

CHAPTER 12: ENFORCEMENT

12.1 ENFORCEMENT

The Mayor, the City Building Department, the Zoning Administrator and City Marshal are designated as the persons to administer and enforce the provisions of this Code and all other land use regulations adopted by the City. The Mayor when deemed necessary shall recommend legal action to enforce the provisions of this Code or other land use regulations. The failure of any persons to properly interpret, apply, or enforce any provision of this Code or other Ordinance of the City shall not operate to waive or stop the City from enforcing compliance with the said ordinances at a later date.

12.2 PENALTIES

Any person, firm or corporation (as principal, agent, employee or otherwise) violating, causing or permitting violation of the provisions of this Code shall be guilty of an Class C, Misdemeanor and shall be fined up to \$500.00. In addition, the City may bring an action to enjoin the continuation of the violation and may seek any other remedy afforded to it by law and by Utah Code Ann. § 10-9a-802 (2005). Each day a violation continues shall be considered a separate violation and offense.

12.3 COMPLETION OF ON- AND OFF-SITE IMPROVEMENTS PRIOR TO THE APPROVAL OF PLATS OR ISSUANCE OF CERTIFICATES OF OCCUPANCY

12.3.1 Policy

In order to protect buyers of subdivided lots, condominiums, planned unit development projects, and other property in the City against purchasing property on which the site improvement work is incomplete and may not be completed, and to protect the public at large from dangerous and undesirable conditions that result from unfinished site improvements such as erosion, flooding, and blowing dust; it is the policy of the City that no plat will be approved and that no certificate of occupancy will be issued on any building project within the City limits unless and until the site improvement work is completed or the developer of the property has provided adequate security to assure timely completion of the improvements when weather permits.

12.3.2 Detailed Site Plans and Construction Drawings

A detailed site plan and construction drawings showing the location and nature of drainage work, utilities, grade changes, retaining walls, and landscaping, together with any trails, paths, or walkways shall be submitted to City Building Department prior to the approval of a Final Plat or the issuance of an Occupancy Permit. Site improvements shall be completed pursuant to this Chapter and as shown in the detailed site plan and construction drawings.

12.3.3 Construction According To Approved Plans

No plat will be approved and no certificate of occupancy will be issued unless that project and all

required site improvements have been constructed in accordance with the plans approved by the Building Department and on which the building permit was issued, except as specified in Section 12.4 (Security For Completion) of this Code.

12.4 SECURITY FOR COMPLETION

In the event that buildings on the property are completed before other required public or private on or off-site improvements are completed, and, if the site improvements cannot be completed contemporaneously with the completion of the building due to weather or other conditions beyond the control of the developer (excluding financial inability to perform); or as it relates to subdivisions, in order to record a final plat prior to completion of off-site improvements, the City may grant Final Plat approval or issue the certificate of occupancy for all or part of the project prior to the completion of site improvements provided that all of the following conditions are met:

- a. The building or buildings, or portions thereof, on the property to be platted or occupied have been constructed in accordance with the approved plans for those buildings, and are in full compliance with applicable building and fire codes, and are completed to the extent that only exterior site improvement work remains unfinished; and
- b. The City Building Department determines that occupancy of the buildings, or portions thereof, prior to completion of required on- and off-site improvements, is safe, and that access for emergency vehicles is adequate with the site improvements unfinished; and
- c. In regard to subdivisions, the Building Department approves all final construction plans, a development agreement has been approved by the City Attorney and executed by the owner/developer; and
- d. The developer posts adequate security for the benefit of the City and the public to insure completion of all public on and off-site improvements in full compliance with the approved plans within two years from the date of Final Plat approval (if required) or one year from the date of issuance of the certificate of occupancy, whichever occurs first.

12.4.1 Amount of Security

The amount of the security to be posted by the developer shall be determined by the City Engineer and shall be equal to one hundred twenty-five (125%) of the amount reasonably estimated by the City Engineer as being necessary to complete remaining on- and off-site improvements as shown on the approved plans. In the event that the developer disputes the cost estimate of the City Engineer, the developer may prove lower construction cost by providing binding contracts between the developer and contractor or subcontractor appropriate to perform the required work at a stated, fixed price. These contracts must be supported by a full security agreement, insuring performance by the subcontractor or contractor. Bid proposals are not satisfactory for this purpose. The City reserves the right to reject contracts made with contractors who the City can verify to not have the equipment or financial capability of timely completing such improvements. If the contracts submitted are acceptable in form, the amount of security required shall be one hundred twenty-five per cent (125%) of the total contract price of all such contracts submitted, plus the estimated reasonable cost of performing any work not covered by the contracts. Specifications in such contracts shall be sufficiently clear to identify the work called for under the contract. The amount of security required for single-family homes shall be the reasonably estimated cost of construction of any retainage and drainage and the estimated cost of landscaping to the extent necessary to hold the soil in place.

12.4.2 Term of Security

The terms of any security arrangement offered to the City shall include, but not be limited to:

- a. Incorporation by reference of the Final Plat and all data required by Chapter 8. and the approved construction plans which are used to compute the cost of the improvements by the Public Works Department and/or City Engineer.
- b. Completion of the improvements within a period of time not to exceed two years from the date the agreement is executed.
- c. The improvements shall be completed to the satisfaction of the City Building Department and according to specifications as established under Chapter 11 (General Design Standards), and the Standard Specifications for Design and Construction .
- d. The City shall have exclusive control over the security proceeds and they may be released only upon written approval of the City.
- e. The security proceeds may be reduced upon request of the Subdivider as the improvements are installed. The amount of the reduction shall be determined by the Public Works Department and/or City Engineer. Such requests may be made only once every 30 days, and no reductions shall be authorized until such time as the Public Works Department and/or City Engineer has inspected the improvements and found them to be in compliance with all City specifications. All reductions shall be granted only by the written authorization of the Mayor signing on behalf of the City.
- f. If the security proceeds are inadequate to pay the cost of the completion of the improvements according to City specifications for whatever reason, including previous reductions, then the owner/developer shall be responsible for the deficiency and in the context of subdivision improvements; no further building permits shall be issued in the subdivision until the improvements are completed or a new security agreement has been approved and executed to insure completion of the remaining improvements.
- g. If upon written demand of the City after expiration of the security time period, the security proceeds are not transferred to the City within thirty (30) days of the demand, then the City's costs of obtaining the proceeds, including the City Attorney's fees and costs or outside attorney's fees and court costs, shall be deducted from the security proceeds.
- h. Upon receipt of the security proceeds after the expiration of the time period, the costs of completion shall include reimbursement to the Public Works Department and/or City Engineer and all other City departments for the costs of administration of the completion of the improvements, including inspection costs.
- i. The owner/developer/subdivider agrees to hold the City harmless from any and all liability that may arise as a result of the improvements which are installed until such time as the City accepts the improvements.
- j. The time period for the completion of the required public improvements may only be extended in the manner prescribed by Chapter 8 of this Code.
- k. All public improvements required under this Code shall be installed by a contractor or subcontractors licensed by the State of Utah.

12.4.3 Form of Security

Such security arrangement shall be one of the following types as dictated by the City:

- a. An irrevocable letter of credit with a federally insured financial institution.
- b. A cashier's check or a money market certificate made payable only to the City.
- c. A trust or escrow account with a federally insured financial institution designating the City as beneficiary.

12.4.4 Payment of Interest

Any interest accruing on escrowed funds shall, unless expended for completion of site improvements required, inure to the benefit of the developer and not to the City. The City shall not be required to pay interest to the developer on any funds escrowed for this purpose.

12.4.5 Release of Funds

The City shall relinquish funds held or security posted for the purpose of paying for site improvement work performed according to the plans as that work is completed. The City shall release funds equal to the actual cost of performing the work as the work progresses minus twenty five percent (25%) which shall be retained by City as a Warranty Bond during the one (1) year warranty period after the public improvements have been accepted. Requests for release of funds may only be made once every thirty (30) day period.

12.4.6 Modification of Plans

A developer may request modifications to plans covering site improvement work by submitting revised plans to the *City Engineer* for review and action and final action. If the modification of the plans increases the cost of required site improvements, additional security must be provided by the developer to cover the increased costs.

12.4.7 Phased Projects

Site improvements applicable to each phase of a phased subdivision project developed pursuant to Section 6 of Chapter 8 of this Code (Phased Subdivisions) shall be completed or security for completion provided as each phase is constructed and either platted or occupied. Site improvements or other phases of the project shall be completed or security offered as those phases are completed.