

## **CHAPTER 9 - ENFORCEMENT, INCLUDING REQUIRED IMPROVEMENTS**

### **11-9-1: PURPOSE:**

This chapter provides for the enforcement of THESE REGULATIONS. It requires DEVELOPERS to provide adequate financial guarantees that REQUIRED IMPROVEMENTS will be installed as proposed and then maintained. Some required improvements will be dedicated to and maintained by the City after final inspection, acceptance, and a warranty period. Some required improvements will be owned and maintained by homeowner's associations or property owners. This chapter also establishes the procedure by which violations of these regulations may be addressed.

### **11-9-2: REQUIRED IMPROVEMENTS:**

A REQUIRED IMPROVEMENT is any improvement, public or private, required for compliance with these regulations. Required improvements (not all of which are required in every development) include, but are not limited to, the following, as shown on the final plans approved by the City

- A. Streets, public or private, including bridges, culverts, curbs, gutters, sidewalks, streetlights, signs, traffic signals, street trees, and other associated facilities;
- B. Access driveways, parking and loading areas, and other associated facilities;
- C. Trails, parks, and other open spaces, and associated facilities;
- D. Water and sewer systems, including wells, treatment plants, mains, storage, pump and pressure relief stations, and other associated facilities;
- E. Runoff, erosion control, and stormwater management measures;
- F. Landscaping, including BOULEVARDS, BUFFERS, landscaping in SETBACKS, parking area landscaping, and all other required or approved landscaping, SCREENING or buffering; and
- G. All other improvements required by these regulations to protect public health and safety or mitigate the potential impacts of the development.

### **11-9-3: STANDARD CONDITION:**

The notice of approval for every permit for a development that includes required improvements shall include this condition:

Approval of this permit is conditioned on the construction or installation and perpetual maintenance of all required improvements shown on the APPROVED PLANS in accord with the standards adopted by the City and the DEVELOPMENT AGREEMENT, where one is required. Failure to construct, install, or maintain a required improvement violates these regulations and is subject to the procedures and penalties established in Chapter 11-9.

### **11-9-4: COSTS OF REQUIRED IMPROVEMENTS:**

- A. Construction or installation of required improvements shall be entirely at the developer's expense.

- B. An exception to A. above, may be made for the City to participate in the installation of improvements in order to correct deficiencies identified in the Capital Improvement Plan, or anticipate future needs. The City's proposed participation shall be negotiated by the Mayor before final plans are reviewed and included in the DEVELOPMENT AGREEMENT approved by the Council.

**11-9-5: STANDARDS FOR REQUIRED IMPROVEMENTS:**

Required improvements shall be installed in compliance with this code and the City's *STANDARDS FOR DESIGN & CONSTRUCTION*.

**11-9-6: WHEN MUST REQUIRED IMPROVEMENTS BE IN PLACE:**

- A. All required improvements must be in place, inspected, and accepted by the City before a CERTIFICATE OF COMPLIANCE (CC) can be issued as provided by Section 11-5-9.9.
- B. CCs may be issued for all required improvements at once or by phase. Either way, the installation inspection, acceptance, and warranty of required improvements shall proceed as provided by a development agreement, where one is required.
- C. Occupancy without a CC is a violation of these regulations, subject to the enforcement procedures of this chapter. A TEMPORARY CERTIFICATE OF COMPLIANCE (TCC) may be possible, as provided by Section 11-5-9.C.

**11-9-7: INSPECTION OF REQUIRED IMPROVEMENTS:**

- A. Required improvements must be inspected by the City or its representatives before a CC is issued and the guarantees required by Section 11-9-9 are returned.
- B. A proposed schedule of inspections must be included in the draft development agreement, where one is required. A final schedule will be included in the approved development agreement.
- C. Applicants may be required to provide reports of inspections made by their own architects, engineers, landscape architects, or other professionals during the construction or installation of required improvements. A proposed schedule of reports will be determined in negotiation with the City and included in the draft development agreement.
- D. Fees for the inspection of required improvements are established in the fee resolution adopted by the Council (please see Section 11-3-6.D). Inspection fees must be paid before inspections are conducted.
- E. Reproducible as-built drawings of all required improvements must be provided to the City at the applicant's expense, and in the format specified by the *Standards for Design & Construction*.

**11-9-8: DEVELOPMENT AGREEMENTS:**

A development agreement is required for all ANNEXATIONS and SUBDIVISIONS that include required improvements. Development agreements are not required for other developments because all improvements must be in place before a CC is issued, but may be requested by an applicant who intends to build in phases or required by the City where extensive improvements are required. A development agreement:

- A. Incorporates by reference the approved final plans of the entire development or, where phased development has been approved, detailed plans of the initial phase;
- B. Lists all required improvements, either for the entire project or the initial phase, and their estimated cost;
- C. Sets a schedule for the inspection and completion of the required improvements in the entire project or the initial phase, and, where applicable, provides an anticipated schedule for the submission of final plans, cost estimates, and guarantees of improvements in future phases;
- D. Guarantees completion of all required improvements using one of the methods listed in Section 11-9-9;
- E. Provides a process by which the City may complete required improvements using the guarantees provided, if necessary;
- F. Provides a process by which either party may request renegotiation;
- G. Provides a process by which the development agreement may be transferred, with notice to the City, to the developer's successors; and
- H. Provides that the development agreement and any vested rights created by approval of the final plan become void if the City is required to use a guarantee to complete required improvements or if the anticipated schedule of improvements required above is not met or renegotiated. The anticipated schedule may be renegotiated without losing vested rights, provided that such negotiations are initiated within 90 days after failure to initiate or complete a phase as scheduled.

*People should not get uptight about development agreements. They can be short and sweet where that is appropriate. We will attach a model development agreement once it is clear that this language works for the City.*

#### **11-9-9: FINANCIAL GUARANTEE OF REQUIRED IMPROVEMENTS:**

Completion of the improvements identified in a development agreement must be guaranteed by one of the following methods:

- A. For required improvements that will come into public ownership: The applicant must provide a bond for or place an amount equal to one-hundred fifty percent (150%) of the estimated cost of installing the required improvements in escrow for the City before a zoning permit will be approved. The development agreement will specify the terms of the bond or escrow account, including the phased return of portions of the funds taken in escrow as work proceeds, provided that at least one-third (33%) of the financial guarantee shall be retained until a CC has been issued.
- B. For required improvements that will not come into public ownership: Many required improvements, parking areas and landscaping, for example, will remain in private ownership, maintained by the applicant, the applicant's successors, or an owner's association. These improvements are still necessary for compliance with these regulations and must be in place before a CC is issued. The City will ensure timely completion of these improvements by requiring the applicant to provide a bond, an irrevocable letter of credit, or money placed in escrow, in the

amount of one hundred fifty percent (150%) of the estimated cost of the required private improvements before a zoning permit is issued. The bond or letter of credit will be surrendered, or the amount placed in escrow returned when a CC has been issued. The development agreement will specify the terms of the bond, letter of credit, or escrow account, including the phased return of portions of the funds offered as work proceeds, provided that at least one-third (33%) of the financial guarantee shall be retained until a CC has been issued.

- C. If any of the required improvements are not completed as provided by the development agreement, the City shall use as much as necessary of the bond, the money held in escrow, or the credit offered to complete those improvements. Any remaining balance will be returned to the applicant.
- D. Interest earned on escrow accounts established to comply with B and C, above shall be added to the account to reflect the inflating cost of making the improvements in the event of default.

**11-9-10: WARRANTY AND MAINTENANCE OF REQUIRED IMPROVEMENTS:**

Continuing maintenance of required improvements that will not come into ownership of the City or another public agency is required. Failure to maintain a required improvement is a violation, subject to enforcement as provided by Section 11-9-11.

- A. The applicant is responsible for maintenance of all required improvements that have been dedicated to the City for two (2) years after the CC is issued. This includes correcting defects in materials and workmanship and repairing damage to required improvements caused by ongoing construction. This warranty will be secured by retaining 10% of the bond, funds placed in escrow and/or made available via an irrevocable letter of credit. The City may use those funds where an applicant fails to make good on this warranty.
- B. Continuing maintenance of improvements that will not come into ownership of the City or another public agency is the responsibility of the owner.
- C. Any development that results, or may reasonably be expected to result, in the creation of multiple ownerships, including subdivisions and condominiums, shall create an owner's association or similar mechanism that is responsible for the continuing maintenance of the required improvements that do not come into public ownership. Drafts of the declaration of covenants and articles of incorporation and bylaws, for that association shall be submitted with the application for a permit. The final version of these documents must be approved with the final plan and recorded before a zoning permit is issued.

**11-9-11: VIOLATIONS:**

- A. §76-2-315, MCA makes violations of these regulations a misdemeanor and allows the City to provide for punishment by fine or imprisonment.
- B. Violations may also be addressed by the revocation of the CC following the procedure established in Section 11-9-12.

**11-9-12: PROCEDURE FOR VIOLATIONS:**

- A. The City may send any owner a notice of violation with the warning that if the violation continues fines may be assessed as provided by Section 11-9-11 and/or the CC may be revoked, as provided

below.

- B. Every notice of violation shall include a specific statement of which standards of these regulations or conditions of approval are being violated.
- C. Every notice of violation shall give the owner of the property ten (10) business days to correct the violation, appeal Staff's determination that there is a violation to the BOA or request additional time to come into compliance.
- D. Appeals will be heard by the BOA following the procedures established in Chapter 11-7.
- E. If the owner fails to correct the violation within the time allowed or loses an appeal and then fails to correct the violation as ordered by the BOA, Staff may seek a misdemeanor citation and/or issue notice that the CC will be revoked.
- F. Every notice of revocation shall cite the CC and the date it was issued.
- G. Every notice of revocation shall give the owner forty-eight (48) hours to either come into compliance, enter into a binding agreement to correct the violation by a date certain, or vacate the property.