

ORDINANCE # 24-10

AN ORDINANCE REVISING TITLE 21 OF THE SANDY CITY MUNICIPAL CODE, CHAPTER 2, “GENERAL PROVISIONS”, SECTION 16, “IMPROVEMENT COMPLETION ASSURANCE (GUARANTEE)”; ALSO PROVIDING A SAVING CLAUSE AND EFFECTIVE DATE FOR THE ORDINANCE.

WHEREAS, a request has been made to revise Title 21 of the Sandy City Municipal Code, Chapter 2, “General Provisions”, Section 16, “Improvement Completion Assurance (Guarantee)”. The purpose of the code amendment is to ensure the standards for improvement completion assurances for public sidewalks are consistent with Utah Code; and

WHEREAS, the Planning Commission held a public hearing on May 16, 2024, which meeting was preceded by notice posting in Sandy City Hall, the Sandy City Parks & Recreation Building, Salt Lake County Library – Sandy, on the Sandy City Website – <http://www.sandy.utah.gov>, and the Utah Public Notice Website – <http://pmn.utah.gov> on April 29, 2024; and

WHEREAS, following the public hearing before the Planning Commission, the Commission made a recommendation to the City Council regarding the amendment; and

WHEREAS, a public meeting was held by the Sandy City Council on June 18, 2024 to consider adoption of the proposed amendment; and

WHEREAS, the City Council has been given specific authority in Title 10, Chapter 9a, Utah Code Ann. to adopt land use regulations to regulate the erection, construction, reconstruction, alteration, repair and uses of buildings and structures, and the uses of land; and

WHEREAS, the State legislature has granted welfare power to the City Council, independent, apart from, and in addition to, its specific grants of legislative authority, which enables the City to pass ordinances which are reasonable and appropriate to the objectives of that power, i.e., providing for the public safety, health, morals, and welfare; and

WHEREAS, the forgoing legitimate governmental objectives are achieved by reasonable means, in that any adverse impact on private property value or use has been carefully balanced against the corresponding gain to the public; and the regulations have been calculated to permit property owners to beneficially use their properties for the practical purposes to which the property is reasonably adaptable; and procedures have been established by the Land Development Code and Utah Code Ann. whereby appeals can be heard and decided if it is alleged that there is legislative or administrative error, or where a special exception or variance to the ordinance is required.

NOW, THEREFORE, BE IT ORDAINED by the City Council of Sandy City, State of Utah, as follows:

Section 1. Amendment. Title 21 is amended as shown on **Exhibit “A”**, which is attached hereto and by this reference made a part hereof.

Section 2. Severable. If any part of this ordinance or the application thereof to any person or circumstances shall, for any reason, be adjudged by a court of competent jurisdiction to be

unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remainder of this ordinances or the application thereof to other persons and circumstances, but shall be confined in its operation to the section, subdivision, sentence or part of the section and the persons and circumstances directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the City Council that this section would have been adopted if such invalid section, provisions, subdivision, sentence or part of a section or application had not been included.

Section 3. Effective. This ordinance shall become effective upon publication of a summary thereof.

PASSED AND APPROVED this ____ day of _____, 2024.

Ryan Mecham, Sandy City Council Chair

ATTEST:

City Recorder

PRESENTED to the Mayor of Sandy City for her approval this ____ day of _____, 2024.

APPROVED this ____ day of _____, 2024.

Monica Zoltanski, Mayor

ATTEST:

City Recorder

PUBLISHED this ____ day of _____, 2024.

Sec. 21-2-16. Improvement Completion Assurance (Guarantee).

...

- (d) *Improvement Agreement and Guarantee.* Prior to recording a plat or commencing any development, the developer shall provide to the City an improvement agreement and a guarantee in accordance with the following requirements.
- (1) *Developer Responsibility.* The developer is responsible for compliant completion and warranty of all improvements. Developer shall timely complete the improvements and guarantee the improvements to be free of defects in materials and workmanship in accordance with this title, the improvement agreement, and all other applicable approvals, regulations, standards, and specifications.
 - (2) *Forms, Duration, Terms.* The developer shall execute an improvement agreement and guarantee using forms that are acceptable to the City. The improvement agreement and guarantee shall be for a duration of 12 months from the date the guarantee is posted with the City. If requested by the developer, a separate improvement agreement and guarantee for construction of public sidewalks may be created for a duration of 18 months from the date the guarantee is posted with the City. The guarantee shall run to the benefit of the City and shall remain in effect until such time as the City approves a partial release. The improvement agreement and guarantee shall contain language that promises and ensures compliant completion and warranty of the improvements by the developer. The guarantee shall contain a provision for unconditional payment of the face amount of the guarantee within ten business days from the date the City makes a written declaration of developer's failure to perform pursuant to this section.
 - (3) *Improvement Warranty Period; Improvement Warranty Guarantee.*
 - a. Developer shall provide an unconditional warranty that improvements comply with the City's standards for design, materials, and workmanship and will be free of defects in materials and workmanship for 12 months following the date when the improvements are inspected and approved by the City Engineer, unless the City Engineer determines, for good cause, that a 12-month period would be inadequate to protect the public health, safety, and welfare; or has substantial evidence, on record of prior poor performance by the developer; or has substantial evidence that the area upon which the improvements will be constructed contains suspect soil and the City has not otherwise required the applicant to mitigate the suspect soil. Improvements listed on the same calculation shall have the same improvement warranty period.
 - b. Financial assurance shall be required for the duration of the improvement warranty period, in the amount set forth in this section, to secure performance of replacement and repairs of improvements in accordance with developer's unconditional warranty.
 - (4) *Amount of the Guarantee and Improvement Warranty Guarantee.*
 - a. The amount of the guarantee will be determined as follows:
 1. The City Engineer will prepare a calculation to determine the amount of the guarantee. The amount of the guarantee shall be 100 percent of the cost of construction plus ten percent of that amount to cover administrative costs incurred by the City to complete the improvements, if necessary.
 2. The City Engineer may divide up the list of items on the calculation and create no more than four separate calculations. In the case where there is more than one calculation, the sum of the calculations shall be the total dollar amount required for the guarantee.
 - b. During the improvement warranty period the amount of the improvement warranty guarantee for each calculation shall be ten percent of the amount shown on the calculation or ten percent of the developer's reasonable proven cost of completion, whichever is less, except the guarantee

Exhibit "A"

for the Storm Water Pollution Prevention Plan requirements shall not be reduced and shall remain at 100 percent.

- (5) *Developer Shall Complete Improvements in a Timely Manner.* All improvements shall be completed to the satisfaction of the City Engineer within ~~one year~~ 12 months from the date the guarantee is posted with the City, unless the developer requests an extension in writing, and the extension is approved by the Director and City Engineer for good cause. If a separate improvement agreement and guarantee for construction of public sidewalks has been approved by the City, all improvements for public sidewalks shall be completed to the satisfaction of the City Engineer within 18 months from the date the original guarantee is posted with the City, unless the developer requests an extension in writing, and the extension is approved by the Director and City Engineer for good cause. The developer shall execute an improvement agreement promising completion within the required time, and the improvement agreement shall be amended for any approved extensions.
- (6) *Specified Sequence for Completion of Improvements.* To protect the health, safety and welfare of the City and its residents from traffic, flood, drainage or other hazards, the City Engineer may require that the improvements be completed or repaired in a specified sequence and/or within a specified period of time, which may be less than ~~one year~~ the time specified in the improvement agreement and guarantee. The City Engineer will notify the developer in writing of that requirement if the City Engineer deems such action necessary.
- (7) *Failure to Complete Improvements in a Timely Manner.* If the developer fails to satisfactorily complete the improvements within 12 months from the date when the guarantee is posted, or 18 months from the date when a guarantee is posted for construction of public sidewalks, or within a shorter time period specified by the City Engineer in order to protect the health, safety and welfare of the City and its residents from traffic, flood, drainage or other hazards, or as extended by the City Engineer pursuant to this section, the City may, in its sole discretion, pursue all lawful remedies, including without limitation, declaring the developer in default of the improvement agreement, declaring the guarantee forfeited by the developer, and demanding payment pursuant to the terms of the guarantee. The City may spend the funds to pay for construction, replacement, or repair of incomplete or defective improvements, as well as the City's administrative overhead and any other associated costs incurred by the City. The City may take any other action it deems appropriate to enforce the improvement agreement, collect on the guarantee, recover amounts not covered by the guarantee and any other civil or criminal remedies allowable by law, which may include liens.
- (8) *Initiating Inspections.* The developer shall request inspections of the installed improvements in writing when all improvements listed on one or more calculations are complete, at the end of an improvement warranty period, and after correcting deficiencies noted in a prior inspection. The request shall contain a statement affirming that all improvements associated with an individual calculation are complete and all deficiencies have been corrected. Inspections will be scheduled by the City Engineer upon receiving the developer's written request. Inspections may, but are not required to, be scheduled without written request from the developer upon determination by the City Engineer that time for completion of an improvement warranty period has run.
- (9) *Developer Shall Correct Deficiencies in a Timely Manner.* The developer shall correct any deficiencies noted by City inspectors within 30 days from the time the inspector notifies the developer. Extensions may be authorized by the City Engineer for good cause beyond the developer's control after receipt of a written request and explanation from the developer.
- (10) *Partial Release of Guarantee.* Upon completion of the improvements listed on an individual calculation, and inspection and approval of those improvements by the City Engineer, the City may release up to 90 percent of the portion of the guarantee amount shown on that calculation.
- (11) *Final Release of Guarantee.* Upon completion of the improvements warranty period for the improvements listed on an individual calculation, and the subsequent inspection and approval of those

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improvements by the City Engineer, the City will release all remaining portions of the guarantee amount shown on that calculation.

- (12) *Acceptable Types of Guarantees.* Guarantees shall be approved by the City and may be either:
- a. An irrevocable letter of credit, containing information required by the City, from a bank or credit union chartered under the laws of the State of Utah or the United States of America, licensed and regulated by the Department of Financial Institutions of the State of Utah or its successor, insured by the Federal Depository Insurance Corporation or National Credit Union Share Insurance Fund, and having an office in the State of Utah. The letter of credit shall be signed by the guarantor, with the signature notarized and attested and shall be automatically extended upon expiration, unless released by a letter issued by the Mayor and the City Engineer;
 - b. An escrow bond, submitted on forms provided by the City, having as a guarantor an organization licensed and regulated by the Department of Financial Institutions of the State of Utah, or its successor, having an office in the State of Utah, and which is insured by the Federal Depository Insurance Corporation or National Credit Union Share Insurance Fund. Escrow bonds shall consist of a letter of commitment, signed by both the guarantor and the developer, with the signatures notarized and attested; or
 - c. A cash bond, submitted on forms provided by the City and signed by the developer, with the signature notarized and attested.
- (13) *Developer's Certification of Notification to Subcontractors.* The developer may be required to sign a statement that certifies that the developer has or will notify all contractors and subcontractors that the City will not release any portion of the guarantee until all improvements on a calculation are completed and the work has been inspected and accepted by the City Engineer, at which time the City will release no more than the portions allowed under this Section.
- (e) *Construction of Improvements Prior to Plat Recordation or Issuance of Building Permit.* If the developer desires to complete the improvements prior to recording a subdivision plat or prior to receiving a building permit, the developer may post an alternative guarantee in accordance with the following requirements.
- (1) The alternative guarantee shall be in an amount needed, as determined by the City Engineer, to remove incomplete improvements and restore disturbed property, including, without limitation, a base rate of \$10,000.00 per disturbed acre (rounded up to the full acre), \$10,000.00 per culinary water main line connection, and \$10,000.00 per stormwater main line connection.
 - (2) After posting the alternative guarantee, the developer may complete all improvements, except that no plat will be recorded, and no building permit will be issued by the City.
 - (3) When the improvements have been completed by the developer and inspected and approved by the City Engineer, the developer shall provide an improvement warranty guarantee as set forth in this Section. Upon the developer posting the improvement warranty guarantee, the City will release the subdivision plat to be recorded, or the City will issue the building permit, provided all other City requirements have been satisfied.
 - (4) A guarantee as described in this Section will be required for all incomplete or deficient improvements prior to recording the plat or receiving a building permit.

(Ord. No. 23-08 , § 1(Exh. A), 7-18-2023)

Editor's note(s)—Ord. No. 23-08 , § 1(Exh. A), adopted July 18, 2023, repealed the former § 21-2-16, and enacted a new § 21-2-16 as set out herein. The former § 21-2-16 pertained to guarantee for improvements and derived from LDC 2008, § 15A-02-16; Ord. No. 11-15, adopted Sept. 9, 2011; Ord. No. 12-04, adopted Jan. 27, 2012; Ord. No. 16-02, adopted Jan. 14, 2016.