEQ to dispose of wastes. 364.52(3)(A)

Approval, by all entities having jurisdiction over the proposed project, of plans and specifications for the proposed sewerage facilities. 364.52(3)(A)

Greywater use (if proposed) meets the minimum criteria of 30 TAC Chapter 210. 364.34(a)

OPTION Y. Wastewater collection and treatment by a utility created by subdivider.

Retail public utility established by subdivider and certificate of convenience and necessity (CCN) obtained from TCEQ. 364.52(3)(B)

_____ _____
status log # checker date

Permit obtained from TCEQ by subdivider to dispose of wastes (from ultimate build-out population of subdivision) in accord with 30 TAC Chapter 305. 364.33(a)(1), 364.52(3)(B)

_____ _____

Approval by TCEQ of engineering planning materials for wastewater system under 30 TAC Chapter 317. 364.33(a)(1)

_____ _____

Approval(s), by all entities having jurisdiction over the project, of plans and specifications for the proposed sewerage facilities. 364.52(3)(B)

_____ _____

Greywater use (*if proposed*) meets the minimum criteria of 30 TAC Chapter 210. 364.34(a)

_____ _____

OPTION Z. Wastewater treatment by on-site sewerage facilities (OSSF).

TYPES OF SYSTEMS AND APPLICABLE TCEQ RULES

The disposal system does not utilize a borehole, cesspool, or seepage pit (unauthorized systems under 30 TAC 285.3(i)), or a pit privy or portable toilet. 364.33(b)(3)

_____ _____

If a sewerage facility would dispose of more than 5,000 gallons per day, the facility complies with 30 TAC Chapter 317. 364.33(b)(2)

_____ _____

If the sewerage facility serves single family or multi-family dwellings and the anticipated flow is 5,000 or less gallons per day, the facility complies with 30 TAC Chapter 285. 364.33(b)(1)

_____ _____

Review of OSSF proposal and inspection of systems by the TCEQ or its authorized agent as necessary to assure compliance with OSSF laws and rules. 364.33(b)(3)

_____ _____

Greywater use (*if proposed*) accords with the minimum criteria of 30 TAC Chapter 285. 364.34(b)

_____ _____

FINAL ENGINEERING REPORT - Additional Contents under Option Z.

Planning materials required by 30 TAC 285.4(c), including site evaluation (30 TAC 285.30) and all other information required by the county's OSSF order. 364.52(4)

_____ _____ _____ _____
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SLUDGE DISPOSAL

Disposal of sludge from water treatment and sewerage facilities shall comply with 30 TAC Chapter 312 and Chapter 317. 364.35

ADDITIONAL INFORMATION (OPTIONAL WITH COUNTY)

Additional information necessary to determine the adequacy of proposed water and wastewater improvements, *if required by the county (at its option) as part of the plat approval process*, including:

- layout of proposed street and drainage work
- legal description of the property
- existing area features
- topography
- flood plains
- description of existing easements
- layout of other utilities
- notation of deed restrictions
- public use areas
- proposed area features
- other information necessary to determine the adequacy of proposed water and wastewater improvements. 364.53

_____ _____ _____ _____

**FINANCIAL GUARANTEES FOR IMPROVEMENTS:
 GENERAL REQUIREMENT, ALTERNATIVE GUARANTEE WITH CITY, SUBDIVISION CONSTRUCTION AGREEMENT,
 AMOUNT, FORM OF BOND, FORM OF LETTER OF CREDIT**

GENERAL REQUIREMENT

If the water and wastewater facilities have not been constructed at the time final plat approval is sought, the commissioners court shall require the subdivider to execute a Subdivision Construction Agreement with the county secured by a bond, irrevocable letter of credit, or other alternative financial guarantee such as a cash deposit. 364.54(a)

_____ _____ _____ _____
 status log # checker date

ALTERNATIVE GUARANTEE WITH CITY

If the subdivision is in a city's ETJ and the city and county have entered into an appropriate interlocal agreement, the city may take the place of the county in executing and enforcing the required Subdivision Construction Agreement and associated financial guarantee. 364.54(e)

_____ _____ _____ _____

SUBDIVISION CONSTRUCTION AGREEMENT (SCA)

Shall be in substantially the form attached in Appendix 2A. 364.54(a)

_____ _____ _____ _____

The following “blanks” in the Subdivision Construction Agreement must be completed:

Paragraph 1. Name of county and name of subdivider.

_____ _____ _____ _____

Paragraph 3. Name/county file number of proposed subdivision.

_____ _____ _____ _____

Paragraph 11. Amount of financial guarantee. This is the total of the costs listed in Exhibit B to the SCA.

_____ _____ _____ _____

Paragraph 29. For notice purposes, addresses of subdivider, county, and issuer of financial guarantee.

_____ _____ _____ _____

Paragraph 31. Name of county, and names of district and division of the local federal court.

_____ _____ _____ _____

Paragraph 36. Signatures of parties, with appropriate acknowledgments added.

_____ _____ _____ _____

Exhibit A. Metes and bounds description of the land being subdivided.

_____ _____ _____ _____

Exhibit B. Description of the required improvements, the estimated cost of completion for each improvement (including contingencies, as determined by commissioners court), and (*if the completion date is expected to be something other than three years after the plat is approved by the commissioners court*) the date by which the particular improvement will be completed.

_____ _____ _____ _____

Note about completion dates and operability date. As listed above under General Contents of Final Engineering Report, the Report must, *if financial guarantees are being provided*, include start and **completion dates** for each significant element needed to provide water or wastewater facilities. Paragraph 9 of the Subdivision Construction Agreement sets a completion date of three years after the plat is approved, unless a different time is specified for a particular improvement in Exhibit B. Therefore, the completion dates from the Final Engineering Report should be inserted in Exhibit B. Other state laws [Local Govt. Code § 212.0105(b)(1)(A) for city plat approval, and Local Govt. Code §§ 232.023(b)(6) and 232.072(b)(1) for county plat approval under Subchapter B or C, respectively] require that a residential plat include a statement of the date by which all the water and wastewater facilities will be fully operable. This **operability date** will thus be no sooner than the latest of the **completion dates**. The operability date may be extended by a city or county under the circumstances set out in 31 TAC 364.65 (see checklist, below) and the parallel statutory provisions in Local Govt. Code §§ 212.0105(c), 232.026, or 232.075.

AMOUNT

Bond or other financial guarantee shall be in an amount determined by the commissioners court to be adequate to ensure proper construction or installation of the (not-yet-built-or-paid-for) water and wastewater facilities to serve the subdivision, including reasonable contingencies, but shall not be less than the amount certified on the plat by the subdivider's engineer. 364.54(b)(2), 364.54(d)

_____ _____
 status log # checker date

FORM OF BOND

Payable to county judge, in his official capacity, or the judge's successor in office. 364.54(b)(1)

_____ _____

Executed with surety approved by court, under criteria set by court (including three specified factors). 364.54(b)(3)

_____ _____

Conditioned on completion of water and wastewater facilities meeting the minimum standards of the model rules, within the time stated on the plat (or within any extension of time granted by commissioners court). 364.54(b)(4)

_____ _____

FORM OF LETTER OF CREDIT

Modeled after the form in Appendix 2B. 364.54(c)(3)

_____ _____

Lists as sole beneficiary the county judge, in his official capacity, or the judge's successor, and must be approved by county judge. 364.54(c)(3)

_____ _____

If for amount more than \$10,000 and less than \$250,000, the financial institution (bank, savings and loan, or other) must meet certain qualifications. 364.54(c)(1)

_____ _____

If for amount more than \$250,000, the financial institution (bank, savings and loan, or other) must meet certain other qualifications. 364.54(c)(2)

_____ _____

Conditioned on completion of water and wastewater facilities meeting the minimum standards of the model rules, within the time stated on the plat (or within any extension of time granted by commissioners court). 364.54(c)(4)

_____ status log # checker date

**PLAT APPROVAL:
APPLICATION, REVIEW, FURTHER PREREQUISITES TO APPROVAL, DISAPPROVAL**

APPLICATION FOR PLAT APPROVAL

Filed with the county by the record owner of the property or the owner's duly authorized agent. 364.51(a)

REVIEW

County reviews final plat to determine whether it meets the minimum standards in Division 2 (re: water and wastewater facilities, greywater, sludge disposal, setbacks, number of dwellings per lot) and the requirements of Division 3 (re: applications, final engineering report, additional information, financial guarantees, review and approval of final plats, time extensions for providing facilities, criteria for subdivisions prior to Sept. 1, 1989). 364.55(a)

FURTHER PREREQUISITES TO APPROVAL

Dedication of sites for water and sewerage facilities to public utilities responsible for operation and maintenance. 364.55(c)(1)

EITHER:

The subdivider must:

OR FOLLOWING THREE:

provide evidence that the water and sewerage facilities have been constructed and installed in accord with criteria set by the Model Rules and the approved plans and specifications,

OR

- (1) obtain all necessary permits for the proposed water and sewerage facilities (except for OSSF permits on individual lots), and
- (2) enter into a Subdivision Construction Agreement with the county (in substantially the form of Appendix 2A) for the provision of unbuilt water and sewer facilities, and
- (3) secure the Subdivision Construction Agreement with a financial guarantee, such as (i) a bond (meeting requirements of 364.54(b)) or (ii) a letter of credit (meeting requirements of 364.54(c)) or (iii) a cash deposit. 364.55(c)(2) and (c)(3).

DISAPPROVAL

If a plat does not meet the requirements prescribed by or under the Model Rules, the commissioners court shall refuse to approve the plat. 364.55(b)

_____ _____ _____ _____
status log # checker date

EXTENSION OF OPERABILITY DATE

Commissioners court may extend date stated on plat by which required water and sewer facilities will be fully operable if:

- (1) the extension would not allow a residence to be inhabited without water and sewer services meeting the model rule standards, and _____
- (2) a financial guarantee (original or new) covers the period of extension, and _____
- (3) the court finds the extension is reasonable and not contrary to the public interest. 364.56 _____

