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Article 5 – Relief Procedures

Section 19.45 – Appeals

Section 19.45.1 Purpose, Applicability and Effect

- (a) **Purpose.** The purpose of an appeal is to contest most administrative any decision on an application based upon alleged misapplication of the criteria for approval of the application. An appeal shall not be used as a means of amending, varying or otherwise altering the standards of this Chapter or the DSC that apply to the application.
- (b) **Applicability.** Unless otherwise provided by this Chapter, any final administrative decision on an application by a City official including a determination by the responsible official that a proposed development is exempt from one or more applications, may be appealed in accordance with Section 19.45.2 (a) to the City Plan Commission. Final decisions on an application by the City Plan Commission may be appealed to the City Council only if expressly provided for in these regulations.
- (c) **Effect.** The granting of an appeal supersedes the previous decision and results in the approval, conditional approval or denial of the application for which approval was sought.
- (d) An appeal under this Section does not constitute an appeal for a determination on vested rights, or the proportionality of infrastructure requirements.

Section 19.45.2 Appeal Requirements

- (a) **Who May Appeal.** The applicant may appeal a final decision on an application to the appellate authority designated by this article, if any.
- (b) **Form of Appeal.** The appeal shall contain a written statement of the reasons why the final decision is erroneous, and shall be accompanied by the fee established by the City Council. An appeal by an applicant shall be accompanied by a copy of the application on which the initial decision was rendered. An appeal may include any other documents that support the position of the appellant.
- (c) **Time for Filing Appeal.** A written appeal must be submitted to the responsible official within ten (10) business days from the date of notification of the final decision on the application.

Section 19.45.3 Processing of Appeal and Decision

- (a) **Responsible Official.** The responsible official for an appeal is the person designated by this Chapter for processing of the application at issue in the appeal. Upon receipt of a written appeal, the responsible official shall compile all documents constituting the record of the decision on appeal and transmit the record to the appellate authority.
- (b) **Stay of Proceedings.** Receipt of a written appeal of a decision on an application stays all proceedings of the City in furtherance of the decision from which appeal is taken, including without limitation, acceptance, processing or issuance of any applications that are dependent on the application being appealed, and any development activities authorized by initial approval of the application.
- (1) The stay shall be lifted only if the responsible official certifies in writing to the appellate authority that a stay would cause imminent peril to life or property.
 - (2) Thereafter, the stay may be reinstated only by order of the appellate authority or a court of record, on application, after notice to the responsible official, for due cause shown.
- (c) **Hearing and Notice.** Notification of the appeal and conduct of the hearing thereon shall be in accordance with Sections 19.38 and 19.39 of this Chapter. The initial hearing on the appeal shall be held within twenty-five (25) business days after the filing of the appeal with the responsible official, unless a different time is prescribed by the provisions of this Section.
- (d) **Decision on Appeal.** The appellate authority shall decide the appeal within thirty (30) business days. The appellate authority shall affirm, reverse or modify the decision from which the appeal was taken.
- (e) **Notification of Decision on Appeal.** The appellant and the applicant for the development permit shall be notified of the decision on appeal in the manner provided in Section 19.38.4.

Section 19.45.4 Criteria

In deciding the appeal, the appellate authority shall apply the same criteria that govern the initial decision on the application under the provisions of this Ordinance.

Section 19.45.5 Expiration and Extension

For purposes of determining the expiration or extension periods under this Chapter, the date of the appellate authority's granting of relief on an appeal is the date on which the application is deemed approved.

Section 19.46 – Proportionality Appeal: Petition for Relief from Dedication or Construction Requirement

Section 19.46.1 Policy Established

Adequate Public Facilities Policy.

- (1) Adequate Service for Areas Proposed for Development.
 - a. Land proposed for development in the City and the City's Extraterritorial Jurisdiction must be served adequately by essential public facilities and services, including parks, water and wastewater, roadway, and drainage facilities.
 - b. Land shall not be approved for platting or development unless and until adequate public facilities necessary to serve the development exist or provision has been made for the facilities, whether the facilities are to be located within the property being developed or off-site.
- (2) Responsibilities of the Developer to Provide Adequate Facilities. The developer shall be responsible for the following to ensure the facilities provided are adequate:
 - a. Phasing of development or improvements in order to ensure the provision of adequate public facilities;
 - b. Extensions of public facilities and roadways (including any necessary on-site and off-site facilities) to connect to existing public facilities or roadways;
 - c. Providing and/or procuring all necessary property interests, including rights-of-way and easements, for the facilities (whether on-site or off-site);
 - d. Providing proof to the City of adequate public facilities;
 - e. Making provisions for future expansion of the public facilities as needed to serve future developments, subject to the City's oversize participation regulations (e.g., when the City will provide for the cost of oversizing facilities), if applicable;
 - f. Providing for all operations and maintenance of the public facilities, or if the City is not the provider, providing proof that a separate entity will be responsible for the operations and maintenance of the facilities;
 - g. Providing all fiscal Security, if required, for the construction of the public facilities;
 - h. Obtaining approvals from any applicable utility providers other than the EPWU; and
 - i. Complying with all requirements of utility providers, including the City or other applicable providers.
- (3) Responsibilities of the Developer to Conform to Adopted Plans. The developer shall ensure that facilities provided are in conformance with the City's adopted plans, ordinances and regulations.

- a. Proposed facilities serving new development shall conform to and be properly related to the public facility elements of the City's adopted Comprehensive Plan; other adopted master plans for public facilities and services, and applicable capital improvements plans, and shall meet the service levels specified in such plans.
- b. The design and construction of all water and wastewater facilities to serve the subdivision shall be in conformance with the City's and EPWU's master plans for water and wastewater facilities and with the City's and EPWU's technical specifications.

Section 19.46.2 Purpose, Applicability and Effect

- (a) **Purpose.** The purpose of a petition for relief from a dedication or construction requirement is to assure that the application of uniform dedication and construction standards to a proposed plat does not result in a disproportionate burden on the property owner, taking into consideration the nature and extent of the demands created by the proposed development on the City's public facilities systems.
- (b) **Applicability.** A petition for relief under this section may be submitted by a property owner or applicant to contest any requirement to dedicate land or to construct public improvements for dedication to the public that is imposed under the City's public facilities standards in any ordinance or regulation to a plat application or to any related development application authorized by the City, whether the requirement is under uniform standards, or attached as a condition to approval of the petition or permit. A petition under this section shall not be used to waive standards on grounds applicable to any petition for an Alternative Subdivision Designs, waiver, or exception as found in other sections of this Chapter.
- (c) **Effect.** If the relief requested under the petition is granted in whole or in part by the City Council, the dedication or construction requirement initially imposed shall be modified accordingly, and the standards applied or the conditions attached to initial approval of the development application shall be thereafter applied in accordance with the relief granted. In the event the original application was denied by the decision-maker based upon the property owner's failure to incorporate the dedication or construction requirement in the proposed permit, the application shall be remanded to the original decision-maker for a decision consistent with the relief granted by the Council.

Section 19.46.3 Petition Requirements

- (a) **Who May Apply.** An applicant may petition for relief from a dedication or construction requirement when a dedication or construction requirement has been applied to a plat, or is the basis for denying the plat application.
- (b) **Form of Petition.** The petition for relief from a dedication or construction requirement shall allege that application of the standard relating to the dedication or construction requirement is not roughly proportional to the nature and extent of the impacts created by the proposed development on the City's water, wastewater,

- stormwater, parks, or roadway system, as the case may be, or does not reasonably benefit the proposed development.
- (c) **Study Required.** The City shall provide a study in support of the petition for relief that includes the following information:
- (1) Total capacity of the City's water, wastewater, stormwater, parks, or roadway system to be utilized by the proposed development, employing standard measures of capacity and equivalency tables relating the type of development proposed to the quantity of system capacity to be consumed by the development. The City shall provide the total capacity of the system to be used but the applicant may provide a different number if documented by their studies, and compare their number with the number provided by the City. If the proposed development is to be developed in phases, such information also shall be provided for the entire development proposed, including any phases already developed.
 - (2) Total capacity to be supplied to the City's water, wastewater, stormwater, parks, or roadway system by the proposed dedication of an interest in land or construction of capital improvements. If the development application is part of a phased development, the information shall include any capacity supplied by prior dedications or construction of capital improvements.
 - (3) Comparison of the capacity of the City's public facilities system(s) to be consumed by the proposed development with the capacity to be supplied to such system(s) by the proposed dedication of an interest in land or construction of capital improvements. In making this comparison, the impacts on the City's public facilities system(s) from the entire development shall be considered.
 - (4) The effect of any City participation in the costs of over-sizing the capital improvement to be constructed in accordance with the City's requirements.
 - (5) Any other information that shows the alleged disproportionality between the impacts created by the proposed development and the dedication or construction requirement imposed by the City.
- (d) **Time for Filing Petition and Study.** A petition for relief from a dedication or construction requirement shall be submitted to the responsible official within ten (10) business days of the City Plan Commission's decision to conditionally approve or deny an application for approval of a Land Study or Preliminary Plat, or where no Preliminary Plat application has been submitted, an application for approval of a Final Plat. The study in support of the petition shall be prepared within sixty (60) business days of the initial decision, unless the applicant seeks an extension in writing. The responsible official may extend the time for preparing the study for a period not to exceed an additional thirty (30) business days for good cause shown.

Section 19.46.4 Land in Extraterritorial Jurisdiction

Where land or facilities to be dedicated are located in the extraterritorial jurisdiction of the City and are to be dedicated to El Paso County, a petition for relief or study in support of the petition shall not be accepted as complete for review by the responsible official unless the petition or study is accompanied by verification that a copy has been delivered to the El Paso County in which the facilities are to be located.

Section 19.46.5 Processing of Petitions and Decision

- (a) **Responsible Official.** The Subdivision Improvement Plan Engineer is the responsible official for a petition for relief from a dedication or construction requirement. The Subdivision Improvement Plan Engineer shall place the petition for relief on a City Plan Commission agenda for a recommendation on the merits of the petition to the City Council. Where the petition is for relief from dedication of rights-of-way for or construction of a facility in the City's extraterritorial jurisdiction that is to be dedicated to El Paso County, the Subdivision Improvement Plan Engineer shall coordinate a recommendation with the El Paso County official responsible for reviewing plats in the El Paso County.
- (b) **Evaluation, Recommendation.** The Subdivision Improvement Plan Engineer shall evaluate the petition and supporting study and shall make a recommendation to the City Plan Commission and to the City Council based upon the information contained in the study, any comments received from El Paso County, and the Director's analysis.
- (b) **Decision-Maker.** The City Council shall decide the petition for relief from a dedication or construction requirement, after receiving a recommendation from the City Plan Commission.
- (c) **Hearing.** The City Council shall conduct a hearing in accordance with Section 19.39 of this Chapter within sixty (60) business days after the study supporting the petition is submitted to the Subdivision Improvement Plan Engineer.
- (d) **Burden of Proof.** The applicant bears the burden of proof to demonstrate that the application of a dedication or construction requirement that is uniformly applied imposes a disproportionate burden on the applicant.
- (e) **Decision.** The City Council shall consider the petition for relief from a dedication or construction requirement based upon the following criteria:
 - (1) The City Council shall determine whether the application of the standard or condition requiring dedication of an interest in land for public improvements or construction of capital improvements is roughly proportional to the nature and extent of the impacts created by the proposed development on such City's water, wastewater, stormwater, parks, or roadway system, and reasonably benefits the development.

- (2) In making such determination, the Council shall consider the evidence submitted by the applicant, the Subdivision Improvement Plan Engineer's report and recommendation and, where the property is located within the City's extraterritorial jurisdiction, any recommendations from the City Plan Commission and El Paso County.
- (f) **Action.** Based on the criteria in (e) above, the City Council shall take one of the following actions:
- (1) Deny the petition for relief, and impose the standard or condition in accordance with the initial decision; or
 - (2) Deny the petition for relief, upon finding that the proposed dedication or construction requirements are inadequate to offset the impacts of the development on community City's water, wastewater, stormwater, parks, or roadway system, and either deny the development application or require that additional dedications of rights-of-way for or improvements to such systems be made as a condition of approval of the application; or
 - (3) Grant the petition for relief, and waive any dedication or construction requirement to the extent necessary to achieve proportionality; or
 - (4) Grant the petition for relief, and direct that the City participate in the costs of acquiring land for or constructing the capital improvement under standard participation policies.
- (f) **Notification of Decision on Petition.** The applicant shall be notified of the decision on the petition for relief in the manner provided in Section 19.38 of this Chapter, within ten (10) business days of the decision.

Section 19.46.6 Expiration; Effect of Relief

- (a) **Expiration or Failure to File Application.** Where a plat application or related application was denied based upon the imposition of the standard requiring dedication of land or construction of a capital improvement, the applicant shall resubmit the application within ninety (90) business days of the date the petition for relief is granted, in whole or in part, showing conformity with the City Council's decision on the petition.
- (1) If such re-submittal of the application is not made within the ninety-day (90-day) period, the relief granted by the City Council on the petition shall expire.
 - (2) If the application for which relief was granted is denied on other grounds, a new petition for relief may be required.
- (b) **Effect.** The relief granted on the petition shall remain in effect for the period the plat or related approved development application is in effect, and shall expire upon expiration of the plat or related application.

Section 19.47 – Vested Rights Petition

Section 19.47.1 Purpose, Applicability and Effect

- (a) **Purpose.** The purpose of a vested rights petition is to determine whether an application should be processed under the terms of a previous ordinance, to provide a process for determination of vested status, and to determine when certain permits are subject to expiration.
- (b) **Applicability.** A vested rights petition may be submitted for an application, permit, plan or plat authorized under this Chapter, filed in accordance with the Texas Local Government Code, Chapter 245 or successor statute.
 - (1) A vested rights petition also may be submitted prior to expiration of certain permits pursuant to Section 19.41.6.
 - (2) A vested rights petition may not be submitted with a petition for a text amendment, a zoning map amendment or any other request for a legislative decision by the City Council.
- (c) **Effect.** Upon granting of a vested rights petition in whole or in part, the responsible official shall process the application and the decision-maker shall decide the application in accordance with the standards specified in the relief order based on prior ordinance requirements or development standards, or extend the permit that would otherwise be subject to expiration pursuant to Section 19.41.6.

Section 19.47.2 Petition Requirements

- (a) **Who May Petition.** An applicant may submit a vested rights petition with any application identified in this ordinance or by the holder of a permit subject to expiration pursuant to Section 19.41.6.
- (b) **Form of Petition.** The vested rights petition shall allege that the applicant has a vested right for some or all of the land subject to the application under Texas Local Government Code, Chapter 245 or successor statute, or pursuant to Texas Local Government Code, Section 43.002 or successor statute, that requires the City to review and decide the application under standards in effect prior to the effective date of the currently applicable standards. The petition shall include the following information and documents:
 - (1) A narrative description of the grounds for the petition;
 - (2) A copy of each approved or pending application which is the basis for the contention that the City may not apply current standards to the application which is the subject of the petition;
 - (3) The date of submittal of the application for the permit, or of a development plan pursuant to which the permit was subsequently submitted, if different from the official filing date.
 - (4) The date the project for which the application for the permit was submitted was commenced;

- (5) Identification of all standards otherwise applicable to the application from which relief is sought;
 - (6) Identification of any current standards which the applicant agrees can be applied to the application at issue;
 - (7) A narrative description of how the application of current standards affect proposed use of the land, landscaping or tree preservation, open space, or park dedication, lot size, lot dimensions, lot coverage or building size shown on the application for which the petition is submitted; and
 - (8) A copy of any prior vested rights determination involving the same land.
 - (9) Whenever the applicant alleges that a permit subject to expiration under Section 19.41.6 should not be terminated, a description of the events constituting progress toward completion of the project for which the permit subject to expiration was approved.
- (c) **Time for Filing Petition.** A vested rights petition shall be submitted with an application for which a vested right is claimed, except that the petition may be submitted before the date of expiration of any permit when submitted pursuant to Section 19.41.6. Where more than one application is required to be submitted by this Chapter, the petition may be submitted simultaneously for each application.

Section 19.47.3 Processing of Petitions and Decision

- (a) **Responsible Official.** The responsible official for a vested rights petition is the same as that for processing the application with which the petition is associated, except where a petition is submitted pursuant to Section 19.41.6. Where multiple applications are submitted, and there is more than one responsible official, the decision of each responsible official shall be coordinated with that of any other responsible official on the vested rights petition. The City Attorney shall also be copied on the vested rights petition following acceptance.
- (b) **Decision by Responsible Official.** If the responsible official is the decision-maker on the original application, the official shall determine whether the relief requested in the vested rights petition should be granted in whole or in part, and shall formulate a written report summarizing the official's reasoning and setting forth the decision on the petition, which shall be delivered to the applicant within ten (10) business days of the date the vested rights petition is accepted for filing. Where the original application allows that the responsible official may forward a decision on the original application to the Commission, the responsible official may likewise refer a vested rights petition to the Commission, pursuant to Sec. 19.47.3 (c) below.
- (c) **Decision by City Plan Commission.** If the original application is one that is decided by the City Plan Commission, the Director shall submit a report in the form of a recommendation to the decision-maker. The City Plan Commission shall render a decision on the vested rights petition in conjunction with its decision on the application. Appeals of its decision shall be in accordance with the appeal section 19.33.

- (d) **Decision by City Council.** Where the City Council is the final decision-maker on the original application or for any petition submitted pursuant to Section 19.41.6, the applicant may submit a written request that the vested rights petition be immediately forwarded to the City Council for a determination.
- (1) The request must be accompanied by a waiver of the time for decision on the application imposed under this Chapter pending decision by the City Council on the petition, which shall stay further proceedings on the application.
 - (2) Upon receipt of the request, the responsible official shall prepare a recommendation and forward the matter to the City Council for decision, which shall decide the petition within thirty (30) calendar days of the applicant's request.
- (e) **Appeal of Decision on Petition.** The applicant or any interested person may appeal the responsible official's or the commission's or board's decision on the vested rights petition within ten (10) business days of the date of such decision to the City Council in accordance with the procedures in Section 19.45. The City Council shall decide the petition within thirty (30) business days of receipt of the notice of appeal.
- (f) **Effect on Related Applications.** A final decision on a vested rights petition or appeal under this Section is deemed necessary in evaluating the completeness of any related application. No related application shall be deemed complete without such decision having been made.

Section 19.47.4 Action on Petition and Order

- (a) **Action on the Petition.** The decision-maker on the vested rights petition may take any of the following actions:
- (1) Deny the relief requested in the petition, and direct that the application shall be reviewed and decided under currently applicable standards;
 - (2) Grant the relief requested in the petition, and direct that the application be reviewed and decided in accordance with the standards contained in identified prior regulations; or
 - (3) Grant the relief requested in part, and direct that certain identified current standards be applied to the application, while standards contained in identified prior regulations also shall be applied; or
 - (4) For petitions submitted pursuant to Section 19.41.6, specify the expiration date or the conditions of expiration for the permit(s).
- (b) **Order on Petition.** The responsible official's report and each decision on the vested rights petition shall be recorded in writing in an order identifying the following:
- (1) The nature of the relief granted, if any;

- (2) The approved or submitted application(s) upon which relief is premised under the petition;
- (3) Current standards which shall apply to the application for which relief is sought;
- (4) Prior standards which shall apply to the application for which relief is sought, including any procedural standards;
- (5) The statutory exception or other grounds upon which relief is denied in whole or in part on the petition;
- (6) To the extent feasible, subordinate applications that are subject to the same relief granted on the petition; and
- (7) For petitions submitted pursuant to Section 19.41.6, the date of expiration of the permit or permits.

Section 19.47.5 Criteria for Approval

- (a) **Factors.** The decision-maker shall decide the vested rights petition based upon the following factors:
 - (1) The nature and extent of prior applications submitted for the land subject to the petition;
 - (2) Whether any prior vested rights determinations have been made with respect to the property subject to the petition;
 - (3) Whether any prior approved applications for the property have expired or have been terminated in accordance with law;
 - (4) Whether current standards adopted after commencement of the project-affect proposed use of the land, landscaping or tree preservation, open space, or park dedication, lot size, lot dimensions, lot coverage or building size based upon the proposed application;
 - (5) Whether any statutory exception applies to the standards in the current Subdivision Ordinance from which the applicant seeks relief;
 - (6) Whether any prior approved applications relied upon by the applicant have expired;
 - (7) For petitions submitted pursuant to Section 19.41.6 whether any of the events in Section 19.47.8 have occurred;
 - (8) Any other provisions outlined in the Texas Local Government Code Chapter 245 or successor statute.
- (b) **Conditions.** If the claim of vested rights under a petition is based upon a pending application subject to standards that have been superseded by current standards under this Chapter, the decision-maker may condition any relief granted on the petition on the approval of the application under such prior standards.

Section 19.47.6 Application Following Final Decision on Petition

- (a) Following the City's final decision on the vested rights petition, the property owner shall conform to the application for which relief is sought to such decision.
- (b) The decision-maker on the application shall consider any application revised under this Subsection in accordance with the procedures for deciding the initial application under this Chapter and in conformity with the relief granted on the petition.
- (c) If the relief granted on the vested rights petition is consistent with the application on file, no revisions are necessary.
- (d) If proceedings have been stayed on the application pending referral of the vested rights petition to the City Council, proceedings on the application shall resume after the City Council's decision on the vested rights petition.

Section 19.47.7 Expiration and Extension

- (a) **Expiration.** Relief granted on a vested rights petition shall expire on occurrence of one of the following events:
 - (1) The applicant or property owner fails to submit a required revised application consistent with the relief granted within forty-five (45) business days of the final decision on the petition;
 - (2) The application for which relief was granted on the vested rights petition is denied; or
 - (3) The application for which relief was granted on the vested rights petition expires.
- (b) **Extension.** Extension of the date of expiration for the application for which relief was granted on a vested rights petition shall result in extension of the relief granted on petition for a like period.

Section 19.47.8 Dormant Projects

- (a) **Definitions.** For purposes of this section only:
 - (1) Initial permit means any of the following types of approvals granted under the El Paso Zoning Ordinance or Subdivision Ordinance, as amended, or any predecessor zoning, subdivision or development-related ordinance that was in effect prior to the adoption of this Chapter, including: site plans, conditional use provisions, sign permits, plats, variances, or any other application that was approved subject to a schematic drawing illustrating the location, arrangement, orientation or design of land uses, lots or improvements on a site intended for development

- (2) Final permit means a building permit, certificate of occupancy, or Final Plat approved under the El Paso Zoning Ordinance or Subdivision Ordinance, as amended, or any predecessor zoning, subdivision or development-related ordinance that was in effect prior to the adoption of this Chapter.
- (b) **Expiration of Permits.** Any application for an initial permit that was approved or submitted before, but that was not subject to an expiration date, two (2) years prior to the adoption date of this Chapter, and that was under the El Paso Zoning Ordinance or Subdivision Ordinance, as amended, or any predecessor zoning, subdivision or development-related ordinance, shall expire on the effective date of this Chapter.
- (c) **Reinstatement.** The owner of the land subject to an initial permit that expires under Subsection (b) above may petition the City Council to reinstate such permit by filing a written petition within sixty (60) calendar days of the effective date of this Chapter. The petition shall clearly state the grounds for reinstatement, and shall be accompanied by documentation of one of the following:
- (1) As of two (2) years prior to the adoption date of this Chapter one of the following events had occurred:
- a. A final permit for all or part of the land subject to the approved initial permit was approved, or was submitted and was subsequently approved;
 - b. An application for a final permit was submitted for all or part of the land subject to the expired initial permit, but such application was rejected on grounds of incompleteness (consistent with Texas Local Government Code, Chapter 245.005(c)(2));
 - c. Costs for development of the land subject to the initial permit, including but not limited to costs associated with roadway, utility and other infrastructure facilities designed to serve the land in whole or in part, but exclusive of land acquisition costs, were incurred in the aggregate amount of five percent (5%) of the most recent appraised market value of the land;
 - d. Fiscal Security, if required, was posted to ensure performance of an obligation for all or a part of the land subject to the approved initial permit; or
 - e. Utility connection fees or other fees for all or part of the land subject to the approved initial permit were paid.
- (2) After two (2) years prior to the adoption date of this Chapter but before the expiration date specified in Subsection (b) above, one of the following events had occurred:
- a. A final permit was approved for all or part of the land subject to the approved zoning permit, and remained in effect for such land on such expiration date; or

- b. A complete application for approval of a final permit for all or part of the land subject to the approved initial permit was pending for decision on such expiration date.
- (d) **City Council Action on Reinstatement.** The City Council may take one of the following actions:
- (1) Reinstatement the expired initial permit without an expiration date, if it finds that the applicant has met any one of the criteria listed in Subsection (c)(1) above;
 - (2) Reinstatement the initial permit for all or part of the land subject thereto, if it finds that the applicant has met any one of the criteria listed in Subsection (c) (2) above, subject to such expiration dates or other conditions that assure that the remaining land that is not subject to an approved or pending final permit application will be developed in a timely fashion. In granting relief under this provision, the City Council may require that development of such remaining land is subject to standards enacted after approval of the initial permit;
 - (3) Deny the petition, if it finds that the applicant has failed to meet any of the criteria in Subsection (c); or
 - (4) Reinstatement the permit for only that part of the land subject to a pending final permit application, if it finds that the applicant has met the criteria in Subsection (c)(2)(b) and the pending application subsequently was approved, and deny the petition for the remaining land subject to the expired initial permit.

Section 19.48– Petition for Waivers or Exceptions

Section 19.48.1 Purpose, Applicability and Effect

- (a) **Purpose.** The purpose of a petition for a waiver or exception to the standards or requirements of this ordinance is to determine whether one or more standards applicable to plats within this Chapter should not be applied to an application.
- (b) **Applicability.** An applicant may file a petition for waiver or exception of one or more standards applicable to a Preliminary Plat, or where no Preliminary Plat application has been submitted for approval, to the standards applicable to a Final Plat in accordance with Section 19.4 and 19.8.
- (c) A petition for a waiver or exception shall not be accepted for a vested rights or proportionality determination under this Section.

Section 19.48.2 Application and Decision-Maker

- (a) The waiver or exception petition shall be decided by the City Plan Commission in conjunction with the application for approval of the Preliminary Plat.
- (b) A request for a waiver or exception pursuant to this section shall be submitted in writing by the subdivider with the filing of a subdivision application. The request shall state fully the grounds for the waiver or exception request and all of the facts relied upon by the subdivider. No waiver or exception may be considered or granted by the city plan commission unless the subdivider has made written request for such request at the time of the subdivision application submittal, or an amended subdivision application submittal.

Section 19.48.3 Criteria for Approval

- (a) The following criteria shall be applied in deciding a waiver or exception:
 - (1) There are special circumstances or conditions arising from the physical surroundings, shape, topography or other feature affecting the land such that the strict application of the provisions of this Chapter to the proposed use would create an unnecessary hardship or inequity upon or for the applicant, as distinguished from a mere inconvenience, in developing the land or deprive the applicant of the reasonable and beneficial use of the land;
 - (2) The circumstances causing the hardship do not similarly affect all or most properties in the vicinity of the applicant's land;
 - (3) The waiver or exception is necessary for the preservation and enjoyment of a substantial property right of the applicant;
 - (4) Granting the waiver or exception will not be detrimental to the public health, safety or welfare, or injurious to other property within the area;
 - (5) Granting the waiver or exception will not have the effect of preventing the orderly use and enjoyment of other land within the area in accordance with the

provisions of this Chapter, or adversely affect the rights of owners or residents of surrounding property;

- (6) The hardship or inequity is not caused wholly or in substantial part by the applicant;
 - (7) The request for a waiver or exception is not based exclusively on the applicant's desire for increased financial gain from the property, or to reduce an existing financial hardship; and
 - (8) The degree of variation requested is the minimum amount necessary to meet the needs of applicant and to satisfy the standards in this section.
- (b) Such findings by the City Plan Commission shall not have the effect of nullifying the intent and purpose of these regulations; the granting of the waiver or exception of conditions will not be detrimental to the public safety, health or welfare or injurious to other property; the relief sought will not in any manner vary the provisions of any other city ordinance or regulation, The Plan for El Paso, or the official zoning map of the city, except that those documents may be amended in the manner prescribed by law; and further provided, that the City Plan Commission shall not approve a waiver or exception unless it shall make findings based upon the evidence presented in each specific case.
- (c) **Burden of Proof.** The applicant bears the burden of proof to demonstrate that the application of a construction requirement that is uniformly applied imposes a disproportionate burden. The subdivider must also demonstrate an alternative method of development that will improve the aesthetic value of the subdivision while giving equal emphasis to safety, economy, tax yield, maintenance cost, response time, drainage, vehicular access and pedestrian passage
- (d) **Decision.** The City Plan Commission shall consider the waiver or exception petition and, based upon the criteria set forth in Subsection (a) above, shall take one of the following actions:
- (1) Deny the petition, and impose the standard or requirement as it is stated in this Chapter; or
 - (2) Grant the petition, and waive in whole or in part the standard or requirement as it is stated in this Chapter. In approving a waiver or exception, the City Plan Commission may require such conditions as will, in its judgment, secure substantially the purposes described in this section.
- (e) **Notification of Decision on Petition.** The applicant shall be notified of the decision on the waiver or exception petition in the manner provided in Section 19.38.4.

Section 19.48.4 Effect of Approval

Effect. The waiver or exception granted shall remain in effect for the period the plat or related approved application is in effect, and shall expire upon expiration of the plat or related application. Extension of the plat also shall result in extension of the relief granted on the petition.