

## **CHAPTER 101. Subdivision Provisions.**<sup>1</sup> [▮](#)

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1. This revision of the Subdivision Control Ordinance of the Code of the County of Fairfax (formerly Chapter 23) was effective June 30, 1975. [\(Back\)](#)

## ARTICLE 1. In General.

### **ARTICLE 1. In General.**

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#### **Section 101-1-1. Title.**

This ordinance shall hereafter be known, cited and referred to as the "Subdivision Ordinance" of Fairfax County. (9-75-23; 1961 Code, § 123-1.1.)

#### **Section 101-1-2. Purpose and intent.**

The subdivision of land is a privilege conferred upon the subdivider by the laws of the Commonwealth of Virginia and Fairfax County through this Subdivision Ordinance. It is the subdivider who is seeking to acquire the advantages of lot subdivision and upon him rests the duty of compliance with reasonable conditions laid down by the Board of Supervisors for design, dedication, improvement and restrictive use of land so as to conform to the adopted comprehensive plan for the physical and economical development of the County and for the safety and general welfare of the future plot owners in the subdivision and of the community at large. (9-75-23; 1961 Code, § 123-1.2.)

#### **Section 101-1-3. Authority.**<sup>2</sup> [¶](#)

The Board of Supervisors pursuant to the recommendation of the Planning Commission and public hearing held in accordance with Va. Code Ann., § 15.2-2204, does hereby exercise the police power conferred by Va. Code Ann., Title 15.2, Article 6 to assure the orderly subdivision of land, and the police power conferred by Va. Code Ann., § 15.2-2224 to implement the comprehensive plan of Fairfax County, and the general police power as conferred under Va. Code Ann., § 15.2-1200. (9-75-23; 1961 Code, § 123-1.3; 39-97-101.)

**Section 101-1-4. Jurisdiction; violations; penalties.<sup>3</sup> [u](#)**

- (a) This Subdivision Ordinance and all regulations adopted hereunder shall apply to all subdivisions of land, as defined herein, including, but not limited to any condominium or any subdivision of any convertible land, convertible space or unit, located within the unincorporated areas of Fairfax County; however, an applicant need not apply for or obtain subdivision approval to record the condominium instruments if site plan approval for the land being submitted to the condominium has first been obtained.
- (1) No person shall subdivide land without making and recording a plat of such subdivision and without fully complying with the provisions of this Ordinance, and Article 6, "Land Subdivision and Development," *Code of Virginia*, Title 15.2, Chapter 22
  - (2) No final subdivision plat shall be recorded unless and until it shall have been submitted to and approved by the Director in accordance with the requirements of this Ordinance.
  - (3) No person shall sell or transfer any land of a subdivision, before such plat has been duly approved and recorded as provided herein, unless such subdivision was lawfully created prior to the adoption of a subdivision ordinance applicable thereto; provided, that nothing herein contained shall be construed as preventing the recordation of the instrument by which such land is transferred or the passage of title as between the parties to the instrument.
  - (4) Any person violating the foregoing provisions of this Section shall be subject to a fine of not more than Five Hundred Dollars (\$500.00) for each lot or parcel of land so subdivided or transferred or sold; and the description of such lot or parcel by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring shall not exempt the transaction from such penalties or from the remedies herein provided.
  - (5) Upon the effective date of this Ordinance, the Clerk shall not file or record a plat of a subdivision required to be recorded until such plat has been approved as required herein or under a prior existing subdivision ordinance; and the penalties provided by *Code of Virginia*, Section 17-59, shall apply to any failure to comply with the provisions of this Ordinance. (Code 1954, vol. 2, §§ 5-3, 5-4; 10-17-56; 12-10-69, § 5; 9-75-23; 21-75-23; 1961 Code, § 123-1.4; 28-95-101; 39-97-101.)

**Section 101-1-5. Policy and purposes.**

- (a) It is hereby declared to be the policy of Fairfax County to consider the subdivision of land as subject to the power of the County to implement the comprehensive plan. This Ordinance is adopted for the following purposes:
- (1) To clearly establish the procedure which must be followed in order to subdivide land in Fairfax County;
  - (2) To insure that this process includes appropriate and applicable reviews;
  - (3) To insure that this process includes consideration of environmental factors;
  - (4) To insure that the review process be completed as expeditiously as possible, while assuring conformance with standards to protect the health, safety and general welfare;
  - (5) To clearly establish the minimum requirements for substantive review;
  - (6) To provide for the adoption of standards and criteria for the minimum requirements, which must be subjected to periodic review, in the *Public Facilities Manual* pursuant to the policies of the comprehensive plan. (9-75-23; 1961 Code, § 123-1.5.)

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### Section 101-1-6. Enactment.<sup>4</sup> [¶](#)

In order that land be subdivided in an orderly manner in accordance with these purposes and policy, this Ordinance is hereby adopted, to become effective thirty (30) days after the *Public Facilities Manual* is adopted. This Ordinance shall apply to all preliminary plats submitted thereafter and any reapprovals of expired preliminary plats, when no construction plan has been submitted. (9-75-23; 1961 Code, § 123-1.6.)

### Section 101-1-7. Interpretation and conflict.

- (a) In their interpretation and application, the requirements of this Ordinance shall be held to be the minimum requirements for the promotion of the public health, safety, and general welfare.<sup>5</sup> [¶](#)
- (b) Conflict with public and private provisions.
  - (1) *Public provisions.* This Ordinance is not intended to interfere with, abrogate or annul any order of a court of competent jurisdiction, statute, regulation, or other provision of law. Where any provision of this Ordinance imposes restrictions different from those imposed by any other provision of County ordinances or regulations or other provisions of law, whichever provisions are more restrictive or impose higher standards shall control, unless the intent is clearly otherwise.
  - (2) *Private provisions.* This Ordinance is not intended to abrogate any legally enforceable easement, covenant or any other private agreement, or restriction; provided, that where the provisions of this Ordinance are more restrictive or impose higher standards or regulations than such easement, covenant or other private agreement, or restriction, the requirements of this Ordinance shall govern. Where the provisions of the easement, covenant or private agreement or restriction impose duties and obligations more restrictive, or higher standards than the requirements of this Ordinance, and such private provisions are not inconsistent with this Ordinance or determinations thereunder, then such private provisions shall be operative and supplemental to this Ordinance and determinations made thereunder. (9-75-23; 1961 Code, § 123-1.7.)

### Section 101-1-8. Saving provision.

This Ordinance shall not be construed as abating any legal action now pending under, or by virtue of, the prior existing Subdivision Ordinance or regulations, or as discontinuing, abating, modifying or altering any penalty accruing or about to accrue, or as affecting the liability of any person, firm, or corporation, or as waiving any right of the County under any Section or provision existing at the time of adoption of this Ordinance or as vacating or annulling any rights obtained by any person, firm or corporation, by lawful action of the County, except as shall be expressly provided for in this Ordinance. (9-75-23; 1961 Code, § 123-1.8.)

### Section 101-1-9. Reservations and repeal.<sup>6</sup> [¶](#)

Upon the effective date of this Ordinance according to law, the "Subdivision Ordinance" of Fairfax County, adopted September 1, 1947, as amended is hereby repealed, except as to Section 23-2(o) and such other Sections expressly retained herein. (9-75-23; 21-75-23; 1961 Code, § 123-1.9.)

### Section 101-1-10. Amendments.

- (a) *Procedure.* For the purpose of promoting the public health, safety and general welfare, the Planning Commission may, or at the request of the Board of Supervisors shall, prepare and recommend amendments to the Subdivision Ordinance. The procedure for such amendment shall be the same

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as for the preparation and recommendation and approval and adoption of the original ordinance; provided, that no such amendment shall be adopted by the Board of Supervisors without a reference of the proposed amendment to the Planning Commission for recommendation, nor until sixty (60) days after such reference, if no recommendation is made by the Commission.

- (b) *Advertisement and public hearing.* All amendments to the Subdivision Ordinance shall be subject to the public hearing and advertising requirements of Va. Code Section 15.2-2204. In addition, all amendments which impose or increase fees shall be subject to the requirements of Va. Code Section 15.2-106. (9-75-23; 1961 Code, § 123-1.10; 34-90-101; 39-97-101.)

### **Section 101-1-11. Vacation of plats.**

The vacation of plats may be made in accordance with the requirements set forth in the *Code of Virginia*. The Director is authorized to act on behalf of the Board of Supervisors for the vacation of plats.

### **Section 101-1-12. Validation of certain divisions of land recorded by metes and bounds or an unapproved plat before September 1, 1947.**

- (a) All divisions of land undertaken by the recordation among the land records of Fairfax County prior to September 1, 1947, of a metes and bounds description or a plat not approved by the appropriate County board, agency or official that complied with all applicable provisions of the Zoning Ordinance in effect at the time the description or plat was recorded or at some time thereafter, or meet the provisions of Sect. 2-405 of the Zoning Ordinance, except as noted in paragraph (b), are hereby validated and shall for all purposes be deemed to be in compliance with all provisions of the Subdivision Ordinance in effect at the time they were recorded as if they had fully complied with all provisions of said Subdivision Ordinance.
- (b) Any lot or parcel that is the result of a division of land undertaken by the recordation among the land records of Fairfax County prior to September 1, 1947, of a metes and bounds description or a plat not approved by the appropriate County board, agency or official which did not comply with the applicable minimum district size, lot area and/or lot width provisions of the Zoning Ordinance in effect at the time the description or plat was recorded or at some time thereafter, or does not meet the provisions of Sect. 2-405 of the Zoning Ordinance is hereby designated as an outlot under the Subdivision Ordinance and shall not constitute a buildable lot. (9-03-101; 11-04-101.)

### **Section 101-1-13. Validation of certain divisions of land created by the recordation of a county-approved plat.**

All purported subdivisions or divisions of land, even though the lot(s) or parcel(s) being subdivided was not a legally created lot or parcel, undertaken by the recordation of a plat approved by the appropriate County board, agency or official that complied with all applicable provisions of the Subdivision Ordinance and Zoning Ordinance in effect at the time of recordation are hereby validated and shall for all purposes be deemed to be in compliance with all provisions of the Subdivision Ordinance in effect at the time of recordation as if they had fully complied with all provisions of said Subdivision Ordinance. (9-03-101.)

### **Section 101-1-14. Validation of parcels.**

- (a) QUALIFICATION FOR VALIDATION BASED ON DOCUMENTS RECORDED AFTER AUGUST 31, 1947. A parcel of land described or depicted in a metes and bounds description or a plat not approved by the appropriate County board, agency or official, which description or plat was recorded among the land records of Fairfax County after August 31, 1947, is hereby validated even though

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such parcel had not been approved pursuant to the provisions of the Subdivision Ordinance in effect at the time of recordation if:

- (1) The parcel created by such metes and bounds description or unapproved plat complied with all applicable provisions of the Zoning Ordinance in effect at the time the description or plat was recorded or at some time thereafter, or meets the provisions of Sect. 2-405 of the Zoning Ordinance; and
  - (2) On March 25, 2003, or thereafter the parcel described in such metes and bounds description or depicted on such unapproved plat is included by Fairfax County as a separate parcel on the Fairfax County Real Property Identification Map; and
  - (3) On March 25, 2003, or thereafter the parcel described in such metes and bounds description or depicted on such unapproved plat is taxed as a separate parcel; and
  - (4) For parcels created after March 25, 2003, it has been more than two years since the recordation of a metes and bounds description or unapproved plat that purported to create said parcel.
- (b) Any lot or parcel that is the result of a division of land undertaken by the recordation among the land records of Fairfax County after August 31, 1947, of a metes and bounds description or a plat not approved by the appropriate County board, agency or official which did not comply with the applicable minimum district size, lot area and/or lot width provisions of the Zoning Ordinance in effect at the time the description or plat was recorded or at some time thereafter, or does not meet the provisions of Sect. 2-405 of the Zoning Ordinance is hereby designated as an outlot under the Subdivision Ordinance and shall not constitute a buildable lot.
- (c) VALIDATION PROHIBITED UNDER CERTAIN CIRCUMSTANCES. Validation of a parcel created after March 25, 2003, shall not be available under this Section if, within two years of the recordation of a metes and bounds description or unapproved plat, the Director has sent, by certified mail, a notification to the owner at the last known address of the owner as shown on the current real estate tax assessment books or current real estate tax assessment records, that the parcel in question was not created in compliance with the requirements of the Subdivision Ordinance in effect at the time of recordation of the metes and bounds description or plat that purported to create said parcel. (23-03-101; 11-04-101.)

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### FOOTNOTE(S):

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2. A large portion of the previous subdivision ordinance was adopted under authority of Virginia Code provisions which were in effect prior to 1962. This ordinance is the first extensive change since the basic subdivision enabling legislation was passed in 1962. Va. Code Ann., § 15.1-465 specifically provides: "The governing body of any county... may adopt an ordinance to assure the orderly subdivision of land and its development." The fact that these Va. Code Ann. provisions delegate police powers to the locality was established in *National Realty Corp. v. City of Virginia Beach*, 209 Va. 172, 163 S.E.2d 154 (1968):

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"The legislature, in providing for local control of land subdivision, delegated to each locality a portion of the police power of the State." *Board of Supervisors v. Georgetown Land Co*, 204 Va. 380, 131 S.E.2d 290, 292(1963). [\(Back\)](#)

The 1962 legislation also included Va. Code Ann., § 15.1-447, which provides in relevant part: [\(Back\)](#)

"(2) The comprehensive plan may be implemented by the preparation and recommendation, as provided in this chapter, of the following... (d) A subdivision control ordinance..." [\(Back\)](#)

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3. The first sentence of this Section is merely a restatement of the previous provisions contained in the 1961 Code of the County of Fairfax, § 23-5(a). The remainder of this provision incorporates the statutory provisions which become effective upon the adoption of a subdivision ordinance, under Va. Code Ann., § 15.1-473. Where possible, the actual language of the Virginia Code was used, although minor changes were necessary for clarification and adaptation. Former County provisions were Sections 23-4 and 23-5.

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4. The effective date should be inserted upon adoption of the Public Facilities Manual provisions, including policy, which are adopted to implement this Ordinance. It is recommended that such effective date be 30 days after the date of enactment of the Public Facilities Manual. The Public Facilities Manual was adopted by the Board of Supervisors on May 31, 1975; the Ordinance then became effective on June 30, 1975. [\(Back\)](#)

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5. This provision is intended to establish that the requirements and standards of this Ordinance are the least which must be complied with for the subdivision of land in Fairfax County. The requirements and standards are not meant to be absolute. [\(Back\)](#)

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6. Section 23-2(o) has been recodified as Section 101-2-2(a)(14) of this Ordinance. [\(Back\)](#)

**ARTICLE 2. Subdivision Application Procedure and Approval Process.<sup>7</sup> ▯**

[Section 101-2-1. Procedure.<sup>8</sup> ▯](#)

[Section 101-2-2. Minimum requirements.](#)

[Section 101-2-3. Preliminary subdivision plat.](#)

[Section 101-2-4. Construction plan.](#)

[Section 101-2-5. Final subdivision plat.](#)

[Section 101-2-6. Condominium conversion and cooperative conversion documents.](#)

[Section 101-2-7. Special subdivision provisions.](#)

[Section 101-2-8. Cluster subdivision provisions.](#)

[Section 101-2-9. Fees.](#)

**Section 101-2-1. Procedure.<sup>8</sup> ▯**

Whenever any subdivision of land is proposed, the subdivider shall apply for and secure approval of such proposed subdivision in accordance with the following procedure.

- (1)(A) The subdivider shall submit a preliminary subdivision plat which conforms with the requirements of this Article and with the regulations adopted under this Article, and to the rules and regulations of the State Health Department concerning the sewage plan, the water plan, and the solid waste plan. However, a preliminary subdivision plat shall not be required for a property subject to a proffered generalized development plan, proffered or approved final development plan or approved special exception plat for a cluster subdivision or waiver of minimum lot size requirements, which plan or plat is certified by a professional engineer, architect, landscape architect or land surveyor authorized to practice as such by the State.
- (1)(B) Notice required.
  - (i) Any person who submits a preliminary subdivision plat, a final subdivision plat when a preliminary subdivision plat and a construction plan are not required, or a construction plan when a preliminary subdivision plat is not required for approval under the provisions set forth in this Section shall submit written proof of notification of all owners of property wholly or partially within 500 feet of the parcel to be subdivided and at least one homeowners' or civic association within the immediate area as approved by the Department of Public Works and Environmental Services. Such notice shall include notice to owners of properties wholly or partially within 500 feet which lie in an adjoining county or municipality. This notification must be to a minimum of 25 property owners other than the owner of the parcel to be subdivided. If there are fewer than 25 different owners of property wholly or partially within 500 feet of the subject property, then additional notices shall be sent to other property owners in the immediate vicinity so that notices are sent to different owners of not less than 25 properties.
  - (ii) Notice shall be sent to the last known address of the owner(s) as shown in the current Real Estate Assessment files and shall be sent by certified mail, return receipt requested. Notice to homeowners' or civic associations shall be sent to the address kept on file by the County Office of Public Affairs, or if none is on file, to the registered address kept on file with the State Corporation Commission.
  - (iii) All written notice required by this paragraph shall include the following information:
    - (1) the tax map reference number;



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- (2) the street address of the parcel;
  - (3) the preliminary subdivision plat, construction plan, or final subdivision plat name;
  - (4) the County identification number;
  - (5) the address and telephone number of the County Office where a copy of the preliminary subdivision plat, construction plan, or final subdivision plat may be reviewed or to where questions may be directed;
  - (6) a description of the proposed development including the number of units, area in acres, and density;
  - (7) the amount of open space provided for any proposed cluster development;
  - (8) a description of the location of the proposed development including the name of the nearest road, the side of the road on which the project is located, identification of the nearest existing road intersection, and the estimated distance from that intersection;
  - (9) a statement that the proposed construction may alter storm drainage from the site;
  - (10) the name, address and telephone number of a representative of the applicant; and
  - (11) a reduction of the plan or plat showing the proposed development at a scale of 1 inch = 500 feet or larger on 8 ½ inch by 11 inch sheet(s).
- (iv) The notice shall state that:
- (1) Changes and corrections to the preliminary subdivision plat, construction plan, or final subdivision plat may occur prior to approval;
  - (2) any person wishing to comment on the preliminary subdivision plat, construction plan, or final subdivision plat should submit comments to the County Office identified in the notice;
  - (3) any person wishing to be notified of the approval of the preliminary subdivision plat, construction plan, or final subdivision plat should submit a written request to that effect to the County Office identified in the notice;
  - (4) the preliminary subdivision plat, construction plan, or final subdivision plat is subject to approval after the expiration of 30 days after the postmark date of the notice unless releases are executed by all property owners required to be notified; and
  - (5) if releases are executed by all property owners required to be notified, the preliminary subdivision plat, construction plan, or final subdivision plat may be approved sooner than 30 days after the postmark date of the notice.
- (v) The subdivider shall send a copy of the written notification letter to the Board Member in whose district the subdivision is located on the same date the abutting property owners specified in Paragraph (1)(B)(i) above are notified.
- (vi) No preliminary subdivision plat, construction plan, or final subdivision plat shall be approved within 30 days following the postmark date on the white receipts for the certified mailings unless releases are executed by all property owners required to be notified. If releases are executed by all property owners required to be notified, the plat or plan may be approved sooner than 30 days after the postmark date on the white receipts for the certified mailings. The original executed releases shall be submitted to the Director on a standard form available from the Director.
- (2) The subdivider shall, after receiving approval of a proffered generalized development plan, proffered or approved final development plan, or approved special exception plat for a cluster subdivision or waiver of the minimum lot size requirements, which plan or plat is certified by a professional engineer, architect, landscape architect or land surveyor authorized to practice as such by the State, or a preliminary subdivision plat, submit a construction plan (unless the

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subdivider chooses to convey pursuant to provisions of Section 101-2-4(c)(2)) which conforms to the requirements of this Article, to State and County standards for the control of erosion and sedimentation, and to the Utility Plan requirements of the *Virginia Code*, Section 15.2-2269. Such construction plan shall be submitted prior to submission of the final subdivision plat or in conjunction with the subdivision of such plat.

- (3) The subdivider shall, after receiving approval of a proffered generalized development plan, proffered or approved final development plan, or approved special exception plat for a cluster subdivision or waiver of the minimum lot size requirements, which plan or plat is certified by a professional engineer, architect, landscape architect or land surveyor authorized to practice as such by the State, or a preliminary subdivision plat, submit a final subdivision plat which conforms with the requirements of this Article and with the regulations adopted under this Article. In the case of a minor adjustment of property lines or a simple subdivision, where no public improvements are required under Section 101-2-2 or the Public Facilities Manual, a final plat may be submitted and no preliminary plat shall be required. In the case of a minor adjustment of property lines for lots located within a cluster subdivision approved by the Director pursuant to Section 101-2-8, the provisions of Section 101-2-8(g) shall be met in addition to all other applicable requirements. In the case of a minor adjustment of property lines, no public improvements as described in Section 101-2-2 and the Public Facilities Manual are required except as noted herein. The Director may require as a condition of approval of a final subdivision plat for a simple subdivision or a minor adjustment of property lines, the dedication of public easements, rights-of-way, and utility easements as may be deemed necessary in order to comply with the minimum requirements set forth in Section 101-2-2. Notice requirements for submission of a final subdivision plat shall apply.
- (4) The subdivider shall, where necessary, secure an air quality permit from the appropriate board or agency prior to commencing construction of any project or improvement.
- (5) Subdivision plats proposing the development or construction of affordable dwelling units in accordance with Part 8 of Article 2 of the Zoning Ordinance shall be processed within 280 days from the receipt thereof, provided such plats substantially comply with all ordinance requirements when submitted. The calculation of the review period shall include only that time the plats are in for County review, and shall not include such time as may be required for revisions or modifications in order to comply with ordinance requirements.
- (6) The subdivider shall obtain all wetlands permits required by law prior to commencing land disturbing activities and shall provide evidence of such permits to the Director. (9-75-23; 19-75-23; 1961 Code, § 123-2.1; 23-76-101; 11-77-101; 16-78-101; 37-78-101; 3-89-101; 6-89-101; 26-90-101; 20-93-101; 47-96-101; 36-97-101; 39-97-101; 37-00-101; 27-02-101; 17-04-101; 1-06-101.)

### **Section 101-2-2. Minimum requirements.**

The following shall be considered desirable minimum requirements and may be varied or waived only in specific cases by the County Executive or, only in the case of specific requests to waive the public street frontage requirement, by the Board of Supervisors; such variance or waiver may be granted with or without conditions only upon a finding, after consideration of a recommendation from the Director of the Department of Public Works and Environmental Services subsequent to the notice provisions contained in Section 101-2-2(19) herein, or in the case of a specific request to waive the public street frontage requirement, after notice of the public hearings has been sent as provided below, that the waiver or variance of any minimum requirement will not adversely affect adequacy of provisions for those items set forth in Section 101-2-2; provided however, that lots in the R-A, R-P, R-C, or R-E Districts which were created on private streets shall be ineligible for a waiver of the requirement that all parcels shall front on dedicated recorded public streets for any subsequent divisions or redivisions under the Subdivision Ordinance. In the case of a specific request to waive the public street frontage requirement, the Board of Supervisors may grant such a waiver provided the private street which provides access to the application property has been constructed and recorded among the Fairfax County land records on or before June

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28, 1993 and provided further that such waiver is in conformance with the applicable recommendations of the Comprehensive Plan. A lot shall not be eligible for a waiver of public street frontage requirements unless:

1. The requirements of the Subdivision Ordinance pose an unusual hardship not generally shared by other landowners, and
2. The waiver will result in a lot or lots that will be harmonious with and will not adversely affect neighboring properties.

A waiver of public street frontage requirements shall allow no more than one additional lot to be created. The waiver shall be recorded in the land records and shall state that further division of the property by waiver of the public street frontage requirement is precluded.

A waiver of public street frontage requirements may be granted by the Board of Supervisors only following a public hearing before the Planning Commission and the Board of Supervisors and after comment by relevant public safety, land use, and transportation agencies. Notice of such public hearings shall consist of certified letters, return receipt requested, postmarked at least ten (10) working days prior to the Planning Commission public hearing, sent by the applicant to all owners of property abutting and immediately across the street from the parcel to be subdivided and which notice shall advise the recipient of the dates, times and location of the public hearings. Such notice shall also be sent by the applicant to all owners of property on the private street ("affected owners"), civic associations contiguous to affected owners and on file with the Department of Public Works and Environmental Services, and the appropriate district council as designated by the Department. The Planning Commission will provide its recommendation on the proposed waiver to the Board of Supervisors within 60 days of the public hearing before the Planning Commission unless that time limit is waived by the Board of Supervisors.

An application for a waiver or variance shall be deemed to be an acceptance by the applicant that the time period within which the submitted subdivision plat must be acted upon will be stayed until the decision on the pending application for waiver or variance has become final. When a request to vary or waive a requirement of the Subdivision Ordinance is submitted, except for requests to waive the public street frontage requirement, the recommendation of the Director shall not be made for thirty (30) days after notice of the application has been provided pursuant to Chapter 101, Section 101-2-2(19). Interested parties may file written comments which shall become part of the record and considered by the Director prior to his recommendation to the County Executive. The County Executive or the Board of Supervisors, as the case may be, may require, as a condition of any variance or waiver pursuant to this Section, dedication of right-of-way or construction of road improvements or an agreement to dedicate and/or construct such improvements as may now or in the future be reasonably required to assure the adequate provision of the requirements of this Section. Any person aggrieved by the County Executive's decision to grant or deny a variance or waiver pursuant to this Section may appeal such decision to the Board of Supervisors. Appeals of the County Executive's decision concerning any amendment to a previously granted variance or waiver shall relate to that amendment only, and shall not be brought with regard to any other decisions of the County Executive previously subject to appeal. All appeals shall be brought within ten (10) working days of the decision at issue and shall be made by submitting a written statement of appeal to the County Executive and to the Clerk of the Board. All written statements of appeal shall include the following information: The name(s) and address(es) of the appellant(s); the date of the County Executive's decision; the date of the appeal; the interest of the appellant(s) in the action; and the statute, ordinance, standard or requirement which the appellant(s) believe has been violated by the County Executive.

- (1) *Subdivision names.* The names of new subdivisions shall not duplicate nor too closely approximate the names of existing or platted subdivisions.
- (2) *Street names.* The proper name of any new street shall not duplicate the proper name of any existing or platted street, unless the new street is clearly a continuation of or in alignment with the existing or platted street.
- (3) *Street layout.*

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- (A) The arrangement, character, extent, width, grade and location of all streets or highways shall conform to the comprehensive plan and official map, as adopted.
  - (B) Where such street is not shown in the comprehensive plan or official map, it shall conform to the duly adopted County standards relating to street design and construction in the Public Facilities Manual. Such standards shall be designed in such manner as to reflect the intensity of the projected use.
  - (C) All lots for single-family detached dwellings shall have frontage on existing VDOT maintained public streets or standard streets for which construction is to be provided in accordance with this subsection. A minor adjustment of property lines as defined in § 101-4-1 is not subject to the above requirement, provided that the plat recorded in the land records shall state that future division of the property by waiver of the public street frontage requirement is precluded. All streets that are proposed to be dedicated to public use shall be constructed to the standards required by the Public Facilities Manual. Private streets may be allowed in commercial and industrial districts, and multiple family dwelling developments. With the approval of the Director, private streets may be allowed in single family attached dwelling developments; single family detached dwelling developments in the P, R-5, R-8 and R-12 Districts; and for single family attached dwelling units when located in a single family detached affordable dwelling unit development in the R-2, R-3 and R-4 Districts. Private streets must be developed in accordance with the Public Facilities Manual. The Director may approve such private streets in those cases in which the developer agrees to bond all improvements required by this Subdivision Ordinance. Where such private streets are approved and meet the standards necessary for inclusion in the system of state highways, the developer must incorporate in all subdivision construction plans, final subdivision plats, approved deeds of subdivision and all similar instruments, the following statement: "The private streets in this development are not intended for inclusion in the system of state highways and will not be maintained by the Virginia Department of Transportation or Fairfax County, and are not eligible for rural addition funds or any other funds appropriated by the General Assembly and allocated by the Commonwealth Transportation Board." Any and all streets that are not constructed to meet the standards necessary for inclusion in the system of state highways shall be privately maintained and shall not be eligible for acceptance into the system of state highways unless improved to current Virginia Department of Transportation standards with funds other than those appropriated by the General Assembly of Virginia and allocated by the Commonwealth Transportation Board. If the proposed private streets do not meet Virginia Department of Transportation standards, the following statement shall be included on all subdivision construction plans, final subdivision plats, approved deeds of subdivision and all similar instruments as follows: "The private streets in this development do not meet the standards necessary for inclusion in the system of state highways and will not be maintained by the Virginia Department of Transportation or Fairfax County, and are not eligible for rural addition funds or any other funds appropriated by the General Assembly of Virginia and allocated by the Commonwealth Transportation Board."
- (4) *Reservations for public use.* In the interest of public welfare the subdivider shall provide reservations of suitable land for schools, parks, playgrounds in accord with the comprehensive plan, capital improvements program, and official map.
  - (5) *Curbs and gutters.* These shall be installed in proposed subdivisions according to the duly adopted standards and criteria of the *Public Facilities Manual*. The requirement for installation shall be based upon actual proposed density and shall not apply to low-density development as established in the standards.
  - (6) *Sanitary sewer facilities and a public water supply.* These shall be installed in proposed subdivisions according to the duly adopted standards and criteria of the *Public Facilities Manual*. The requirement for installation shall be based upon actual proposed density and may be waived for low density development where a water plan and sewage plan are adequate.

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- (7) *Facilities in rights of way.* In addition to improvements prescribed herein, any facility to be constructed or installed in a dedicated right of way by or for a public utility shall be subjected to review by the Director, according to the duly adopted standards and criteria of the *Public Facilities Manual*.
- (8) *Utilities.* All utilities shall be installed underground; such utilities, when provided by the subdivider, shall be installed underground in accordance with duly adopted County standards, as established in the *Public Facilities Manual*. All other utilities shall be installed underground in accordance with standards of utility practice for underground construction, which standards, and any amendments thereto, shall be furnished to the County by the utility company, and in accordance with standards furnished to and regulations issued by the applicable regulatory authority.
- (9) *Major underground utility easement (notice required).*
  - (A) In addition to the notice requirement of Section 101-2-1, any person who submits a preliminary subdivision plat, final subdivision plat or construction plan which proposes land disturbing activities within fifty (50) feet of or within a major underground utility easement located on the property shall send a written notice and a copy of such plan or plat to the owner of the major underground utility easement.
  - (B) All written notice required by this paragraph shall include the tax map reference number, the street address of the parcel, the preliminary subdivision plat, final subdivision plat, or construction plan name and County identification number and shall state that: (1) Changes and corrections to the preliminary subdivision plat, final subdivision plat or construction plan may occur prior to approval; (2) persons wishing to be notified of the approval of the preliminary subdivision plat, final subdivision plat or construction plan should submit a written request to that effect to the County Office identified in the notice; (3) the address and telephone number of the County Office where a copy of the preliminary subdivision plat, final subdivision plat or construction plan may be reviewed; (4) the preliminary subdivision plat, final subdivision plat or construction plan is subject to approval after the expiration of forty-five (45) days after the postmark date of the notice unless releases are executed by all major underground utility easement owners required to be notified; and (5) if releases are executed by all major underground utility easement owners required to be notified, the preliminary subdivision plat, final subdivision plat or construction plan may be approved sooner than forty-five (45) days after the postmark date of the notice.
  - (C) Such plan or plat and notice shall be sent by certified mail, return receipt requested, postmarked no later than five days after the initial submission of the plan or plat to the Director, to the owner's current registered agent on file with the State Corporation Commission. A copy of the notice and plan or plat with the corresponding postmarked white receipt shall be submitted to the Director and no plan or plat subject to this paragraph shall be approved within 45 days following the postmark date on the white receipt for the certified mailing unless releases are executed by all major underground utility easement owners required to be notified. If releases are executed by all major underground utility easement owners required to be notified, the plan or plat may be approved sooner than 45 days after the postmark date on the white receipts for the certified mailings. The original executed releases shall be submitted to the Director on a standard form available from the Director.
- (10) *Sidewalks, trails and walkways.* These shall be installed in proposed subdivisions according to the duly adopted standards and criteria of the *Public Facilities Manual*. The requirement for installation shall be based upon actual proposed density and proposed use. Access shall be provided to any adjacent sidewalks, trails and walkways which exist or are shown in the comprehensive plan.
- (11) *Standards and criteria.* These shall be adopted under this Ordinance in order to implement the policy and purposes enumerated herein.

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- (A) Such standards and criteria shall be published in the *Public Facilities Manual* and shall be effective upon adoption by the Board pursuant to notice and public hearing.
- (B) The Board of Supervisors shall review the *Public Facilities Manual* annually pursuant to notice and public hearing.
- (12) *Drainage and flood control.* Improvements for the purpose of adequate control of stormwater shall be required by the Director according to the standards and criteria duly adopted in Chapters 118 and 124 of the County Code and the Public Facilities Manual.
- (13) *Stormwater quality.* All required Water Quality Impact Assessments, site-specific determinations of water bodies with perennial flow, Resource Protection Area Boundary Delineations and Resource Management Area Boundary Delineations shall be submitted and adequate measures shall be provided in compliance with Chapters 118 and 124 of the County Code and the Public Facilities Manual.
- (14) *Open space.* The Director may require the dedication of up to ten percent of the proposed subdivision to the County for recreational purposes, according to the duly adopted standards and criteria of the *Public Facilities Manual*.
- (15) *Monuments.* In all subdivisions monuments shall be placed in the ground at all lot corners and angle points in the outer lines of the subdivision and at all points of angles and curvature in the right of way lines of all streets within the subdivision, according to the duly adopted standards and criteria of the *Public Facilities Manual*.
- (16) *Soil identification and Soil Report.* <sup>9</sup> [§](#)
  - (A) Adequate identification of soil characteristics shall be provided in accordance with the requirements of the Public Facilities Manual and the County Code.
  - (B) Unless waived in accordance with Chapter 107 of the Code, a soil report prepared by or under the direction of a professional engineer experienced in soil and foundation engineering must be submitted for proposed subdivisions located in problem soil areas, which are delineated on the official map adopted by the Board of Supervisors, and for such other proposed subdivisions where special soil or water conditions are deemed by the Director to be potentially injurious, and instances where marine clays and/or swelling and shrinking clays are discovered on the project site.
  - (C) The required soil report and associated plans, specifications and other documentation must be prepared in accordance with the procedures outlined in the Public Facilities Manual adopted by the Board of Supervisors and must be accompanied by written proof of notification to five (5) adjoining property owners, or all adjoining property owners if there are less than five (5) when the Director deems that the proposed construction or grading in problem soil may adversely impact adjacent properties as a result of unstable slopes, grading or construction methods including, but not limited to, blasting or dynamic compaction. The form of such notice shall be approved by the Director.
  - (D) Submission of a soil report shall not be required for the installation or repairs of linear structures in problem soils such as public utilities, sanitary sewer lines, storm sewer lines, trails, sidewalks, drainage channel improvements, telephone and cable TV lines, etc., when the associated work complies with the safety requirements of the Occupational Safety and Health Administration (OSHA) as adopted by the Commonwealth.
  - (E) Submission of a soil report shall not be required as a prerequisite for any plat approval when no grading or construction work is proposed with the subject plat. The Director may require that the engineer or surveyor note on the plat that future grading or construction work in the problem soil(s) may require the submission of a soil report. For the subdivision of parcels of land where the site is unmapped, the Director may require for plat approval, submission of a soils map.
  - (F) After a soil report on the proposed subdivision has been submitted, the Director shall refer all projects to the Geotechnical Review Board. However, if it is reasonably apparent to the

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Director that the proposed project does not create a threat of injury to life or property then the requirement for referral to the Geotechnical Review Board shall not be applicable. The Geotechnical Review Board shall analyze soil reports referred to the Board by the Director and provide him with appropriate recommendations. The recommendations of the Geotechnical Review Board shall not be binding on the Director. No soil related construction work shall commence until the proposed work has been approved. However, approval as to soil conditions shall not relieve any person from obtaining any or all additional permits and approvals necessary for the proposed work.

- (G) The following note will be placed on the final subdivision plat where a soil report was required. "Engineering geology and/or soil reports have been reviewed and approved by the Director of the Department of Public Works and Environmental Services for the property described herein and are available for review at the Department of Public Works and Environmental Services. Site conditions are of such a nature that land slippage or foundation problem possibilities required the submittal of soil reports. A copy of said soil report is available at the Department of Public Works and Environmental Services."
- (H) Review and approval of plans, specifications and reports by the County with or without recommendations of the Geotechnical Review Board shall in no way relieve the subdivider of the responsibility for the design, construction and performance of the structures, pavement and slopes on the project and damage to surrounding properties.
- (I) In accordance with Virginia Code § 55-70.1, the warranty on the foundation for any new dwelling against structural defects, shall be for a period no less than five years.
- (17) *Erosion and sediment control.* Adequate erosion and sediment control measures shall be installed in every subdivision in compliance with the requirements of Chapters 104 and 118 of the County Code, Article 11 of the *Public Facilities Manual*, and the current Virginia Erosion and Sediment Control Handbook.
- (18) *Vegetation.* Vegetation removal and replacement shall be accomplished in conformance with the requirements of Paragraph (17), *supra*, and with the policies and procedures of Chapter 122 of the Code (Tree Conservation Ordinance) and the Public Facilities Manual.
- (19) *Variance or waiver (notice required).*
  - (A) Any person who submits a request for a variance or waiver of the minimum requirements as set forth in this Section shall submit written proof of notification of all owners of property abutting and immediately across the street from the parcels to be subdivided. This notification must be to a minimum of five (5) property owners other than the owner of the parcel to be subdivided, one (1) civic association within the immediate area as approved by the Department of Public Works and Environmental Services (DPWES) and to the appropriate district council as designated by DPWES and will include adjacent property owners where there are fewer than five (5) property owners abutting and across the street. Notice shall be sent to the last known address of the owner(s) as shown in the current Real Estate Assessment files. All written notice shall be sent by certified mail, return receipt requested.
  - (B) The written notification required in Paragraph (A) shall include the tax map reference number, the street address of the parcel, the preliminary subdivision plat, final subdivision plat, or construction plan name and County identification number and shall state that: (1) A request for a variance or waiver of the minimum requirements contained in Section 101-2-2 of the Subdivision Ordinance of Fairfax County has been submitted to the Department of Public Works and Environmental Services and the nature of the variance or waiver request (summarize the requested variance or waiver); (2) persons wishing to be notified of the approval of the variance or waiver should submit a written request to that effect to the County Office identified in the notice; (3) the address and telephone number of the County Office where a copy of the variance or waiver request may be reviewed; (4) the variance or waiver request is subject to approval after the expiration of thirty (30) days after the postmark date of the notice unless releases are executed by all property owners, the local

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civic association, and the district council required to be notified; and (5) if releases are executed by all property owners, the local civic association, and the district council required to be notified, the waiver or variance may be approved sooner than thirty (30) days after the postmark date of the notice.

- (C) No waiver or variance shall be approved within thirty (30) days following the postmark date on the white receipts for the certified mailings unless releases are executed by all property owners, the local civic association, and the district council required to be notified. If releases are executed by all property owners, the local civic association, and the district council required to be notified, the waiver or variance may be approved sooner than thirty (30) days after the postmark date on the white receipts for the certified mailings. The original executed releases shall be submitted to the Director on a standard form available from the Director.
- (20) *Street lights.* Street light poles and fixtures shall be installed in proposed subdivisions according to the duly adopted standards and criteria of the Public Facilities Manual. The requirement for installation shall be based upon actual proposed density and proposed use.
- (21) *Tree conservation requirements.*
- (A) All developments requiring submission and approval of a subdivision plan, except for those controlling subdivision boundary adjustments through which no new lots are created, shall include the tree conservation requirements of Chapter 122 of the Code (Tree Conservation Ordinance) and the Public Facilities Manual.
  - (B) The tree conservation requirements of this Section, Chapter 122 of the Code (Tree Conservation Ordinance) and the Public Facilities Manual or any approved proffered condition, special permit, special exception or variance shall be completed; provided, however, that completion of the requirements may be delayed when justification satisfactory to the Director is provided; such justification shall include an agreement and bond with surety satisfactory to the Director for completion in accordance with a firm schedule for timely completion.
- (22) *Places of burial.* The subject property shall be surveyed for evidence of burial places. Any grave, object, or structure marking a place of burial located on land proposed for subdivision shall be identified on any plans required by this Chapter.
- (23) *Off-site utility easements (notice required).*
- (A) In addition to the notice requirement of Section 101-2-1, any person who submits a construction plan which proposes land disturbing activities within an off-site utility easement shall send a written notice with the information required by Section 101-2-1 and a copy of such plat or plan to the owner of the property containing the easement. Notice shall be sent to the last known address of the owner as shown in the current Real Estate Assessment files and shall be sent by certified mail, return receipt requested.
  - (B) The written notification required in Paragraph (A) shall include the tax map reference number, the street address of the parcel, construction plan name and County identification number and shall state that: (1) Changes and corrections to the construction plan may occur prior to approval; (2) persons wishing to be notified of the approval of the construction plan should submit a written request to that effect to the County Office identified in the notice; (3) the address and telephone number of the County Office where a copy of the construction plan may be reviewed; (4) the construction plan is subject to approval after the expiration of thirty (30) days after the postmark date of the notice unless releases are executed by all property owners required to be notified; and (5) if releases are executed by all property owners required to be notified, the construction plan may be approved sooner than thirty (30) days after the postmark date of the notice.
  - (C) A copy of the notice and plan with the corresponding postmarked white receipt shall be submitted to the Director and no plan shall be approved within 30 days following the postmark date on the white receipts for the certified mailings unless releases are executed



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by all property owners required to be notified. If releases are executed by all property owners required to be notified, the plan may be approved sooner than 30 days after the postmark date on the white receipts for the certified mailings following consideration of any comments received. The original executed releases shall be submitted to the Director on a standard form available from the Director.

### (24) *Shared Utility Easements.*

- (A) Common or shared easements shall be provided for conveyance to franchised cable television operators furnishing cable television and public service corporations furnishing cable television, gas, telephone and electric service to the proposed subdivision in accordance with § 15.2-2241(6) of the *Virginia Code* and the Public Facilities Manual. (Code 1954, vol. 2, §§ 5-2, 5-12; 10-17-56; 3-4-59; 11-18-58; 7-12-61; 10-11-61; 7-18-62; 7-31-68; 11-19-69; 12-10-69; 2-11-70; 11-18-70; 50-74-23; 9-75-23; 18-75-23; 19-75-23; 1961 Code, § 123-2.2; 73-76-101; 11-77-101; 1-80-101; 18-80-101; 5-88-101; 8-90-101; 34-90-101; 33-91-101; 20-93-101; 31-93-101; 47-93-101; 11-95-101; 28-95-101; 36-97-101; 37-00-101; 23-01-101; 9-02-101; 14-02-101; 30-03-101; 27-04-101; 06-07-101; 21-08-101; 61-08-101; 03-14-101.)

### Section 101-2-3. Preliminary subdivision plat.

- (a) *Who may prepare.* Preliminary subdivision plats shall be prepared by a certified land surveyor or professional engineer.<sup>10</sup> In addition, plats and plans submitted under the County's Plans Examiner Program shall be reviewed and recommended for submission by a Plans Examiner in accordance with Chapter 117 (Expedited Land Development Review) of the Code of the County of Fairfax, Virginia. [§](#)
- (b) *Generally.* Sixteen (16) prints of preliminary plats shall be submitted for approval, and the Director, when necessary, may require additional copies. One (1) copy, with the action of the Director noted thereon, shall be returned to the subdivider or his agent.
- (c) *Preparation.* <sup>11</sup> Preliminary plats of a subdivision shall be prepared in accordance with the regulations set forth in this Section and shall be submitted in metric measurements with the English units of measurement shown in parenthesis following the metric measurements or submitted using the English equivalent to metric measurements. Such plats shall be on a maximum sheet size of thirty-six (36) inches by forty-eight (48) inches or metric equivalent and shall be drawn to a metric scale of not smaller than 1:1000 (1:500 is required by the State Health Department if the lots are to be served by individual sewage disposal systems) or to an English scale of not smaller than 1" = 100' (1" = 50' is required by the State Health Department if the lots are to be served by individual sewage disposal systems) and may be of one or more sheets. Where more than one sheet is provided, match lines shall clearly indicate where the sheets join. Preliminary plats shall show the following information: [§](#)
- (1) Name of subdivision, owner, subdivider, surveyor or engineer, date of drawing, number of sheets, north point and scale.
  - (2) Location of proposed subdivision by an inset map at a scale of not less than two (2) inches equal one (1) mile indicating thereon nearby highways and roads and their names and numbers, public schools, parks, libraries, fire stations, police stations, towns, subdivisions and other landmarks.
  - (3) A boundary survey or existing survey of record; provided, that such survey shows a closure with an accuracy of not less than one (1) in two thousand five hundred (2,500); total acreage, acreage of subdivided area, number and approximate area of all building sites, computations showing conformance with the density and open space requirements of the Zoning Ordinance, existing buildings within the boundaries of the tract, names of owners and their property lines within the boundaries of the tract and adjoining such boundaries.

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- (4) All existing, platted and proposed streets and easements, their names, numbers, approximate widths, design speeds (posted speeds when design speeds are unavailable), and typical cross-sections; category, centerline radius, horizontal and vertical alignments and horizontal and vertical sight distance measurements for all proposed streets; existing or proposed deceleration and acceleration lanes, vehicle trip estimates, turn lanes, transitions and median breaks, service drives, street lights and proposed stop and yield signs; public areas and parking spaces; existing or proposed utilities; existing and proposed recreational facilities, sidewalks, trails, fire flow, and other pertinent data.
  - (5) Location of stormwater management facilities (such as Best Management Practices [BMP], detention, and/or retention ponds) with approximate sizing and summary of approximate amount of detention and BMP requirements; and location of maintenance accessways.
  - (6) Sufficient detail to verify the presence of an adequate outfall as defined in the "Public Facilities Manual," including but not limited to an outfall narrative, drainage areas, pipe sizes, cross-sections and flow calculations.
  - (7) Identification of the necessity for floodplains studies, drainage studies, soil reports, and easements and/or letters of permission for off-site construction.
  - (8) Topography satisfactory to the Director and to the State Health Department, as established in the *Public Facilities Manual*.
  - (9) Statement concerning erosion and sediment control measures to be provided prior to any clearing, grading or construction, including proposed limits of clearing.
  - (10) Statement concerning the stormwater detention or the retention facilities to be used prior to any clearing, grading or construction.
  - (11) Statement that air quality permit shall be obtained, if necessary, and provided prior to any clearing, grading or construction.
  - (12) Statement by the owner/developer certifying that all wetlands permits required by law will be obtained prior to commencing land disturbing activities.
  - (13) Existing Vegetation Map, Tree Preservation Target Calculations and Narrative, and 10-Year Tree Canopy Requirements and Calculations to show compliance with the Tree Conservation Requirements in § 101-2-2(21), the Cluster Subdivision Provisions in § 101-2-8(b) and (c), Chapter 122 of the Code (Tree Conservation Ordinance) and § 12-0500 of the Public Facilities Manual.
  - (14) A map identifying classification of soil types at a scale of not smaller than one inch equals five hundred feet (1" = 500'), based upon the County of Fairfax Soils Identification Maps or, if not mapped, based upon soils identified by a professional authorized by the State to provide such information.
  - (15) All Resource Protection Area boundaries and all Resource Management Area boundaries.
  - (16) Identification of the necessity for a Water Quality Impact Assessment.
  - (17) For cluster subdivisions in the R-2 District and cluster subdivisions in the R-3 and R-4 Districts which have a minimum district size of three and one-half acres or greater, the existing use and zoning classifications for all parcels located outside of and contiguous to the cluster subdivision boundary.
- (d) *Approval.* <sup>12</sup> Preliminary plats shall be approved by the Director and such action shall be evidenced on copies thereof by his signature; provided that the provisions of this Chapter are complied with in the preparation thereof. [§](#)
- (1) Upon receipt of the preliminary plat, the Director shall forthwith transmit a copy of such plat to any appropriate body or agency for review. Review by any appropriate body or agency shall be completed and returned to the Director.

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- (2) Unless delayed by a federal or State review, a preliminary plat shall be acted upon within 60 days, except under abnormal circumstances, from receipt thereof in the Office of the Director. Any preliminary plat that has been previously disapproved and has been modified and corrected to address all deficiencies shall be acted upon within 45 days, except under abnormal circumstances, from receipt thereof in the Office of the Director. The Director shall thoroughly review the plat and make a good faith effort to identify all deficiencies, if any, with the initial submission. If the preliminary plat is disapproved, the reason or reasons for such disapproval shall be shown on the plat or in a separate document. The reasons for disapproval shall identify all deficiencies in the plat which cause the disapproval by reference to specific duly adopted ordinances, regulations, or policies and shall identify such modifications or corrections as will permit approval of the plat.
- (3) However, if approval of a feature or features of the preliminary plat by a federal or state agency, including, without limitation, the Virginia Department of Transportation, is necessary, the Director shall forthwith forward a copy of the preliminary plat to the appropriate federal or State agency or agencies for review. Upon receipt of the approvals from all federal and State agencies, the Director shall act upon such preliminary plat within thirty-five (35) days.
- (4) An approved preliminary plat must comply with all provisions of law and shall be valid for a period of five years, provided the subdivider: (i) submits a complete final subdivision plat for all or a portion of the property within one year of the original date of approval of the preliminary plat; and (ii) after such submission, diligently pursues approval of the final subdivision plat. Diligent pursuit of approval means that the subdivider has incurred extensive obligations or substantial expenses relating to the submitted final subdivision plat or modification thereto.

No sooner than three years following such preliminary subdivision plat approval, and upon 90 days written notice by certified mail to the subdivider, the Director may revoke such approval upon a specific finding of facts that the subdivider has not diligently pursued approval of the final subdivision plat. A preliminary plat may be re-approved (redated) prior to expiration to extend its validity for a one-year period from the date of re-approval if such plat complies with all provisions of law in effect at the time of re-approval. A preliminary plat shall be null and void if the final plat of the subdivision is not approved and recorded within five years after approval of the preliminary plat. Approval of a preliminary plat shall not be considered to be an acceptance of such plat for recordation. (Code 1954, vol. 2, §§ 5-4, -6, -8, -17; 10-17-56; 11-18-59; 9-14-66; 2-10-69, § 5; 9-75-23; 19-75-23; 1961 Code, § 123-2.3b; 23-83-101; 53-86-101; 10-87-101; 6-89-101; 27-89-101; 8-90-101; 34-90-101; 25-91-101; 15-92-101; 20-93-101; 28-95-101; 33-96-101; 46-96-101; 47-96-101; 22-99-101; 27-02-101; 17-04-101; 27-04-101; 61-08-101.)

### Section 101-2-4. Construction plan.

- (a) *Who may prepare.* Construction plans for subdivision development shall be prepared and certified by a certified professional engineer or land surveyor authorized by the State to practice as such. In addition, plats and plans submitted under the County's Plans Examiner Program shall be reviewed and recommended for submission by a Plans Examiner in accordance with Chapter 117 (Expedited Land Development Review) of the Code of the County of Fairfax, Virginia.
- (b) *Generally.* <sup>13</sup> All construction plans shall be submitted to the Director in sixteen (16) prints, or more where necessary, and each shall conform to the standards and criteria established under this Ordinance. <sup>14</sup>
- (c) *Preparation, exceptions.*
  - (1) A construction plan shall be submitted by the subdivider in accordance with the construction plan requirements established under this Section to insure general compliance with the Zoning Ordinance and provide specific information on improvements to be made by the subdivider as required in this Ordinance and the Public Facilities Manual. A construction plan shall be submitted in metric measurements or the English equivalent to metric measurements. Where the submission of a preliminary subdivision plat is required by Section 101-2-1(1)(A), such plat must be approved prior to the submission of the construction plan. The construction plan must

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be submitted prior to or in conjunction with the submission of the final subdivision plat, and such plan must be approved by the Director prior to the approval of the final subdivision plat. An approved construction plan shall remain valid as long as the preliminary subdivision plat remains valid or, where the submission of a preliminary subdivision plat is not required by Section 101-2-1(1)(A), then for a period of five years from the date of approval of the construction plan. The construction plan shall include final details in accord with the Erosion and Sedimentation Control Ordinance and with the Utilities Plan.

- (2) A construction plan shall not be required from any subdivider who is not constructing any improvements for dedication and who includes covenants and restrictions relating to every lot or parcel which:
  - (A) Provide that Fairfax County may enforce such covenants and restrictions; and
  - (B) Assure compliance with the Erosion and Sedimentation Control Ordinance; and
  - (C) In subdivisions where there are common areas or non-dedicated public improvements, provide for the creation and maintenance of a homeowners' organization with the capacity to maintain any private roads and to the common areas or improvements.
- (d) *Approval.* <sup>14</sup> The Construction Plan shall be acted upon within 60 days, except under abnormal circumstances, from receipt thereof in the Office of the Director. Any construction plan that has been previously disapproved and has been modified and corrected to address all deficiencies shall be acted upon within 45 days, except under abnormal circumstances, from receipt thereof in the Office of the Director. The Director shall thoroughly review the construction plan and make a good faith effort to identify all deficiencies, if any, with the initial submission. If the construction plan is disapproved, the reason or reasons for such disapproval shall be shown on the plan or in a separate document. The reasons for disapproval shall identify all deficiencies in the plan which cause the disapproval by reference to specific duly adopted ordinances, regulations, or policies, and shall identify such modifications or corrections as will permit approval of the plan. (9-75-23; 1961 Code, § 123-2-4; 11-77-101; 6-89-101; 27-89-101; 34-90-101; 28-95-101; 33-96-101; 22-99-101; 27-02-101; 27-04-101.) <sup>15</sup>

### Section 101-2-5. Final subdivision plat.

- (a) *Who may prepare.* Final subdivision plats which are intended for recording shall be prepared by a certified professional engineer or land surveyor. In addition, plats and plans submitted under the County's Plans Examiner Program shall be reviewed and recommended for submission by a Plans Examiner in accordance with Chapter 117 (Expedited Land Development Review) of the Code of the County of Fairfax, Virginia.
- (b) *Generally.* The original of the final plat and at least 16 prints of the final plat of the subdivision or section thereof, accompanied by payment of all required fees, shall be submitted for approval. If a construction plan for the proposed subdivision or section thereof has not previously been submitted, then it shall be submitted in conjunction with the submission of the final plat of the subdivision or section thereof. The original and one print of the final plat with the action of the approving authority noted thereon shall be retained by the Director until such time as the same is to be recorded. At that time, the original and one print of the final plat shall be transmitted forthwith to the office of the Clerk of the Circuit Court in a manner acceptable to the Director. After recordation, the Clerk of the Circuit Court shall return the original of the final plat to the Director who shall return it to the surveyor or engineer who prepared the plat.
- (c) *Preparation.* Final subdivision plats shall be prepared in accordance with the regulations set forth and established under this Section and shall be submitted in metric measurements with the English units of measurement shown in parentheses following the metric measurements or submitted using the English equivalent to metric measurements. Such plats shall be drawn in ink on suitable material to a metric scale of 1:1000 or larger, or an English scale of 1" = 100' or larger with clearly legible

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letters and figures which will be legible after copying on a sheet or sheets not less than eight and one-half (8½) inches by eleven (11) inches, nor more than eighteen (18) inches by twenty-four (24) inches or their metric equivalent and shall show the following information:

- (1) Name of subdivision, district, county, state, owner, north point, the scale and date of drawing and number of sheets. If shown on more than one (1) sheet, match lines shall clearly indicate where the several sheets join. A blank oblong space four (4) inches by six (6) inches shall be reserved for the use of the approving authority.
- (2) Location of proposed subdivision by an inset map at a scale of not less than two (2) inches equals one (1) mile indicating thereon adjoining roads and their names and numbers, town, subdivisions and other landmarks.
- (3) A boundary survey of the site, with a maximum permissible error of closure within the limit of one in 20,000, related to the Virginia Coordinate System of 1983 (VCS 83) North Zone. Two (2) adjacent corners or two points on every plan sheet shall be referenced to the VCS 83 with coordinate values shown in feet. If a conversion from meters to feet is necessary, the foot definition used for conversion is the U.S. Survey Foot of 1 ft. = 1200/3937 E+00 meters. Plats may be related to true north or meridian of record for properties located more than 1.24 miles (2.0 kilometers) from one or both of the two (2) nearest VCS 83 monuments, with distance measured along a straight line from each monument to the closest point on the property boundary. Plats for subdivisions creating no more than two (2) lots may be related to true north or meridian of record. Plats referenced to VCS 83 shall be annotated as follows: "The plat of the property shown hereon is referenced to the Virginia Coordinate System of 1983 as computed from a field run boundary and horizontal control survey that ties this boundary to the Fairfax County Survey Monument (insert number and name of monument and show combined grid and elevation factor) or NOAA/NGS Survey Monument (insert PID number and designation with the combined scale factor)." It is the surveyor's responsibility to ascertain the existence of VCS 83 control monuments to be utilized in their surveys. Assistance will be provided by the Land Survey Branch, Construction Management Division, DPWES to the extent of granting access to their records on VCS 83 control data. If using a GPS Static, or Virtual Reference System for deriving horizontal and/or vertical control, coordinates must be stated in VCS 83, North Zone, U.S. Survey Foot units, with NGVD 1929 vertical datum and so stated in the above format.
- (4) The surveyor or engineer shall endorse upon each such plat a signed certificate setting forth the source of title of the owner of the land subdivided and the place of record of the last instrument in the chain of title; when the plat is of land acquired from more than one (1) source of title, the outlines of the several tracts shall be indicated upon such plat.
- (5) Every such plat, or deed of dedication to which the plat is attached, shall contain in addition to the professional engineer's or land surveyor's certificate a statement as follows: "The platting or dedication of the following described land (here insert a correct description of the land subdivided) is with the free consent and in accordance with the desire of the undersigned owners, proprietors, and trustees, if any." The statement shall be signed by such persons and duly acknowledged before some officer authorized to take acknowledgment of deeds. When thus executed and acknowledged, the plat, subject to the provisions herein, shall be filed and recorded in the office of the Clerk of the Court where deeds are admitted to record for the lands contained in the plat, and indexed in the general index to deeds under the names of the owners of lands signing such statement, and under the name of the subdivision.
- (6) The accurate location and dimensions by bearings and distances with all curve data of all lot and street lines, center lines of streets, center lines of all easements, boundary lines of all parks, school sites or other public areas; the house number and area of all single-family dwelling building sites; all existing and platted streets, their names, numbers and width (if definable); existing and proposed utility easements; and, a note stating that any future easement or authorization for electric, cable, telephone or gas services to be furnished to the property must comply with the provisions of § 15.2-2241(6) of the *Virginia Code*. Names of owners or lot and subdivision names, accurate location of their property lines, both within the boundaries of the subdivision and adjoining such boundaries.

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- (7) All dimensions shown in feet and decimals of a foot to the closest one one-hundredth (1/100) of a foot; all bearings in degrees, minutes and seconds, which may be to the nearest ten seconds.
- (8) The data for all curves or portions thereof along street frontages shall be shown in detail at the curve or in a curve data table containing the following: Delta, radius, arc, tangent, chord and chord bearing.
- (9) Land within an adopted Pro Rata Road Reimbursement District shall be so designated, with the pro rata road reimbursement payment calculations for each proposed use and the sum total of payments to be reimbursed.
- (10) A statement by the owner/developer certifying that all wetlands permits required by law will be obtained prior to commencing land disturbing activities.
- (11) The specific lots which will contain affordable dwelling units pursuant to Part 8 of Article 2 of the Zoning Ordinance shall be designated on the final subdivision plat. For multiple section developments where not all the required affordable dwelling units are to be provided in the first section of the development, the final subdivision plat for the first section and all subsequent sections shall contain a notation identifying in which section(s) the affordable dwelling units will be or have been provided and a total of all affordable dwelling units for which such plat(s) have been approved.

Additionally, at the time of final subdivision plat submission, the owner and/or applicant shall submit an affidavit which shall include:

- A. The names of the owners of each parcel of the sites or portions thereof at one location, as such term is defined in Par. 1 of Sect. 2-802 of the Zoning Ordinance; and
  - B. The Fairfax County Property Identification Map Number, parcel size and zoning district classification for each parcel which is part of the site or portion thereof.
- (12) All Resource Protection Area (RPA) boundaries and all Resource Management Area boundaries and a note or notes with the following information:
    - (i) The source of the boundary information;
    - (ii) The RPA is to remain undisturbed and vegetated in accordance with the requirements of Section 118-3-3(f) of Chapter 118 of the County Code;
    - (iii) Only water dependent facilities or redevelopment is permitted in the RPA; and
    - (iv) Where houses are to be served by on-site sewage disposal systems, each disposal system shall be pumped-out at least once every five (5) years and each disposal system shall be provided with a reserve sewage disposal site with a capacity at least equal to that of the primary sewage disposal site. Building shall be prohibited on the area of all such sewage disposal sites, including the reserve sewage disposal site, until the structure is connected to public sewer or an on-site sewage treatment system that operates under a permit issued by the State Water Control Board.

### (d) *Approval.*

- (1) Final plats shall be acted upon within sixty (60) days, except under abnormal circumstances, from receipt thereof. If disapproved, the reason or reasons for such disapproval shall be shown on the plat or in a separate document. The reasons for disapproval shall identify all deficiencies in the plat which cause the disapproval by reference to specific duly adopted ordinances, regulations, or policies, and shall generally identify such modifications or corrections as will permit approval of the plat. Final plats shall be approved for the Board of Supervisors, by the Director, and such action shall be evidenced thereon by his signature; provided,
  - (A) Such plats are in satisfactory accordance with a proffered generalized development plan, proffered or approved final development plan, or approved special exception plat for a cluster subdivision or waiver of the minimum lot size requirements, which plan or plat is certified by a professional engineer, architect, landscape architect or land surveyor

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authorized to practice as such by the State or an approved preliminary plat and the provisions of this Chapter and, as such have been recommended for approval to the Director, which action shall be evidenced on the copies by appropriate signatures and such plats have been approved by the Director of Health Services or his agent which action shall be evidenced on the copies by his signature; and

- (B) All physical improvements required by the provisions of this Chapter for the subdivision so platted shall have been installed therein, and approved for conformance with the construction plans and specifications therefor, such construction plans and specifications having been submitted and approved prior to the commencement of construction; except in lieu of actual installation of such physical improvements, there shall be executed by the subdivider and submitted with the final plat an agreement to construct such physical improvements in form and substance as approved by the County, together with a bond with surety satisfactory to the County, in an amount sufficient for and conditioned upon the construction of such physical improvements in form and substance as approved by the County in the amount of the estimated cost of the physical improvements as determined by the Director. Such agreement and bond shall provide for completion of all work covered thereby within a time to be determined by the Director. Failure of the subdivider to complete the required improvements within the specified time (including any extensions of time which are granted for good cause) shall be deemed to be a violation of this Ordinance and the Director shall withhold further permits or approvals until such violation is in the process of being corrected. The adequacy, conditions and acceptability of any initial bond or bond extensions hereunder shall be determined by the Director or any official of the County as designated by resolution of the Board. In any case where any such official has rejected any such agreement or bond, the subdivider shall have the right to have such determination made by the Board of Supervisors; and
  - (C) The subdivider has paid to the County the fees set forth in Section 101-2-9 (Fees).
- (2) The construction plan for the required physical improvements shall be submitted prior to or in conjunction with the submission of the final plat and must be approved prior to the approval of the final plats. Construction plans submitted pursuant to Section 101-2-1(2) which are approved on or after January 1, 1992 and approved construction plans submitted pursuant to Section 101-2-1(2) which are valid as of January 1, 1992 shall be null and void if the final subdivision plat is not recorded in the County land records within five years of such approval of the construction plan, provided, however, that where the submission of a preliminary subdivision plat is required by Section 101-2-1(1)(A), construction plans submitted pursuant to Section 101-2-1(2) and approved after July 1, 2002, shall remain valid for so long as the approved preliminary subdivision plat remains valid. Approval of the final plats of subdivisions or sections thereof shall not be deemed the acceptance by the County of any street, alley or other public place shown on the plats for maintenance, repair or operation thereof, and said approval shall be null and void if said plats are not filed for recordation within six months after the date thereof; however, in any case where construction of facilities to be dedicated for public use has commenced pursuant to an approved plan or permit with surety approved by the County, or where the developer has furnished surety to the County by certified check, cash escrow, bond or letter of credit in the amount of the estimated cost of construction of such facilities, the time for plat recordation shall be extended to one year after final approval or to the time limit specified in the surety agreement approved by the County, whichever is greater. Recorded plats valid on or after January 1, 1992 shall be valid for a period of five years after the approval of such recorded final subdivision plats or for such longer period as the Director may, at the time of approval, have determined to be reasonable, taking into consideration the size and phasing of the proposed development. During such period of validity, no change or amendment to any local ordinance, map, resolution, rule, regulation, policy or plan adopted subsequent to the date of approval shall apply if it would adversely affect the right of the developer to commence and complete the approved development, except in case of mistake, fraud or change in circumstances substantially affecting the public health, safety or welfare, or in order to implement to the greatest extent possible local regulations adopted pursuant to the Chesapeake



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Bay Preservation Act, the Federal Clean Water Act, Section 402 (p.) of the Stormwater Program and regulations promulgated by the Environmental Protection Agency.

- (3) Plans and specifications for the control of erosion and sedimentation, as required, shall be submitted and approved by the Director or his agent. This approval shall be concurrent with the approval of the aforesaid plans and specifications, and become a part thereof.
- (4) The recordation of such plat shall operate to transfer, in fee simple, to the County such portion of the premises platted as is on such plat set apart for streets, alleys or other public use and to transfer to the County any easement indicated on such plat to create a public right of passage over the same. The recordation of such plat shall operate to transfer to the County such easements shown on the plat for the conveyance of stormwater, domestic water and sewage, including the installation and maintenance of any facilities utilized for such purposes, as the County may require. Nothing contained in this Section shall affect any right of a subdivider of land heretofore validly reserved. The Clerk of the Circuit Court shall index in the name of all the owners of property affected by the recordation in the grantor's index any plat recorded under this Section. Nothing in this Section shall obligate the County to install or maintain such facilities unless otherwise agreed to by the County. Provided, that where the Director approves, in accordance with this Subdivision Ordinance, a plat or replat of land therein, then upon the recording of such plat or replat in the Clerk's office all rights-of-way, easements or other interest of the County in the land included on the original plat but not shown on the replat shall be terminated and extinguished, except that an interest acquired by consideration and evidenced by a separate instrument of record shall not be affected thereby.
- (5) Upon final completion, seven (7) copies of a certified "as-built" plan prepared by a licensed professional engineer or licensed land surveyor registered in the state, shall be submitted to the Director. The certified "as-built" plan shall include the following:
  - (A) Boundary of the site as shown on the approved subdivision construction plan or final subdivision plat of record. The as-built plan shall show any geodetic reference points located on the site.
  - (B) Locations of all storm sewer, sanitary sewer, fire hydrants and associated easements including all waterline easements. For storm and sanitary sewers, the pipe sizes, lengths, top and invert elevations and percent grade of pipes as computed shall also be shown.
  - (C) Ponds, including detention, retention and Best Management Practice (BMP) ponds, showing elevations of tops of embankments, toes of embankments, weirs, spillways, drainage structures, access easements and capacities of such ponds. Capacities shall be shown both volumetrically and topographically with sufficient elevations to calculate the capacities.
  - (D) Horizontal locations of all designed trails included on the approved subdivision construction plan. Vertical location of any trail which exceeds eight percent (8%) grade (whether designed or not as an eight percent (8%) grade) and shown on the approved subdivision construction plan. Elevations may be used in lieu of an as-built profile.
  - (E) Deed Book and page number(s) of the recordation in the land records of Fairfax County of dedications and easements reflected on the approved subdivision construction plan.
  - (F) A statement of certification by a licensed professional engineer or land surveyor registered in the State, certifying that the as-built plan conforms with the criteria listed above and represents actual conditions on the site for those items only, and bearing the engineer's or surveyor's seal, signature and Virginia registration number.
  - (G) All utility locations, except building and service connections, with the notation "from available records." Such plans and records shall be furnished by the appropriate utility companies.
- (6) The subdivider or developer shall be entitled to periodic partial releases and final complete release of any bond, escrow, letter of credit, or other performance guarantee required in support



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of the obligation to construct the facilities covered by such performance guarantee. For purposes of partial and final complete releases, as provided for in *Virginia Code* §§ 15.2-851.1 and 15.2-2245 and the Public Facilities Manual, the designated administrative agency shall be the Department of Public Works and Environmental Services and all notices, requests and correspondence required under that statute shall be sent to the Director. Code 1954, Vol. 2, §§ 5-9, -10, -11; 10-17-56; 7-22-59; 7-20-60; 9-14-66; 12-10-69, § 5; 9-75-23; 1961 Code, § 123-2.5; 17-78-101; 10-80-101; 19-80-101; 9-86-101; 16-86-101; 51-86-101; 26-88-101; 6-89-101; 12-89-101; 27-89-101; 3-90-101; 34-90-101; 6-93-101; 13-93-101; 25-94-101; 28-95-101; 33-96-101; 47-96-101; Ord. 39-97-101; 4-98-101; 22-99-101; 37-00-101; 42-00-101; 27-02-101; 30-03-101; 17-04-101; 27-04-101; 32-06-101; 21-08-101; 39-13-101.)

### Section 101-2-6. Condominium conversion and cooperative conversion documents.

- (a) *Filing.* The declarant of a conversion condominium or conversion cooperative shall file with the Director six copies of all the information which is required by the Virginia Real Estate Commission pursuant to *Virginia Code*, Sections 55-79.89 and 55-498, as amended, including all subsequent amendments or modifications thereto. This filing shall be simultaneous with the filing required by the Commission.
- (b) *Notification to tenants.* The formal notice required to be given to tenants pursuant to Sections 55-79.94(b) and 55-487(A), *Virginia Code*, 1950, as amended, shall include a statement informing the tenants of the filing of the documents and information required by Sections 55-79.89, and 55-498, *Virginia Code*, 1950, as amended, with the Virginia Real Estate Commission and the Director of the Department of Public Works and Environmental Services and that said documents and information are available for inspection during normal business hours at such County offices as may be designated by the Director.
- (c) *Availability for Inspection.* Documents and information filed with the Director pursuant to this Article shall be available to the public during the normal business hours for inspection and copying at such locations in the County as may be designated by the Director.
- (d) *Applicability.* Notwithstanding the fact that a conversion cooperative is not a subdivision of land, it is intended that the provisions of this Section expressly apply to conversion cooperatives. (15-81-101; 21-83-101; 6-89-101; 3-93-101; 37-00-101; 9-03-101; 23-03-101.)

### Editor's note—

Ord. No. 9-03-101, adopted March 24, 2003, amended the Code by renumbering former §§ 101-2-8—101-2-10 as new §§ 101-2-10—101-2-12.

### Section 101-2-7. Special subdivision provisions.

- (a) For the purposes of this Section, the following meanings shall apply:
  - (1) *Original lot* shall mean the lot or parcel proposed for division under this Section.
  - (2) *Gift lot* shall mean the portion of the original lot which is to be transferred by sale or gift under this Section.
  - (3) *Parent lot* shall mean the portion of the original lot which is not to be transferred by sale or gift under this Section.
  - (4) *Owner* shall mean the person(s) who own(s) the original lot.
  - (5) *Member of the immediate family* shall mean any person who is a natural or legally defined offspring or parent.

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- (6) *Recipient* shall mean the member of the immediate family of the owner who, under the provisions of this Section, is to receive, by sale or gift, the gift, the gift lot.
- (b) A single division of a lot or parcel shall be permitted for the purpose of sale or gift of the gift lot to a member of the immediate family of the owner, subject to the following:
  - (1) Compliance with all of the provisions of Chapter 101 (Subdivision Provisions) of the County Code which are based upon any express requirements of the *Virginia Code*.
  - (2) All lots created under this Section must have frontage of not less than twenty (20) feet on an existing public street which is dedicated and recorded.
  - (3) In the event more than one (1) person owns the original lot, no gift lot subdivision will be allowed unless the recipient is a member of the immediate family of all such owners.
  - (4) A recipient may be the beneficiary of only one (1) division carried out pursuant to either this Section or a similar provision adopted by any other county or city in Virginia based on the mandate of *Virginia Code*, Section 115.2-2244.
  - (5) A lot or parcel created under this Section shall not be allowed to be further divided at a later date under the provisions of this Section.
  - (6) Approval of a subdivision under this Section does not exempt the parent lot or the gift lot from any requirements set forth in the Zoning Ordinance. Thus, prior to any use, the parent lot and gift lot must comply with all applicable requirements set forth in the Zoning Ordinance.
  - (7) All applications for a division of a lot or parcel under this Section shall expressly be designated as such and shall include:
    - (A) A written statement by the owner, under oath, that the division of the lot or parcel to be carried out under this Section is for the purpose of sale or gift to a member of said owner's immediate family;
    - (B) A written statement by the owner, under oath, which sets forth the names of all the members of the immediate family of the owner, their relationship to the owner, their dates of birth, and their addresses;
    - (C) A written statement by the recipient, under oath, that said recipient has never been the beneficiary of any other division carried out pursuant to either this Section or a similar provision adopted by any other County or City in Virginia based on the mandate of Virginia Code Section 15.2-2244;
    - (D) A written statement by the owner, under oath, that the original lot is not being subdivided for the purpose of circumventing the provisions and requirements of the Fairfax County Subdivision Ordinance;
    - (E) Notification of all persons owning property abutting and immediately across the street from the original lot; this notification must be sent to a minimum of five (5) different persons owning property other than the owner of the original lot; if there are fewer than five (5) different persons owning property abutting and immediately across the street from the subject property, then additional notices shall be sent to other persons owning property in the immediate vicinity so that notices are sent to five (5) different persons owning property; and
      - (1) Notice shall be sent to the last known address of the persons entitled to such notice under this Section as shown in the current Real Estate Assessment files and shall be sent by certified mail, return receipt requested.
      - (2) All written notice required by this paragraph shall include the tax map reference number, the street address of the original lot, the plat name and County identification number and shall state that: (a) Changes and corrections to the plat may occur prior to plan approval; (b) persons wishing to be notified of the approval of the plat should submit a written request to that effect to the County Office identified in the notice; (c)

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the address and telephone number of the County Office where a copy of the plat may be reviewed; (d) the plat is subject to approval after the expiration of thirty (30) days after the postmark date of the notice unless releases are executed by all property owners required to be notified; and (e) if releases are executed by all property owners required to be notified, the plat may be approved sooner than thirty (30) days after the postmark date of the notice.

- (3) No plat shall be approved within thirty (30) days following the postmark date on the white receipts for the certified mailings unless releases are executed by all property owners required to be notified. If releases are executed by all property owners required to be notified, the plat may be approved sooner than thirty (30) days after the postmark date on the white receipts for the certified mailings. The original executed releases shall be submitted to the Director on a standard form available from the Director. (7-82-101; 6-89-101; 18-89-101; 3-93-101; 36-97-101; 39-97-101; 37-00-101; 9-03-101; 23-03-101.)

### Section 101-2-8. Cluster subdivision provisions.

When the topography or other physical characteristics of the property are such that a cluster subdivision will preserve open space, steep slopes, floodplains, Resource Protection Areas and/or desirable vegetation, a cluster subdivision may be permitted in the R-2 District and may be permitted in the R-3 and R-4 Districts which have a minimum district size of three and one-half acres or greater, by the Director provided that:

- (a) All other applicable cluster subdivision regulations shall be met, including but not limited to the Zoning Ordinance and Public Facilities Manual.
- (b) Open space shall be provided pursuant to the regulations of the zoning district in which located and Sect. 2-309 of the Zoning Ordinance. To the greatest extent possible and as determined by the Urban Forest Management Division, existing trees shall be preserved within the open space area.
- (c) Existing vegetation shall be shown in accordance with §§ 12-400 and 12-0500 of the Public Facilities Manual. If sufficient quality vegetation exists on site as determined by the Urban Forest Management Division, the full 10-year tree canopy requirements of Chapter 122 of the Code (Tree Conservation Ordinance) shall be met through the preservation of existing trees. The assessment of vegetation quality and tree preservation potential on a site shall be determined by the Urban Forest Management Division and shall be based on Sections 12-0400 and 12-0500 of the Public Facilities Manual. In addition, a tree preservation plan shall be submitted by the applicant that includes the location, crown spread, species, size and condition rating of individual trees and groups of trees proposed to be preserved. Specific tree preservation activities that will occur to maximize survivability of trees identified to be preserved shall be included in the plan and shall be subject to approval by the Urban Forest Management Division. In addition, proposed landscaping shall be subject to review and approval by the Urban Forest Management Division to ensure that any proposed landscape plants are consistent with Section 12-0600 of the Public Facilities Manual.
- (d) All portions of any building lot shall be located outside of any Resource Protection Area or any floodplain and its adjacent slopes of 15 percent or greater, except for driveway access when it is determined by the Director that there is no other option available to provide driveway access for the lot. In such instance, only that portion of the lot necessary to provide the driveway for such lot shall be permitted within the Resource Protection Area or floodplain and its adjacent steep slopes of 15 percent or greater and such portion shall be the minimum area necessary to accommodate a driveway.
- (e) Utility lines within a cluster subdivision shall be designed to avoid encroachment into any Resource Protection Area or floodplain and its adjacent steep slopes of 15 percent or greater, except when it is determined by the Director that the extension of or connection to existing utility

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lines requires encroachment into such areas and those connections or extensions are provided in a manner that minimizes disturbance to the Resource Protection Area or floodplain and its adjacent slopes of 15 percent or greater.

- (f) Waiver of any of the provisions of this Section shall not be permitted.
- (g) Minor adjustments of property lines between lots located within a cluster subdivision and/or between lots located within the boundary of a cluster subdivision and contiguous lots located outside of the cluster subdivision may be permitted by the Director pursuant to Section 101-2-1(3) subject to the following:
  - (1) Such subdivision shall only be to consolidate land area of contiguous lots, or to rearrange lots in order to reallocate land area between contiguous lots; and
  - (2) There shall be no change in the amount of land area located within the cluster subdivision; and
  - (3) The total number of lots within the cluster subdivision shall not be increased; and
  - (4) The total amount of open space within the cluster subdivision shall not be reduced; and
  - (5) Such subdivision shall be in conformance with all other provisions of this Section. (17-04-101; 61-08-101.)

### Section 101-2-9. Fees.

- (a) The subdivider shall pay to the County the applicable fees, at such times and amounts in Appendix Q of the Code. (16-91-101; 34-91-101; 3-93-101; 20-93-101; 27-93-101; 13-96-101; 22-99-101; 37-00-101; 9-03-101; 23-03-101; 30-03-101; 46-03-101; 17-04-101; 16-05-101; 40-05-101; 32-06-101; 26-08-101; 13-09-101; 06-11-101.)

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### FOOTNOTE(S):

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7. In its revision of this Article, Ord. No. 6-89-101 deleted § 101-2-3, renumbered §§ 101-2-4—101-2-6 as §§ 101-2-3—101-2-5, and left § 101-2-6 vacant. ([Back](#))

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8. When the existing Subdivision Ordinance was adopted in 1947, the necessary review time was considerably less than is needed today. The previous ordinance provided thirty (30) days for action upon a preliminary plat, then thirty (30) days for action upon a final plat. The actual time required for an adequate review has lengthened over the years and some reviews have taken over a year. The additional plans and permits, mentioned in the process outlined in the Ordinance provisions are all a direct result of State or Federal legislation. (1) Sewage plan—required under State Health Department regulations, effective July 1, 1974. (2) Water plan—required under State Health Department regulations, effective July 1, 1974. (3) Solid waste plan—required under State Health Department regulations, effective July 1, 1974. (4) Utility plan—required under Va. Code Ann., § 15.1-480. (5) Erosion and sediment control plan—required under Va. Code Ann., § 15.1-89.1, et seq. and regulations promulgated thereunder. (6) Air quality permit—required for "land development" under State Air Pollution Control Board regulations. Although other permits may be required, they do not generally apply to the subdivision of land. Any person developing on or adjacent to a waterway should check with the State Water Control Board concerning the necessity of a permit. ([Back](#))

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9. The "Guidelines for the Preparation of Geotechnical Studies" have been duly adopted by the Board of Supervisors and are published in the Public Facilities Manual. ([Back](#))

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10. See Va. Code Ann., § 15.1-476. ([Back](#))

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11. Editor's note—The amendment to this section effected by Ord. No. 33-91-101 became effective at 12:01 a.m., October 1, 1991, and the following was grandfathered from paragraph (c): ([Back](#))

"Preliminary subdivision plats approved prior to the effective date [12:01 a.m., October 1, 1991], provided that (a) upon application, such preliminary subdivision plat may be reapproved in accordance therewith one time after the effective date, (b) the subsequent subdivision construction plan or site plan associated with the development is approved within twelve (12) months of the approval or reapproval of the preliminary subdivision plat, as the case may be, and (c) the final subdivision plat is recorded in accordance with Section 101-2-5(d)(2) of the Subdivision Ordinance. Revisions to such approved plats may be approved in accordance with the provisions of Section 101-2-3(c) in effect at the time of initial preliminary subdivision plat approval, provided, however, that the approval of such revisions shall not affect the aforementioned time frames." ([Back](#))

Since the prior provisions of the Subdivision Ordinance were enacted, review of the preliminary plat has become increasingly complex. For this reason the staff in Environmental Management has requested that the thirty (30) day review provision be extended to at least sixty (60) days. Such sixty (60) day period shall be tolled during any return of the plat to the subdivider for amendment. ([Back](#))

The major criticism of applicants-developers is directed to the length of time that approval of a preliminary plat actually requires. This seems to be due, in large part, to the fact that Board policy requires the review of these plats by a large number of bodies and agencies, in addition to those approvals required by law. While such review is certainly appropriate, it should not be so time consuming as to extend the normal review period which is necessary. Furthermore, the new requirements of the State and Federal governments (re air quality and erosion and sediment control) will lengthen the review process and further delay approval of plats. Wherever possible, the County should encourage simultaneous reviews on a single project and should commit itself to the efficient processing of applications. ([Back](#))

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12. Since the prior provisions of the Subdivision Ordinance were enacted, review of the preliminary plat has become increasingly complex. For this reason the staff in Environmental Management has requested that the thirty (30) day review provision be extended to at least sixty (60) days. Such sixty (60) day period shall be tolled during any return of the plat to the subdivider for amendment. ([Back](#))

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13. The requirements of this Section, similar to those of the Zoning Ordinance are appropriate to this review, which is designed to insure that any subdivision will be in compliance with the provisions of the Zoning Ordinance. ([Back](#))

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14. These provisions are designed to be parallel to the approval provisions concerning the preliminary subdivision plat, as provided supra, in Section 101-2-3 ([Back](#))

**ARTICLE 3. Pro Rata Road Reimbursement Districts.**

[Section 101-3-1. Purpose and intent.](#)

[Section 101-3-2. Applicability.](#)

[Section 101-3-3. Exemptions.](#)

[Section 101-3-4. Definitions.](#)

[Section 101-3-5. Initiation of Pro Rata Road Reimbursement Districts.](#)

[Section 101-3-6. Identification of an area having related traffic needs.](#)

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**Section 101-3-1. Purpose and intent.**

A subdivider or developer may be required to pay a proportionate, fair share of the cost of construction of certain reasonable and necessary public road improvements located outside the property limits of the land owned by him, which improvements have been constructed by an initial subdivider or developer and which serve an area having related traffic needs to which his subdivision or development will contribute. Such pro rata reimbursement payments shall be made as provided herein to an initial subdivider or developer by each subsequent subdivider or developer within an area having related traffic needs if such area has been designated by the Board of Supervisors as a Pro Rata Road Reimbursement District. (13-93-101, § I.)

**Section 101-3-2. Applicability.**

Pro rata road reimbursement payments imposed pursuant to Pro Rata Road Reimbursement Districts adopted in accordance with the provisions of this Article shall be required of every subdivider or developer of land within the boundaries of such Districts unless otherwise exempt under Section 101-3-3. (13-93-101, § I.)

**Section 101-3-3. Exemptions.**

- (a) Pro rata road reimbursement payments shall not be assessed or imposed upon the following:
- (1) Land subject to proffered conditions approved and accepted by the Board of Supervisors pursuant to Va. Code § 15.2-2303 which include proffered offsite road improvements.
  - (2) Land subject to an impact fee assessed or imposed pursuant to Article 8 (Va. Code §§ 15.2-2317, et seq.) of Chapter 22, Title 15.2 of the *Code of Virginia*.
  - (3) Land for which final site plan approval, including site plan waiver or exception approval, or final subdivision plat approval has been obtained prior to the effective date of adoption of a Pro Rata Road Reimbursement District which includes such land. In order to retain the exemption from having to pay the pro rata road reimbursement payment, the development approved on the final site plan or by the site plan waiver or exception must be constructed within the period of validity

### ARTICLE 3. Pro Rata Road Reimbursement Districts.

of such approval and the approved final subdivision plat either must have been validly recorded prior to the effective date of adoption of a District or must be recorded within 6 months of final subdivision plat approval.

- (4) Land within an approved Pro Rata Road Reimbursement District which is owned at the time of District approval by the initial subdivider or developer therein who has constructed the public road improvements which form the basis for the pro rata road reimbursement payments, provided such land has been identified by Fairfax County Real Property Identification Map Number as part of the Board of Supervisors' action approving the District.
- (5) Public uses as defined in the Zoning Ordinance and facilities owned or operated by the Washington Metropolitan Area Transit Authority.
- (b) Land which is exempt from having to pay a pro rata road reimbursement payment as a result of the provisions of paragraph (a) above may be included within the boundaries of a Pro Rata Road Reimbursement District. If such land should subsequently lose its exemption, the pro rata road reimbursement payment required by the approved District shall be calculated in accordance with the provisions of Section 101-3-11(c) below. (13-93-101, § I; Ord. 39-97-101.)

#### Section 101-3-4. Definitions.

For the purposes of this Article, the following words and phrases shall have the following meanings:

- (a) *Initial subdivider or developer* shall mean the person or entity who has constructed public road improvements within an approved Pro Rata Road Reimbursement District and who is entitled to receive pro rata road reimbursement payments from certain subsequent subdividers and developers within the District. The initial subdivider or developer shall be the record title owner of the parcel designated at the time of adoption of a District pursuant to Section 101-3-9. There may be only one (1) initial subdivider or developer per District.
- (b) *Developer* shall mean the record title owner of property, the development of which is subject to Article 17, of the Zoning Ordinance, and the record title owner of property upon which a single-family detached dwelling is constructed on a lot within a recorded subdivision plat approved after the effective date of adoption of a Pro Rata Road Reimbursement District.
- (c) *Petitioner* shall mean a subdivider or developer who has constructed public road improvements and who has submitted a petition requesting adoption of a Pro Rata Road Reimbursement District by the Board of Supervisors whereby he would be entitled to receive pro rata reimbursement payments from other subdividers and developers within the District.
- (d) *Public road improvements* shall mean the construction of new or the widening of existing minor arterial streets and principal arterial streets as such streets are defined in the Zoning Ordinance, including construction of related drainage improvements and utility relocations required as a result of such construction. The term "public road improvements" shall also include installation of traffic lights and highway signs required by the Virginia Department of Transportation (VDOT) or the Director. Such term shall not include the construction of improvements required under Article 2 of this Chapter or Article 17 of the Zoning Ordinance which improvements are necessary to serve a particular development. (13-93-101, § I.)

#### Section 101-3-5. Initiation of Pro Rata Road Reimbursement Districts.

A Pro Rata Road Reimbursement District may be initiated pursuant to this Article either by motion of the Board of Supervisors or by the filing of a petition with the Director, Department of Transportation and a copy with the Director, Department of Public Works and Environmental Services by a subdivider or developer who has constructed substantial public road improvements under permits issued after July 1, 1988, which serve an area having related traffic needs. If initiated by motion of the Board, the initial subdivider or developer who would receive the pro rata road reimbursement payments should a district be adopted shall provide staff with the Submission Requirements contained in Section 101-3-7. (37-00-101)

**Section 101-3-6. Identification of an area having related traffic needs.**

The designation of an area having related traffic needs is the basis upon which the boundaries are established for an adopted Pro Rata Road Reimbursement District. Such designation is dependent upon many factors which may be unique to any given area of Fairfax County. Adoption of boundaries of an area having related traffic needs necessarily involves judgment and discretion on the part of the Board of Supervisors. The following criteria may be considered in the designation of an area having related traffic needs:

- (a) Comprehensive Plan land use and transportation recommendations for the area.
- (b) Land to which the constructed public road improvements provide a primary source of access either directly or via a collector street or local street which intersects such public road improvements.
- (c) Land in an area to which the constructed public road improvements provide improved access.
- (d) The type of road and distance over which the public road improvements have been provided.
- (e) The number and character of streets intersecting the public road improvements, the area to which such streets provide access, and the extent to which such area has alternative access via other public streets.
- (f) In general, the boundaries of an area having related traffic needs should not cross Interstate or Primary highways, except in highly unusual circumstances.
- (g) Such other criteria as may be considered by the Board of Supervisors. (13-93-101, § 1.)

**Section 101-3-7. Submission requirements.**

Every petition requesting the establishment of a Pro Rata Road Reimbursement District shall include the following, which shall be subject to verification by staff:

- (a) A map clearly delineating the boundaries of the proposed Pro Rata Road Reimbursement District drawn on a copy of the applicable section sheets of the current Fairfax County Official Zoning Map.
- (b) A statement of justification setting forth in detail the factors which form the basis for petitioner's contention that the mapped area constitutes an area having related traffic needs.
- (c) A list, by Fairfax County Real Property Identification Map Numbers, of all parcels within the proposed District of which the petitioner is the record title owner.
- (d) Copies of all approved Fairfax County public improvement bonds and agreements executed by petitioner as Developer, including related itemized Surety Value Estimates of quantity take-offs for each constructed public road improvement for which pro rata reimbursement is sought. If the cost of installed traffic signals or highway signs required by VDOT or the Director was not included in the amount of the public improvement bond, evidence of payment acceptable to staff which documents that petitioner paid for such improvements shall also be submitted.
- (e) A copy of the relevant sheets of the subdivision plat, site plan or construction plan, as the case may be, approved in conjunction with the bonds and agreements submitted pursuant to subparagraph (d) above, upon which sheets is delineated the extent of the public road improvements for which reimbursement is sought.
- (f) A pro rata road reimbursement analysis and resulting recommended pro rata reimbursement rate for each vehicle trip per day, which reimbursement rate will be multiplied by the number of vehicle trips per day generated by types of uses as set forth in the Institute of Transportation Engineers (ITE) *Trip Generation Manual* in order to calculate individual pro rata road reimbursement payments required pursuant to an adopted District. The analysis shall be



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prepared pursuant to Section 101-3-8 and shall include the vehicle trip generation calculations performed in accordance with paragraph (d) therein.

- (g) A statement by the petitioner which clearly delineates whether the petitioner wishes to have the pro rata road reimbursement payments directed to the owner of one (1) parcel within the proposed District for the entire duration of the District (Option #1), or, in the alternative, whether the petitioner wishes to have such payments directed to the petitioner or his designated agent at a specified address (Option #2).

If Option #1 is chosen by the petitioner, then the petitioner shall submit the following:

(1) The designation by Fairfax County Real Property Identification Map Number and by street address of one (1) parcel within the proposed District currently owned by petitioner, the record title owner of which, including petitioner's successors in title, shall be the person or entity entitled to receive pro rata road reimbursement payments at the time such payments are made. Only one (1) such parcel shall be so designated within a District.

If Option #2 is chosen by the petitioner then the petitioner shall submit the following:

(2) Petitioner's name and mailing address to which pro rata road reimbursement payments will be sent. As an alternative, petitioner may submit the name and mailing addresses of petitioner's agent for the purposes of receiving pro rata road reimbursement payments and signing notarized certifications pursuant to paragraph (b) of Section 101-3-11.

- (h) Such additional information as may be requested by Fairfax County staff in order that staff may fully evaluate the petition. (13-93-101, § I.)

#### **Section 101-3-8. Calculation of pro rata road reimbursement payments.**

- (a) The amount of required pro rata road reimbursement payments shall be based upon a pro rata reimbursement rate (dollar amount) established upon adoption of a Pro Rata Road Reimbursement District by the Board of Supervisors. Such rate shall represent the proportionate share of reimbursable costs as determined by the Board, attributable to each vehicle trip per day utilizing the road segments for which reimbursement is sought and approved.

- (b) The following formula shall be used to determine the pro rata reimbursement rate per vehicle trip per day:

[Cost of public road improvements within proposed District constructed at petitioner's expense (exclusive of improvements required pursuant to Article 2 of this Chapter or Article 17 of the Zoning Ordinance)] divided by [Total estimated number of vehicle trips per day (vpd) on the road segments for which reimbursement is sought] = \$ amount per vpd.

- (c) Trip generation estimates for specific uses shall be based upon the Institute of Transportation Engineers (ITE) *Trip Generation Manual*.

- (d) The total estimated number of vehicle trips per day on the road segments for which reimbursement is sought shall be determined by adding the following numbers:

- (1) Current estimated number of vehicle trips per day on such road segments as shown on traffic counts conducted by VDOT or other entity acceptable to the Department of Transportation within two (2) years prior to the filing of a petition to establish a Pro Rata Road Reimbursement District. If such traffic counts are not available, petitioner shall conduct a traffic count utilizing standard methodology acceptable to the Department of Transportation.
- (2) Number of future vehicle trips per day estimated to be generated from the eventual development or redevelopment, use and occupancy of all land within the proposed District which, as of the date of the traffic counts utilized in preceding paragraph (d)(1), either is vacant; is underdeveloped with respect to its current zoning; is zoned to a district which allows a lesser density or intensity than the applicable Comprehensive Plan recommendation; or is under construction with a residential or nonresidential use permit yet to be issued.

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- (e) For purposes of calculating the vehicle trip generation figures required under this Article only, the following assumptions shall apply:
  - (1) Land subject to an approved proffered rezoning shall be developed to the maximum densities, intensities and uses approved.
  - (2) Land zoned to a district, not subject to proffers, which permits densities or intensities equal to or greater than as recommended in the Comprehensive Plan shall develop to the maximum extent permitted under the current zoning district.
  - (3) Land zoned to a district which permits densities or intensities less than the applicable Comprehensive Plan recommendation shall develop to the maximum extent recommended in the Plan.
- (f) All land within the boundaries of a proposed Pro Rata Road Reimbursement District shall be included in the vehicle trip generation estimates, even though such land may be exempt under Section 101-3-3
- (g) Accessory structures in residential developments such as swimming pool bath houses and community centers shall not be included in the estimated number of vehicle trips per day calculated pursuant to paragraphs (d)(2) and (d)(3) above and shall not be subject to a pro rata road reimbursement payment.
- (h) *Cost of Construction of Public Road Improvements.*
  - (1) The cost of construction of public road improvements for which pro rata reimbursement may be required shall mean the cost of construction of such improvements as such costs were represented by the petitioner to the Bonds and Agreements Branch, Division of Design Review at the time petitioner sought approval of the public improvement bonds and agreements required prior to the construction of such public road improvements. The sum total of such costs as reflected on the submitted Surety Value Estimates shall be increased by a factor of fifteen percent (15%) in order to cover related costs, including, but not limited to, a proportionate cost of engineering expenses. Costs of construction shall also include petitioner's cost of acquiring real property interests from others, which real property interests are necessary in order to construct the public road improvements and the dedication of which does not result in the grant of advanced density credit to the petitioner. The foregoing costs shall be adjusted annually from the date of approval of the public improvement bonds and agreements to incorporate the lesser of the following amounts:
    - (A) Changes in the *Virginia Highway Construction Bid Index* since the approval of such bonds and agreements; or
    - (B) The legal rate of interest set forth in *Code of Virginia*, Section 6.1-330.53, as amended.
- (i) After the adoption of a Pro Rata Road Reimbursement District, including the establishment of a pro rata reimbursement rate (\$ amount per vpd, as calculated above) for the District, the amount of pro rata road reimbursement payments required of subdividers and developers subject to such payments shall be determined at the time of final subdivision plat approval for a residential subdivision or final site plan approval, as the case may be. The amount of required pro rata road reimbursement payments shall be shown on such final subdivision plat or final site plan and shall be calculated as follows:
  - (1) The Board-adopted pro rata reimbursement rate shall be adjusted annually from the effective date of the District to incorporate the lesser of the following amounts:
    - (A) Changes in the *Virginia Highway Construction Bid Index* since the effective date of the District; or
    - (B) The legal rate of interest set forth in *Code of Virginia*, Section 6.1-330.53, as amended.
  - (2) The required pro rata road reimbursement payments for all uses within the District shall be the sum of the adopted pro rata reimbursement rate, as adjusted above, multiplied by the number of vehicle trips per day estimated to be generated for each use based upon the ITE Trip

### ARTICLE 3. Pro Rata Road Reimbursement Districts.

Generation Manual, provided, however, that trip generation estimates which are lower than those set forth in the ITE Trip Generation Manual may be used if the Director of the Department of Transportation concludes that such lower trip generation rates more accurately reflect the traffic expected to be generated by a particular use. Any such request shall be submitted by the owner of the property which is the subject of a proposed subdivision or site plan at the time the subdivision plat/site plan is filed with the Department of Public Works and Environmental Services, with the original of the request being submitted to the Director of the Department of Transportation, and a copy being submitted to the Department of Public Works and Environmental Services with the subdivision plat/site plan. Any such request shall also include evidence that such owner has provided the initial subdivider or developer with a copy of the request, and has informed the initial subdivider or developer that responses to the request must be filed with the Director of the Department of Transportation and the Department of Public Works and Environmental Services within thirty (30) days of the filing of the request. (13-93-101, § I; 37-00-101.)

#### **Section 101-3-9. Adoption of Pro Rata Road Reimbursement Districts.**

- (a) Upon receipt of a petition requesting the establishment of a Pro Rata Road Reimbursement District including all submission requirements, staff of the Department of Transportation will evaluate the request, assisted by staff of the Department of Public Works and Environmental Services, the Department of Planning and Zoning and such other staff as may be necessary.
- (b) Staff will prepare a recommendation for forwarding to the Planning Commission and Board of Supervisors.
- (c) A public hearing on the requested Pro Rata Road Reimbursement District shall be held before the Planning Commission and before the Board of Supervisors. Such public hearings shall be advertised in accordance with the requirements of the Code of Virginia, Sections 15.2-106 and 2204. The Office of Transportation shall oversee advertising and notice requirements. Petitioner shall submit proof that he has sent by certified mail, return receipt requested, written notice of the public hearings to the owner of each parcel within the proposed District at the last known address of such owner as shown in the current real estate tax assessment records. Such notice shall include the maximum pro rata road reimbursement payment proposed for each dwelling unit within the proposed District and the maximum proposed pro rata reimbursement rate to be assessed for each vehicle trip per day estimated to be generated by all uses within the proposed District other than dwelling units. Such notice shall include the location where the petition may be reviewed in its entirety.
- (d) In adopting a Pro Rata Reimbursement District, the Board of Supervisors may modify the district boundaries as requested by the petitioner to include a lesser land area and may adopt pro rata road reimbursement payments for dwelling units and a pro rata road reimbursement rate per vehicle trip per day for all other uses less than were advertised. The Board of Supervisors may also approve in whole or in part the extent of the public road improvements which the petitioner has asked to be the basis for the pro rata road reimbursements.
- (e) A Pro Rata Road Reimbursement District may be adopted after the public road improvements have been constructed to the point where they are being used by the public, but prior to the acceptance of such public road improvements by the governmental units which are to have ultimate responsibility for their maintenance, subject to the following conditions:
  - (1) The public road improvements for which pro rata reimbursement has been approved are accepted by the governmental units which are to have ultimate responsibility for their maintenance within one (1) year after the effective date of the District; and
  - (2) Required pro rata road reimbursement payments which have been deposited with the Bonds and Agreements Branch prior to acceptance of such public road improvements by the governmental units which are to have ultimate responsibility for their maintenance shall not be forwarded to the initial subdivider or developer until such acceptance may occur.

### ARTICLE 3. Pro Rata Road Reimbursement Districts.

- (f) Any Pro Rata Road Reimbursement District approved by the Board of Supervisors shall include the following:
- (1) A map which clearly delineates the boundaries of the District, drawn on the current Fairfax County Real Property Identification Map.
  - (2) One of the following as chosen by the petitioner under the provisions of Section 101-3-7(g):
    - (A) The name and current mailing and street addresses of the initial subdivider or developer entitled to receive the pro rata road reimbursement payments, as well as the Fairfax County Real Property Identification Map Number and street address of the parcel, the record title owner of which will be entitled to receive pro rata road reimbursement payments at such time as they may be made; or
    - (B) The name and current mailing and street addresses of the initial subdivider or developer entitled to receive the pro rata road reimbursement payments, or, if the petitioner (initial subdivider or developer) has designated an agent for the purposes of receiving pro rata road reimbursement payments and signing notarized certifications pursuant to the paragraph (b) of Section 101-3-11, the name and mailing and street addresses of such agent.
  - (3) A listing, by Fairfax County Real Property Identification Map Number, of all properties within the District owned by the initial subdivider or developer.
  - (4) The amount of the pro rata road reimbursement payment required for each dwelling unit and the pro rata reimbursement rate (dollar amount per vpd) to be assessed for each vehicle trip per day estimated to be generated for all uses other than dwelling units.
  - (5) The total amount of reimbursable costs approved by the Board.
  - (6) The effective date of the District.
- (g) All of the information required under preceding paragraph (f), including a map of the adopted Pro Rata Road Reimbursement District, shall be set forth in Appendix I to this Code.
- (h) Upon adoption of a Pro Rata Road Reimbursement District, the District shall remain valid for a period of twenty-five (25) years from the date of the District, or for such lesser period or longer period as the Board may initially or subsequently specify by ordinance, provided, however, that if the initial subdivider or developer should be reimbursed the total amount of reimbursable costs approved by the Board, as adjusted to incorporate the lesser of either changes in the *Virginia Highway Construction Bid Index* since the effective date of the District or the legal rate of interest set forth in *Code of Virginia*, Section 6.1-330.53, as amended prior to the expiration of the period of District validity, no further pro rata road reimbursement payments shall be required within the District.
- (i) Boundaries of adopted Pro Rata Road Reimbursement Districts may not overlap. (13-93-101, § I; Ord. 39-97-101; 37-00-101.)

#### **Section 101-3-10. Amendment of Adopted Pro Rata Road Reimbursement Districts.**

Amendments to an adopted Pro Rata Road Reimbursement District, other than amendments which would modify the duration of the period of validity of the District, may be processed and adopted in the same manner that the District was originally established. Amendments which propose to modify the duration of the period of validity of an adopted District may be approved following notice and public hearings provided in accordance with Section 101-3-9(c); provided, however, that such notice need not include information about adopted pro rata road reimbursement payments or rates. A statement of justification which sets forth the grounds for modification of the duration of the District shall be submitted with any such amendment request. (13-93-101, § I.)

**Section 101-3-11. Payment of pro rata road reimbursements.**

- (a) Required pro rata road reimbursement payments shall be made prior to the issuance of any residential or nonresidential use permit required pursuant to Part 7, Article 18 of the Zoning Ordinance.
- (b) In the event parcels within an adopted Pro Rata Road Reimbursement District should resubdivide, redevelop or be occupied by uses for which the estimated vehicle trip generation rates are greater than the rates attributable to such parcels at the time required pro rata reimbursement payments were previously paid, then an additional pro rata reimbursement payment shall be required which shall be calculated based upon the difference between the estimated number of vehicle trips.
- (c) In the event parcels within an adopted Pro Rata Road Reimbursement District which were exempt from pro rata reimbursement payments pursuant to the provisions of Section 101-3-3 should resubdivide, redevelop or be occupied by uses in such a manner so as to no longer be entitled to any exemption, and in the event the new use of such parcels has a higher estimated vehicle trip generation rate than the previously exempt use, then pro rata reimbursement payments for such parcels shall be calculated based on the difference between the estimated vehicle trip generation rate for the new use and the estimated vehicle trip generation rate for the previously exempt use.
- (d) Anyone who has applied for a residential or nonresidential use permit and who is required to make a pro rata road reimbursement payment shall submit a notarized certification signed by the initial subdivider or developer or his agent identifying the property and use for which the residential or nonresidential use permit has been requested and that the required pro rata reimbursement payment has been received, or shall submit such other evidence of payment as may be required by County staff.
- (e) As an alternative to providing the notarized certification or other evidence of payment as may be required as referenced in the preceding subparagraph, an applicant for a residential or non-residential use permit may deposit the required pro rata road reimbursement payment with the Bonds and Agreements Section by certified or other secured funds determined to be acceptable by the Director of Finance. In such event, Fairfax County shall forward payment to the initial subdivider or developer and shall not be required to place such reimbursement payments in an interest bearing account during the interim.
- (f) As an alternative to the procedures set forth in preceding paragraphs (b) and (c), an applicant for a residential or nonresidential use permit may submit a notarized, fully executed agreement between him and the initial subdivider or developer setting forth an agreed method of payment of the required pro rata reimbursement payments which agreement shall also state that Fairfax County may proceed to issue the requested residential or nonresidential use permits.
- (g) In order to be entitled to continue to receive pro rata road reimbursement payments, the initial subdivider or developer must give written notice by certified mail to the Directors of the Department of Public Works and Environmental Services and the Department of Planning and Zoning of any change in his mailing or street addresses from the date of adoption of the District. If the initial subdivider or developer has designated an agent for the purposes of receiving pro rata road reimbursement payments and signing notarized certifications pursuant to paragraph (b) above, then either the agent or the initial subdivider or developer must give such written notice of any change in the mailing or street addresses of the agent from the date of adoption of the District. Failure to give the written notice as required herein within thirty (30) days of such change may cause the initial subdivider or developer to forfeit pro rata road reimbursement payments collected or due after such change.

(13-93-101, § I; 37-00-101.)

**ARTICLE 4. Definitions.**<sup>15</sup> [§](#)

[Section 101-4-1. Definitions.](#)

**Section 101-4-1. Definitions.**

The following definitions shall be used in the interpretation and administration of the Subdivision Ordinance:

- (1) *Clerk* shall mean the Clerk of Court of Fairfax County.
- (2) *Construction plan* shall mean any drawing required by the Director which may be used in the processing of record plats or for the construction of any phase of on-site or off-site improvements. These include, but are not limited to, site plans, grading plans, plans and profiles and cross sections.
- (3) *Cooperative* shall mean real estate owned by an association, each of the members of which is entitled, by virtue of his ownership interest in the association, to exclusive possession of a unit.
- (4) *Director* shall mean the Director of the Department of Public Works and Environmental Services or his agent.
- (5) *Minor adjustment of property lines* shall mean a subdivision where the division or redivision of a tract, plot or parcel of land which reallocates or consolidates land area of contiguous lots or parcels, but which does not result in the creation of any additional lot(s), parcels or outlots or any increase in density, and which does not create or aggravate an existing noncompliance with regard to minimum lot area, minimum lot width, or minimum required yards.
- (6) *Outlot* shall mean any lot which does not comply with the minimum lot width, lot area or shape factor requirements of the Zoning Ordinance of this Code; or the frontage requirements established in the *Public Facilities Manual* under this Ordinance.
- (7) *Private street* shall mean any vehicular access not dedicated to public use, which provides principal access to abutting properties or to individual residential buildings.
- (8) *Specifications* shall mean the duly adopted directions, provisions and requirements pertaining to the method and manner of performing the work or to quantities and qualities of materials and workmanship to be furnished.
- (9) *Standards* shall mean County design and construction criteria, as promulgated and defined in the *Public Facilities Manual*.
- (10) *Subdivider* shall mean a person or his agent who has applied for approval of or has duly recorded a plat for the subdivision of a tract of land.
- (11) *Subdivision* shall mean the division or redivision of a tract, plot, or parcel of land, including condominium development or condominium conversion, where there is any division or redivision of real property; provided, this shall not include any division or redivision where each tract, plot or parcel is five (5) acres or greater.
- (12) *Utilities* shall mean distribution and/or service connection facilities and appurtenances thereto, for gas; electricity; water; sanitary sewer; storm water; street lighting; communications, including telephone, television, radio and telegraph; heating and/or air conditioning by circulation of water, steam, air and other medium; fuel, including but not limited to, gasoline, oil or coal; or other similar consumable commodities or services.
- (13) *Water Quality Impact Assessments* shall mean any assessment submitted pursuant to Article 4 of Chapter 118 of this Code. (Code 1954, Vol. 2, § 5-1; 10-17-56; 10-14-59; 11-18-59; 12-10-69,

ARTICLE 4. Definitions.

§ 5; 2-11-70; 9-75-23; 1961 Code, Article III; 11-77-101; 15-80-101; 21-83-101; 5-88-101; 8-90-101; 34-91-101; 20-93-101; 51-93-101; 28-95-101; 37-00-101; 40-06-101; 61-08-101.)

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FOOTNOTE(S):

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15. Editor's note—Formerly, Art. 3; renumbered by 13-93-101, § II. ([Back](#))