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¹Article 29: Security and the Deferred Development Agreement Process

29.010 Purpose

The purpose of this Article is to define two distinct processes intended to guarantee the future completion of work required as part of the approval process for a Development Permit. Providing security, as described in Sections 29.021 and 29.030 through 29.050 of this Article, is acceptable exclusively on a short-term, interim basis. Following the Deferred Development Agreement process, as described in Sections 29.022 and 29.060 of this Article, is acceptable exclusively on a long-term basis.

- (1) The ability to provide security in lieu of immediate installation is available for various procedures throughout this Development Code. It serves as the guarantee work will be completed and provides the funding for the City if the applicant fails to complete the installation requirements. The standards for security protect the public from additional expenditures. In general, security is accepted exclusively on a short-term, interim basis to allow for certain events to occur, such as occupying a building or securing final plat approval of a partition or subdivision, while guaranteeing the work will be completed within an identified time frame.
- (2) Following the Deferred Development Agreement process, which includes a cash deposit, applies exclusively on a long-term basis to allow for development to proceed, even though all of the required public improvements have not been completed or installed at the time of the development and will not be completed in the immediate future. Complying with the provisions of the Deferred Development Agreement process guarantees that work will be completed at the appropriate time.

29.020 General Provisions

29.021 Security is accepted for the following:

- (1) Erosion Control Plan (see 13.143)
- (2) Final Plat Approval of a Subdivision (see 17.422)
- (3) Certain required improvements for Site Plan (see 19.060)
- (4) Landscaping (see 23.053)
- (5) Street Improvements (see 27.110)
- (6) Public Sidewalks (see 27.312)
- (7) Public Water Lines (see 28.052)
- ²(8) Public Sewer Lines (see 28.071)

29.022 The Deferred Development Agreement Process:

The signing of a Deferred Development Agreement and the posting of a cash deposit are accepted for any public improvement required by the Director, Hearings Officer, Urban Area Planning Commission or City Council that are part of a conditional approval for an application for a Development Permit and are not feasible to install at the time of application. Public improvements include but are not limited to the following:

- (1) Street improvements, including widening, final lifts or overlays, installation of curbs, gutters or sidewalks,
- (2) Installation of public water mains and appurtenances,
- (3) Installation of public sewer mains and appurtenances,
- (4) Installation of storm drain facilities,
- (5) Installation of traffic control devices, including traffic signals.

29.030 Security for Final Plat Approval of a Subdivision

29.031 Criteria for Security

Security may be deposited in lieu of the final installation and final acceptance for street and other public improvements if all of the following criteria are met:

- (1) The applicant and all other "persons with an interest in the property" have met all of the below listed criteria:

(Note: "persons with an interest in the property" shall NOT include persons with ALL of the following characteristics: they have only a security interest in the property, they do not have any right to direct or control any aspect of the day to day operations related to the development of the property; and they have not previously maintained any ownership interest in the property except as a security interest):

- (a) no outstanding conditions for final plat more than 120 days old on any pending project.
- (b) not forfeited the security and required the City to complete a project within the last five years.
- (c) not been convicted of a violation of the Municipal, Development, or Building Code within the last five years.

- (d) not cleared significant size trees, or graded a proposed subdivision prior to the issuance of a development permit or grading permit, or cleared or graded in violation of that subdivision approval.
- (2) All permit, engineering, and tree fees which are due and payable by the applicant for the current and all other projects have been paid.
 - (3) The City is provided with a Completion Contract signed by a licensed and bonded developer which authorizes the City or the Josephine County Homebuilders Association at the request of the City to complete installation of public improvements within the conditions stated in 17.422. The contract shall:
 - (a) Be signed with pre-qualified contractors for installation of the improvements. The contract shall include all items which have not been completed such as:
 - (i) Paving, including curb and gutter.
 - (ii) Sidewalks.
 - (iii) Any other conditions of approval that cannot be completed until the installation of the street.
 - (iv) Repair any damage to existing water, sewer, storm system, or base rock prior to the installation of paving.
 - (b) Comply with the prevailing wage laws of the State of Oregon for local government construction of a public improvement as set forth in ORS 279.348 et. seq. (unless Josephine County Homebuilders Association administers and manages the Completion Contract in its entirety).
 - (c) Contain provisions allowing the City to require installation of the improvements and allowing the City to pay the contract amount from the security posted.
 - (d) Authorize the City to use the contract or install the improvements pursuant to the City's ordinary bidding process.

29.032 Items included in the Security.

Security may be deposited to temporarily delay the final installation of certain public improvements. The security shall include the following:

- (1) Inspection fees of 5% of the Completion Contract amount which shall be deducted from the deposit based on an hourly rate, with the balance of any fees returned to the applicant.

- (2) Management fee of 8% of the Completion Contract amount which is a flat fee paid to the City and not returned to the applicant if the City initiates the Completion Contract because of an applicant's failure to install all of the required improvements.
- (3) Administration fee of 2% of the Completion Contract amount which is a flat fee paid to the City and not returned to the applicant if the City initiates the Completion Contract because of an applicant's failure to install all of the required improvements.
- (4) Contingency for punch list items of 5% of the Completion Contract amount which shall be deducted from the deposit based on expenses actually incurred with the balance of any fees returned to the applicant.

29.033 Form of Security

- (1) Security must be in the form of cash, bank deposits, Certificates of Deposits or Letters of Credit.
- (2) Notwithstanding subsection (1), if the Completion Contract authorizes the Josephine County Homebuilders Association to administer and manage the Completion Contract through completion, and if the Association, accepts full responsibility for the same, then security may also be provided through performance bonding or other financial security acceptable to the Association.

29.034 Timing for completion

For those public improvements for which security has been allowed, construction of all remaining improvements, not including sidewalks and tree planting if required, shall be completed within seven months of the recording of the final plat. Occupancy of homes shall NOT be permitted until all public improvements have been installed, tested, and received final acceptance by the City, and final inspection of the home has occurred.

29.035 Release of Security

Security can be released upon written request of the applicant and with the demonstration of the completion of work. The amount of the release shall be based on the estimate for the work completed. An inspection and processing fee of \$100 will be deducted from each payment.

29.040 Security for all other public improvements not deferred through the Deferred Development Agreement Process

29.041 Items included in the Security.

Security may be deposited to temporarily delay the final installation of certain public improvements. The security shall include the following:

- (1) Estimated cost of improvement based on prevailing wages.
- (2) Inspection fees of 5% of the estimated cost which shall be deducted from the deposit based on an hourly rate with the balance of any fees returned to the applicant.
- (3) Management fee of 8% of the estimated cost which is a flat fee paid to the City and not returned to the applicant if the City initiates the improvements because of an applicant's failure to install all of the required improvements.
- (4) Administration fee of 2% of the estimated cost which is a flat fee paid to the City and not returned to the applicant if the City initiates the improvements because of an applicant's failure to install all of the required improvements.
- (5) Contingency for punch list items of 5% of the estimated cost which shall be deducted from the deposit based on expense actually incurred with the balance of any fees returned to the applicant.
- (6) An approved timetable for the completion of the work.

29.042 Form of security

Security shall be in the form of cash, bank deposits, Certificates of Deposits or Letters of Credit.

29.043 Release of Security

Security can be released upon written request of the applicant and with the demonstration of the completion of work. The amount of the release shall be based on the estimate for the work completed. An inspection and processing fee of \$100 will be deducted from each payment.

29.050 Security for all private improvements required of the development

29.051 Items included in the security

Security may be deposited to temporarily delay the final installation of minor improvements such as landscaping or erosion control measures. The security shall include the following:

- (1) Estimated cost of improvement based on prevailing wages.
- (2) Management fee of 5% of the estimated cost which is a flat fee paid to the City and not returned to the applicant if the City initiates the improvements because of an applicant's failure to install any of the required improvements.

- (3) Contingency of 5% of the estimated cost which shall be deducted from the deposit based on expenses actually incurred with the balance of any fees returned to the applicant.

29.052 (4) An approved timetable for completion of the work.
Form of security

Security shall be in the form of cash, bank deposits, Certificates of Deposits or Letters of Credit.

29.053 Release of Security

Security can be released upon written request of the applicant and with the demonstration of the completion of work. The amount of the release shall be based on the estimate for the work completed. An inspection and processing fee of \$100 will be deducted from each payment.

29.060 Deferred Development Agreement Process

29.061 Authority for Requiring Public Improvements

In accordance with Sections 2.034, 2.045, 2.055 and 2.066 of the Development Code, the Review Body (i.e. the Director, the Hearings Officer, the Urban Area Planning Commission or the City Council) can decide to approve, conditionally approve or deny an application for a Development Permit. The installation of specified public improvements may be a requirement of a conditional approval. The decision to conditionally approve the application must be based on the applicable criteria for approval, as set forth in this Code.

29.062 Applicable Criteria and Other Code Authority for Requiring Public Improvements

The Review Body can require the installation of public improvements based upon the following criteria:

- (1) Tentative Partition Plan, 17.312 (3) and (4)
- (2) Tentative Subdivision Plan, 17.413 (3) and (4)
- (3) Minor Site Plan Review, 19.042 (2) and (3)
- (4) Major Site Plan Review, 19.043 (2) and (5)

Additional authority for requiring the installation of public improvements in association with an application for a Development Permit is found in the following sections:

- (1) 27.110 Provision of Street Improvements
- (2) 27.310 Public Sidewalks and 27.312 Deferral of Installation

- (3) 28.013 Service Extension within the Urban Growth Boundary.
- (4) 28.071 Sewer System Design and Extension

29.063 Process for Deferring the Installation of Public Improvements

The Review Body must find the obligation to install specified public improvements is necessary to satisfy certain criteria for approval of an application for a Development Permit. It may allow installation to be deferred to a future date if the following conditions are satisfied:

- (1) The Review Body finds it is not feasible to install the public improvements at the current time and therefore deferring the installation to an unspecified, future date is preferable to the City.
- (2) The City Engineer establishes the cost of the deferred public improvements, based on the most recent and most applicable costs incurred through creation of a Local Improvement District and the applicant makes a cash deposit of 115% of the cost of the deferred public improvements
- (3) The applicant signs a Deferred Development Agreement, on a form provided by the City Manager, for the future installation of the deferred public improvements, to be used by the City if the cash deposit is insufficient to construct the public improvements at the time future construction is undertaken.

29.064 Use of the Cash Deposit and Deferred Development Agreement

The cash deposit, plus accrued interest, shall be spent at the appropriate time to pay the cost of installation of public improvements previously identified and deferred as part of the approval process for an application for a Development Permit.

Interest shall accrue at an annual rate adopted by the City Council by resolution. In January of each year, the Council shall adopt the interest rate for the current calendar year. The interest rate shall be the previous calendar year's average interest rate paid to investments by the Local Government Investment Pool, a division of the Oregon State Treasury. The Council may readjust the rate adopted in the previous January applicable to the past year.

The Deferred Development Agreement may be used to create a Local Improvement District or to complete a Local Government Improvement Project.

- (1) At the time of installation of the deferred public improvements, the City shall refund the difference, if any, between the original cash deposit, plus accrued interest, and the cost of the improvements, to the current owner of the property, without regard to mortgage holders.

- (2) At the time of installation of the deferred public improvements, if the cost is greater than the amount originally deposited, plus accrued interest, the City may use the Deferred Development Agreement to create a Local Improvement District or to complete a Local Government Improvement Project.
- (3) If the deferred public improvements are installed by the initiator of a Developer Installed Improvement Program, the costs to the current owner of the property obligated by the terms of the Deferred Development Agreement cannot exceed the amount of the original cash deposit, plus accrued interest. The initiator of the Developer Installed Improvement Program cannot use the Deferred Development Agreement to cover additional costs or expenses incurred as a result of installing the deferred public improvements.
- (4) The current owner of the property, obligated by the terms of the Deferred Development Agreement, with the written permission of the City, may choose to install the improvements. Upon inspection and approval of the public improvements by the City, the current owner may seek reimbursement of the costs of the public improvements up to the value of the original cash deposit, plus accrued interest. The City shall reimburse the deposit plus interest unless there are legal reasons preventing the City from doing so.

1. Added 5-31-97, Amended 2/20/02 (Ordinance 5104)

2. Added 5-31-01 (Ordinance 5063)