

Chapter 17.38 BONDS FOR COMPLETION OF IMPROVEMENTS TO REAL
PROPERTY

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Section 17.38.010 Improvement Completion Assurances and Improvement Warranties
Generally

All required landscaping or infrastructure improvements shall be completed prior to any plat recordation or development activity unless the applicant requests to post an Improvement Completion Assurance under the terms of this chapter. In all cases shall the Improvement Warranty be posted prior to any plat recordation or development activity. If desiring to record a plat (in the case of subdivision improvements being incomplete) or obtain a certificate of occupancy (in the case of land developments in which a certificate of occupancy is requested before all required improvements are completed) any person or entity subdividing, improving, building upon or otherwise developing real property (hereinafter "developer") shall post for the benefit of Lindon City an Improvement Completion Assurance and Improvement Warranty in such amount and of adequate security, as set forth hereinafter, ensuring the timely and proper completion of all improvements required by the Lindon City Code, the Lindon City Development Review Committee ("DRC"), and all applicable building codes, standards, and specifications. (Ord. 2015-9, amended 03/03/2015; Ord. 2000-2, amended, 10/04/2000)

Section 17.38.015 Definitions

1. "Improvement Completion Assurance" means an irrevocable letter of credit, escrow bond, cash bond, or combination bond posted by a developer to guarantee the proper completion of required improvements.
2. "Improvement Warranty" means a an irrevocable letter of credit, escrow bond, cash bond, or combination bond posted by a developer to unconditionally warrant that accepted improvements comply with the approved plans and the municipality's written standards for design, materials, and workmanship, and are and will remain free of defects (or will be repaired or replaced at no cost to the City) within the improvement warranty period.
3. "Public Improvements" (for the purpose of this ordinance) means:
 - a. Utility installations, including piping of culinary and irrigation water, sanitary sewer, storm drainage, and other required utilities as established by Lindon City;
 - b. Utility improvements required for service by the following utilities, but not provided by the utility company: power, telephone, natural gas, cable television, and telecommunications.
 - c. Roads, grading, curb, gutter, sidewalks, trails, street lights, erosion control, and related items;
 - d. Any other improvement that may or may not appertain to an individual lot being developed but which benefits the property or that the DRC reasonably deems necessary to the development of the property; required by or promised to the City; required by ordinance or statute; shown on plans approved by the City; or required by the City Engineer, the DRC or the Legislative Authority as part of the land development process.
4. "Private Improvements" means:

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- a. Parking, storm drain, landscaping, fencing.
- b. Any other improvement on the property that was promised to the City, required by City ordinances, shown on plans approved by the City, or that was required by the DRC, City Engineer, Building Official or Legislative Authority as part of the land development or building approval process.

Section 17.38.020 Improvement Completion Assurance for Public Improvements

1. When required infrastructure improvements are not complete and the applicant requests recordation of a subdivision plat, approval of a building permit or conditional use permit, any developer making "Public Improvements," as defined above, to real property shall post an Improvement Completion Assurance for the proper and timely installation and completion of all such Public Improvements. The Improvement Completion Assurance shall be executed by agreement between the City and the developer, with the City Administrator, or other designated City representative, having authority to enter into said agreement.
2. The Improvement Completion Assurance shall guarantee that all required improvements will:
 - a. Be constructed in accordance with the City's construction standards and specifications; as represented in the construction drawing approved by the City Engineer; as promised to the City; and as required by the City Engineer, the DRC or the Legislative Authority.
 - b. Be completed and pass city inspection within one (1) year of the date that the final plat is recorded or building permit is issued, except that required improvements for plats recorded or building permits issued between October 1 and March 31 must be completed by the next October 1. For example, the required improvements for a plat recorded on February 6, 2015 must be completed by October 1, 2015. The purpose of this requirement is to give the City an opportunity to collect on the bond and complete required asphalt improvements before the asphalt batch plants close for the winter and before the weather prohibits the completion of the improvements. The City may retain and use the Improvement Completion Assurance for work not timely completed. The developer may request extensions from the DRC and such extensions shall be granted for good cause shown.
3. The Improvement Completion Assurance guaranteeing the timely and proper installation of required improvements shall be equal in value to at least one hundred percent (100%) of what it would cost the City to have the required improvements constructed, as estimated by the City Engineer. This estimated cost is intended to include all costs associated with the City having the required improvements constructed, including costs such as engineering costs, inspection costs, administrative costs, and collection costs, including court costs and attorney's fees. The purpose of the bond is to enable the City to make or complete the required improvements in a timely manner in the event of the developer's inability or failure to do so. The City need not complete the required improvements before collecting on the bond. The City may, in its sole discretion, delay taking action on the bond and allow the developer to complete the improvements if it receives adequate assurances that the improvements will be completed in a timely and proper manner. The City shall not release more than 90% of the Improvement Completion Assurance until the following have been completed:
 - a. A certificate of final acceptance of required improvements has been issued by the Lindon City Public Works Department.
 - b. The Developer has submitted record drawings to the City.

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- c. The Developer has posted the Improvement Warranty for the amount required in 17.38.020(5).
 4. The Improvement Completion Assurance may be posted before beginning construction or during construction. If it is posted during construction, the costs established by the City Engineer for those improvements already constructed and accepted by the City may be deducted from the required bond amount.
 5. The Improvement Warranty is required and:
 - a. Shall guarantee that all required improvements will remain free from defects for a period of one (1) year following the date that a certificate of final acceptance of required improvements has been issued by the Lindon City Public Works Department. The developer shall repair or replace any improvements which are or become defective during this time period. Subdivision public improvements shall remain free from defects for a period of one (1) year following the date that all improvements pass City inspection.
 - i. The DRC may require a warranty period beyond one (1) year in order to protect the public health, safety, and welfare if there is substantial evidence:
 - A. of prior poor performance by the developer; or
 - B. that the area upon which the infrastructure will be constructed contains suspect soil and the City has not otherwise required the developer to mitigate the suspect soil.
 - b. Shall be in the amount of ten percent (10%) of the lesser of the:
 - i. City Engineer's original estimated cost of completion of required improvements; or
 - ii. developer's reasonable, proven cost of completion of required improvements.
 - c. Shall be executed by agreement between the City and the developer, with the City Administrator, or other designated City representative, authorized to enter into said agreement.
 - d. Must be posted before the City will record the subdivision plat (in the case of improvements associated with a subdivision) or before the City will issue a Certificate of Occupancy (in the case of improvements not associated with a subdivision).
 6. Further, the Improvement Warranty will guarantee that all repairs to, or replacements of , the required improvements will be made to the satisfaction of the DRC, the Public Works Department, and the City Engineer. The Public Works Director or his authorized designee may require the developer to guarantee and warrant that any repairs will remain free of defects for a period of six (6) months following the date that the repairs pass City inspection, or until April 15th of the following year, whichever time period is longer. The City may retain the Improvement Warranty until the repairs have lasted through the warranty period, and may take action against the bond if necessary to properly complete the repairs. The Improvement Warranty shall not be released until the Public Works Director or his authorized designee has certified in writing that the promised performance is completed and the warranty period has expired.
 7. The Improvement Completion Assurance and Improvement Warranty shall be an irrevocable letter of credit, escrow bond, cash bond or combination bond in favor of the City. The requirements relating to each of these types of bonds are detailed in the approved bond form as maintained by the Development Review Committee. The City must approve any bond submitted pursuant to this section. The City reserves the right to reject any of the bond types if it has a rational basis for doing so. Letters of credit shall be from a federally insured bank or financial institution and shall be submitted on one of

the forms set forth in this section or as approved by the DRC. Escrow bonds shall be held by a federally insured bank, credit union, or similar financial institution or a title insurance underwriter authorized to do business in the State of Utah.

8. The City shall have the sole right to enforce the Improvement Completion Assurance and Improvement Warranty. Private parties shall not be third-party beneficiaries of the Improvement Completion Assurance or Improvement Warranty.
9. Whenever a temporary turn-around is approved as part of a subdivision and in anticipation of a future through road being constructed, the applicant constructing the temporary turn-around shall post a cash payment to the City equal in amount, as estimated by the City Engineer, to the cost of removing the temporary turn-around and construction of the required street improvements along the street frontage where the temporary turn-around will have previously existed. This cash payment will be applied to construction costs at the time the through road is constructed.

(Ord. 2015-9, amended 03/03/2015; Ord. 2000-2, amended, 10/04/2000)

Section 17.38.030 Improvement Completion Assurance for Private Improvements

1. Any developer making private improvements to real property that are not completed at the time of application for an occupancy permit shall post an Improvement Completion Assurance for the proper and timely installation of all such Private Improvements. The Improvement Completion Assurance shall be executed by agreement between the City and the developer, with the City Administrator, or other designated City representative, having authority to enter into said agreement.
2. The Improvement Completion Assurance shall guarantee that all required improvements will:
 - a. Be constructed in accordance with the City's construction standards and specifications and the plans approved by the City Engineer and Building Official, as promised to the City, and as required by the DRC, City Engineer, Building Official and Legislative Authority.
 - b. Be completed and pass City inspection within one (1) year of the date that the occupancy permit is issued. Improvements required between November 1 and March 31 must be completed by the next October 1. For example, the required improvements for an occupancy permit issued on February 6, 2015 must be completed by October 1, 2015. The purpose of this requirement is to give the City an opportunity to collect on the bond and complete any required asphalt improvements before the asphalt batch plants close for the winter and before the weather prohibits the completion of the improvements. The City may retain and use the Improvement Completion Assurance for work not timely completed. The developer may request extensions from the DRC and such extensions shall be granted for good cause shown.
3. The Developer retains full responsibility for failure or defects of Private Improvements. Any failure in materials or workmanship of a Private Improvement after the item passes inspection is not the responsibility of the City. The City's review and concern for Private Improvements is that they pass inspection if specific code requirements apply to the item, and/or the improvements meet substantial conformance with an approved plan at the time of inspection.
4. The Improvement Completion Assurance guaranteeing the timely and proper installation of required improvements shall be equal in value to at least one hundred percent (100%) of the cost of what it would cost the City to have the required improvements constructed, as estimated by the City Engineer. This estimated cost is intended to include all costs associated with the City having the required improvements constructed, including costs such as engineering costs, inspection costs, administrative costs, and collection costs,

including court costs and attorney's fees. The purpose of the bond is to enable the City to make or complete the required improvements in a timely manner in the event of the developer's inability or failure to do so. The City need not complete the required improvements before collecting from or foreclosing on the bond. The City may, in its sole discretion, delay taking action on the bond and allow the developer to complete the improvements if it received adequate assurances that the improvements will be completed in a timely and proper manner.

5. The bond shall be an irrevocable letter of credit, escrow bond, cash bond or combination bond in favor of the City. The requirements relating to each of these types of bonds are detailed in the approved bond form as maintained by the Development Review Committee. The City must approve any bond submitted pursuant to this section. The City reserves the right to reject any of the bond types if it has a rational basis for doing so. Letters of credit shall be from a federally insured bank or financial institution and shall be submitted on one (1) of the forms set forth in this section or as approved by the DRC. Escrow bonds shall be held by a federally insured bank, credit union, or similar financial institution or a title insurance underwriter authorized to do business in the State of Utah.
6. The City shall have the sole right to enforce the Improvement Completion Assurance. Private parties shall not be third-party beneficiaries of the Improvement Completion Assurance.

(Ord. 2015-9, amended 03/03/2015; Ord. 2000-2, add, 10/04/2000)

Section 17.38.040 Required Forms

1. Any person posting an Improvement Completion Assurance or Improvement Warranty shall use the original stamped forms listed below and maintained by the DRC.
 - a. DRC Form #1 — Improvement Completion and Warranty Agreement Form.
 - b. DRC Form #2 — Irrevocable Letter of Credit Form.
2. The DRC shall have power to create, maintain, and amend such forms as necessary to fulfill the purposes of this ordinance.

(Ord. 2015-9, amended 03/03/2015; Ord. 2000-2, add, 10/04/2000)