

## **PRIVATE IMPROVEMENT ACCEPTANCE POLICY**

### 1.0 Purpose

This directive establishes a formalized policy for considering requests that The City of Lake Forest (City) take jurisdiction and liability for existing private improvements.

Chapter 46 of the City Code (the Code) states a public way is any public street, highway, alley or other public thoroughfare. Public ways are public land which may be improved or unimproved and which provide a primary means of access to abutting properties, but does not include private improvements. The Code also recognizes the existence and use of private roads, defined as "a private thoroughfare other than a street or alley permanently reserved in order to provide a means of access to more than one zoning lot."

Private improvements are specifically designated as such at the time of subdivision of the property except for those private improvements that pre-date current subdivision processes. Private improvements are permitted by the City through the subdivision process most often in response to the request of the developer which is often linked to reducing the cost of infrastructure buildout. Other factors that support private improvements include the interest in preserving historic or natural resources. A private improvement can include, but is not limited to, roads, open areas, ponds, trails and utilities. Typically, a private improvement is identified on the recorded plat of subdivision and in the Declaration of Covenants. Some private improvements are under the control of a Home Owners Association (HOA), but others are not. Some private improvements have been expressly approved following City review, but others may have developed independent of the City's actions. A key distinction with private improvements is that the responsibility for maintenance and/or replacement of said private improvements rests with the owners of the responsible properties, and not with the City.

The long-term maintenance of private improvements can sometimes be seen as burdensome over time by the owners of the affected properties and as a result, the City receives from time-to-time requests to takeover the responsibility for and control of private improvements. This policy is intended to assist the City in evaluating and responding to such requests in a consistent manner.

### 2.0 Scope

This policy applies to all situations where the City is asked to take ownership of or responsibility for private improvements. Although circumstances may vary, in the case of each such request, the City will need to ascertain the nature and condition of the private improvement in question, as well as the costs associated with any assumption of responsibility by the City. This policy is based on the underlying assumption that most private improvements are purposefully established and carefully considered as part of the subdivision process. Furthermore, the policy is based on the premise that City acceptance of ownership or responsibility for such improvements is neither desirable, nor beneficial to the City and would in fact require the subsidy of these private improvements by residents City-wide. Furthermore, this policy is intended to ensure that all owners of private improvements have a clear understanding of the City's policy, and the process by which the City will evaluate any request involving the City accepting ownership of or responsibility for private improvements.

### 3.0 Policy

- 3.1 It is standard practice for the City to decline requests from HOAs or individual property owners relating to City acceptance of private improvements.
- 3.2 The private improvements in the following subdivisions were approved by the City at the time of subdivision at the request of the developer. These private improvements are clearly identified on the recorded plat of subdivision and the HOAs' responsibility for maintaining these private improvements is documented in the Declarations of Covenants for each subdivision. Requests for a transfer of responsibility for the private improvements in the following subdivisions will not be considered.
  - (i) Conway Farms
  - (ii) Willow Lakes
  - (iii) Amberly Woods
  - (iv) Stonebridge
  - (v) Academy Woods
  - (vi) Thorndale
  - (vii) Knollwood
  - (viii) Westleigh Farms
  - (ix) The Preserve at Westleigh
- 3.3 If the City receives a written request to assume responsibility for a private improvement(s), it is up to the discretion of the City Council to determine if accepting the private improvement(s) is in the best interest of the City.
- 3.4 Any request to have the City own and be responsible for a private improvement must be submitted to the City Manager in writing. The request must indicate the requestor's interest in the private improvement and must include documentation deemed to be acceptable to the City identifying the owner(s) of the private improvement. If the requestor is a HOA, the written request must indicate whether the developer or a third party does not own the HOA or property within the association involved. In addition, the letter request must include signatures of all property owners (100%) belonging to the HOA.
- 3.5 The written request should also include plans and associated calculations showing the conditions and the limits of said private improvements and must include a detailed engineering report which addresses the following: (a) identification of all private improvements that are the subject of the request, (b) identification and demonstration of whether or not each of the private improvements included in the request meet current City standards, (c) for those private improvements that do not meet City requirements, the nature and extent of how the improvements deviate from current City standards, (d) an Engineer's Estimate Of Probable Cost (EEOPC) for upgrading private improvements proposed for transfer to the City to achieve compliance with current City Standards and a timetable for such upgrading, or, in the alternative, an explanation of why such upgrading is not in the best interest of the City, and (e) an EEPOC for annual maintenance related to the private improvement(s) in question for the next ten (10) years.
- 3.6 Any private improvements must be brought up to the City Standards without cost to the City as a pre-condition to the City's acceptance of responsibility and all related plats and plans must be revised to reflect work that will need to be undertaken to achieve compliance with said

standards. All plats and plans shall be subject to City review and approval. In addition, a contribution equaling the 10-year total of the EEOPC on annual maintenance will be required.

- 3.7 Within 90 days after the City has determined that a complete request has been received including all of the supporting materials referenced above the City Engineer and Director of Community Development will prepare a report and recommendation to the City Council. The report will review the request in light of established City practices with respect to the acceptance of private improvements and detail the fiscal impact of accepting the specific private improvements that are the subject of the request. In addition, the report will review any risk or liabilities relating to the City's assumption of the private improvement after it is fully upgraded to City standards. Or, if the requestor asserts that such upgrade cannot be achieved, the report should consider the impacts on the City of assuming a substandard improvement from capital, operational, maintenance, and liability perspectives. The City Engineer and Director of Community Development will notify the requester at least 15 days and not more than 30 days prior to the date the request will be discussed by the City Council or its designated Board, Commission or Committee. The City Council has full discretion in determining whether to deny, approve or accept in part the request to assume ownership or responsibility for any private improvement. The City Council shall direct that written notification of the Council decision, including the findings on which the decision was based, to the requester(s) within 10 days of the Council action.
- 3.8 If the City Council finds that City acceptance of the private improvement is in the best interest of the residents and the City and therefore approves the request, the requestor has 90 days to submit engineering plans and all required studies, plats and documentation as determined to be necessary by the City Engineer in accordance with this Administrative Directive. Following review and subject to approval of the plans and documents by the City Engineer, the private improvements approved for acceptance by the City must be improved to City standards within 90 days of said approval. Based on demonstrated need, a longer period may be allowed for the completion of the improvements by the City Manager. In addition, the City may require a fully executed agreement between the requester and the City addressing the terms of any transfer of private improvements. The executed agreement may provide for ongoing financial contributions by the requester relating to the acquired private improvements. The requester must also provide the City with an appropriate bill of sale and evidence that there are no outstanding liens or claims on the private improvement in question. The requester must also deliver to the City any necessary easements, rights-of-way, or other interests in land that the City Manager determines are necessary or convenient to the City's assumption of such private improvement.

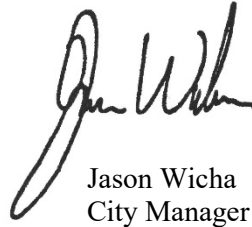
#### 4.0 Liability

- 4.1 If the City Council finds the transfer of the Private Improvement is in the best interest of the City and its residents as a whole, the City will not assume any liability for any damage that may occur to the Private Improvements or injuries or damages that may result in connection with the Private Improvements prior to the actual date of the City's formal acceptance of the Private Improvements. Any such acceptance will be effected through the adoption of a resolution of the City Council, which will be followed by a closing to ensure full compliance with the terms of the Council's acceptance, this policy, and any conditions on the Council's acceptance. If determined to be necessary by The City, an amended plat of subdivision shall be provided by the requestor and subject to approval by the City Engineer, be recorded.

- 4.2 All costs related to the review and acceptance of City improvements are considered reimbursable expenses and shall be paid by the requestor. These costs shall include, but not be limited to staff review of the request and related plans, studies and documents, staff research, legal fees incurred by the City, cost to the City for third party consultants and all recording costs.
- 4.2 The requestor must indemnify the City and its officers, officials, employees, agents, attorneys, and representatives for any claims, actions, liabilities, or judgment of any kind whatsoever arising from or relating to an occurrence involving the Private Improvement before the date of the City's acceptance and subsequent closing for the transfer of the Private Improvement.

5.0 Distribution

- 5.1 Employee Information website at [www.citylf.org](http://www.citylf.org).



Jason Wicha  
City Manager