



JAMES SORENSEN
COMMUNITY DEVELOPMENT
DIRECTOR

MONICA ZOLTANSKI
MAYOR

SHANE E. PACE
CHIEF ADMINISTRATIVE
OFFICER

Staff Report Memorandum

May 16, 2024

To: City Council via Planning Commission

From: Community Development Department

Subject: Amendments to Title 21 of the Land Development Code related to Improvement Completion Assurances for Public Sidewalks CA04262024-0006759

Public Hearing Notice: This item has been noticed on public websites, sent to affected entities and posted in three public locations at least 10 days prior to the Public Hearing.

Request

The proposed Code Amendments would amend Title 21, *Land Development Code*, Chapter 2, *General Provisions*, Section 16, *Improvement Completion Assurance (Guarantee)*. The code amendments ensure the standards for improvement completion assurances for public sidewalks are consistent with Utah Code. The specific amendments to the Land Development Code are included as Exhibit "A" (red-lined version) and Exhibit "B" (clean version).

Background

During the 2024 Utah Legislative Session, [House Bill 476](#) was passed, which enacted language that modify a provision relating to completion assurance bonds for public sidewalks (UCA 10-9a-802, Enforcement). The new legislation restricts cities from redeeming an improvement completion assurance that secures the installation of a public sidewalk any sooner than 18 months after the date it is posted. The proposed code amendment will bring the City's land use code under [Sec. 21-2-16](#) into compliance with these new state law provisions.

Case History	
Case Number	Case Summary
Ord. No. 23-08 CA10262022-0006429	Implements new state legislation relating to improvement completion assurances (bonding). Removes requirements to bond for on-site landscaping and amenities unless it is for public landscaping improvements or essential for public health and safety. Sets forth the administrative procedures and requirements for improvement agreements and financial assurance for construction improvements prior to recording a plat or obtaining a building permit.
Ord. No. 16-02	Changes to the guarantee for improvements section of the code, which includes

CODE-10-15-4669	regulations related to performance bonds for all new development projects.
Ord. No. 12-04 CODE-8-11-1935	Created the Utility Systems Connection Protection Guarantee, which is an alternative approach to bonding prior to recording a plat or obtaining a building permit.
Ord. No. 11-15 CODE-11-1-2082	Clarified the Utility Systems Connection Protection Guarantee that this option is not available for projects that do not require a building permit or a plat.

Public Notice

The city issued notice of the public hearing for the proposed code amendments on public websites, mailed notice to affected entities and posted in three public locations at least 10 days prior to the Planning Commission public hearing in accordance with the Land Development Code Sec. 21-36-1 and the Utah State Code § 10-9a-205.

Analysis

Currently, the duration of improvement completion assurances are for 12 months from the date the guarantee is posted with the City ([Sec. 21-2-16](#)). However, the new legislation restricts all cities from redeeming an improvement completion assurance for public sidewalks any sooner than 18 months after the date it is posted. Therefore, the proposed code amendment will bring the City's land use code into compliance with these new state law provisions. The specific language of the proposed code amendment is shown under Exhibit "A" (red-lined version) and Exhibit "B" (clean version).

Non-Conforming Uses

This code amendment would not create any non-conforming situations.

Land Development Code Purpose Compliance

The Sandy City Land Development Code in 21-1-3 lists the criteria explaining the intent and purpose of the Ordinance. The purpose is:

21-1-3 Purpose

This Code is adopted to implement Sandy City's General Plan and to promote public health, safety, convenience, aesthetics, welfare; efficient use of land; sustainable land use and building practices; transportation options and accessibility; crime prevention; timely citizen involvement in land use decision making; and efficiency in development review and land use administration. Specifically, this Code is established to promote the following purposes:

1. General

- a. To facilitate the orderly growth and development of Sandy City.*
- b. To facilitate adequate provision for transportation, water, sewage, schools, parks, and other public requirements.*
- c. To stabilize property values.*
- d. To enhance the economic well-being of Sandy City and its inhabitants.*

2. Implementation of General Plan

To coordinate and ensure the implementation of the City's General Plan through effective execution of development review requirements, adequate facility and services review and other goals, policies, or programs contained in the General Plan.

3. Comprehensive, Consistent and Equitable Regulations

To establish a system of fair, comprehensive, consistent and equitable regulations, standards and procedures for review and approval of all proposed land development within the City.

4. Efficiently and Effectively Managed Procedures

- a. To promote fair procedures that are efficient and effective in terms of time and expense.*

- b. To be effective and responsive in terms of the allocation of authority and delegation of powers and duties among ministerial, appointed, and elected officials.*
- c. To foster a positive customer service attitude and to respect the rights of all applicants and affected citizens.*

The proposed code amendment is consistent with the purpose of the Land Development Code because the proposal promotes the public health, safety and welfare; ensures consistency and equitable standards; establishes fair procedures that are efficient and effective in terms of time and expense; facilitates the orderly growth and development of Sandy City; and is consistent with the Sandy City General Plan.

General Plan Compliance

The Sandy City General Plan encourages appropriate development standards for all uses and zoning categories within the city. The proposed code amendment furthers that goal and objective by establishing appropriate land development standards for all uses and zoning categories within Sandy City.

Recommendation

Staff recommends that the Planning Commission forward a positive recommendation to the City Council to amend Title 21, of the Sandy Municipal Code, related to improvement completion assurances for public sidewalks as shown in Exhibit “A”, based on the following findings:

Findings:

1. The City Council may amend land use ordinances consistent with the purposes of the Sandy Land Development Code, the Sandy City General Plan, and the Utah Code, Municipal Land Use, Development, and Management Act per Title 21 Chapter 5 of the Sandy Municipal Code.
2. The proposal is reviewed by the Planning Commission and City Council in accordance with the requirements of Title 21 Chapter 5 of the Sandy Municipal Code.
3. The proposal complies with the purpose of the Land Development Code under Section 21-1-03 by promoting the public health, safety, and welfare; ensuring consistent and equitable standards; establishing fair procedures that are efficient and effective in terms of time and expense; and by facilitating the orderly growth and development of Sandy City.
4. The proposal complies with the Goals and Policies of the General Plan by establishing appropriate development standards for all uses and zoning categories within Sandy City.

Planner:



Melissa Anderson
Zoning Administrator

Exhibits:

- A. Proposed code amendments (red-lined version)
- B. Proposed code amendments (clean version)

File Name: S:\USERS\PLN\STAFFRPT\2024\CA04262024-0006759 - HB476 BONDING\STAFF REPORT\STAFF REPORT - BONDING CODE AMENDMENT.FINAL.DOCX

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

Exhibit "A"

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.

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Exhibit "B"

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 - 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.
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