

CHAPTER 5

PUBLIC IMPROVEMENTS

SECTION:

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11-5-1: **CONSTRUCTION DRAWINGS:** The developer's engineer shall be a professional engineer licensed in the State of Utah and shall prepare, or shall be responsible for the preparation of, all construction drawings relative to public improvements in and out of the development. The developer's engineer shall also prepare, as part of the construction documents, an estimate of the cost of construction of all the public improvements. Four (4) copies, of the construction drawings must be submitted with the final plat. All such drawings shall be reviewed and approved by the City. A signed approved set shall be kept at the construction site.

- A. Drawing Alteration: Any changes or alterations to the original drawings must be approved, in writing, by the City Engineer prior to the construction of any such changes.

11-5-2: **BUILDING PERMIT ISSUANCE; MINIMUM IMPROVEMENTS:**

- A. Construction of public improvements shall proceed only after the construction drawings have been approved by all required entities. Building lots may be sold by the developer for the proposed subdivision only after the final plat has been recorded. The following minimum improvements shall be completed and in place before the City will issue a building permit for any lot within the proposed development:
 1. All grading of roads (including pit run and road base) as shown on the approved construction drawings, and all curb, gutter, and all utility trenches that lay inside the roadway;
 2. All storm water (excluding finish grades and landscaping), water, sewer, and other

improvements that may be deemed necessary minimum improvement; and (Ord. No. 2018-014, 10/23/2018)

3. Egress and ingress to provide acceptable and safe travel to and from each lot in the approved subdivision. Construction zone signs provided and maintained by the City at the developer's expense must be installed as per the Public Works Director.
- B. Inspection: All required testing results and red line drawings must be turned in to the City before the minimum improvement inspection takes place. An inspection of the minimum improvements shall be made and the City; and the City Engineer will certify to the City, in writing, that the minimum improvements are complete prior to the issuance of any building permits. (Subd. Ord., 1-24-1990; Ord. No. 2018-014, 10/23/2018)
- C. Asphalt shall not be laid prior to a minimum improvement inspection approval. (Ord. No. 2018-014, 10/23/2018)

11-5-3: COMPLETION OF CONSTRUCTION - TIME LIMIT:

- A. Construction must be completed within a two (2) year time period. The two (2) year time period begins on the date the construction drawings were signed by the City Engineer.
- B. At the completion of construction, or prior to the end of the maximum two (2) year time period, whichever comes first, the City shall make an inspection of all improvements and inform the developer of their findings. At the completion of construction, the developer shall call for an inspection by the City, and that inspection shall be made within ten (10) days of the written request. The developer's engineer shall provide the City with as-built drawings accurately defining, for permanent record, the surface improvements and underground utilities as they were actually constructed. A construction punch list will be made up by the City indicating the items missed or needing correction prior to acceptance of the improvements by the City, and all required replacements or repairs shall be completed by the developer, at the developer's expense, prior to acceptance by the City.

11-5-4: MANDATORY APPROVAL STAGES: The following list of mandatory approvals is required by the City. The City shall be given twenty four (24) hours (business days only) notice to schedule the following approvals. It is the responsibility of the developer to either notify or cause his subcontractors to notify the City in order that these approvals can be made. Failure to do so may result in work stoppage until the approvals are complete. Detailed approvals are listed in the Standards and Specifications Manual.

- A. The City must receive a written notice of approval from the City Engineer before the development can begin the next approval stage
 1. Preconstruction Meeting. A Pre-Construction Meeting will be held with the developer, general contractor for the Development, and City Staff prior to beginning any construction in the Development, including grading and trenching.
 - a. It is the developer's responsibility to notify the general contractor and all

- appropriate subcontractors for the Development of their required attendance at the Pre Construction Meeting and that no construction can commence until after that meeting.
- b. The Storm Water Notice of Intent (NOI) and Storm Water Pollution Prevention Plan (SWPPP) must be in place prior to the preconstruction meeting.
2. Minimum Improvements. An inspection of the minimum improvements shall be made and the City Engineer will certify to the City, in writing, that the minimum improvements are complete prior to the issuance of any building permits.
 - a. The City must receive a written notice of approval of minimum improvement before asphalt installed.
 3. Substantial Completion. A substantial completion inspection shall be made when the construction is one-hundred percent (100%) completed in accordance with the Approved Development and Public Improvement Installation Agreement and Approved Construction Drawings as modified by any change orders agreed to by the Developer and approved by the City Engineer.
 - a. A list of items to be corrected (Punch List) will be given to the developer and/or contractor. The failure to include an item on the Punch List does not alter the responsibility of the developer and/or contractor to complete all the work in accordance with the Approved Development and Public Improvement Installation Agreement and Approved Construction Drawings including any change orders agreed to by the Developer and approved by the City Engineer.
 4. Final. A final inspection shall be made when the construction and all items on the punch list are 100% complete and installed in accordance with the Approved Development and Public Improvement Installation Agreement and Approved Construction Drawings as modified by any change orders agreed to by the Developer and approved by the City Engineer.
 - a. The warranty period shall not begin until the City Engineer certifies, in writing, that all improvements are 100% complete.
 5. Warranty. The Developer shall warrant that the Public Improvements shall remain in good condition and free from all defects in performance, materials and workmanship during the Warranty Period except where such damage or defects are caused by verified acts of misuse, vandalism, or negligent acts of parties other than those associated in any way with the design, construction, and/or materials used in Development, including but not limited to Developer, subcontractors, engineers, consultants etc.
 - a. The warranty security will not be released until the City Engineer certifies, in writing, that the Public Improvements are in good condition and free from all defects in performance, materials, and workmanship.

- B. If the improvements fail after receiving a written approval for 11-5-4:A. 2, 3, and 4, the approval is void. The Developer must resolve the failure and receive written approval that the failure has been corrected before moving to the next stage.
 - C. Scope and Limitations of the Inspection and Report and/or Punch List. The inspection report and/or punch list is not an all-encompassing report and/or punch list dealing with the improvement in every aspect. It is a reasonable attempt to identify any obvious or significant defects apparent at the time of the inspection.
 - 1. This is a visual inspection only and limited to those areas and sections of the property fully accessible and visible to the inspector on the date of the inspection.
 - 2. The inspection report and/or punch list does not and cannot make comment upon defects that may have been concealed; or the assessment or detection of defects which may be subject to the prevailing weather conditions.
 - 3. The inspector's presence on-site does not constitute an inspection or approval.
- (Ord. No. 2018-014, 10/23/2018)

11-5-5: **ACCEPTANCE:** The subdivision of lands shall not be accepted by the City without the City and developer first receiving a statement signed by the City Engineer that the improvements described in the approved construction drawings and the approved development agreement and addendum have been completed.

Additionally, any subdivision of lands shall not be accepted without the developer having first provided the City with a one year written guarantee on all public improvements installed. (Subd. Ord., 1-24-1990; 1998 Code)

11-5-6: Repealed.

11-5-7: **SECURITY OF PERFORMANCE:** (Ordinance Modification 003-00 1/25/00)

The security of performance required by this Section is to assure the City that all improvements are constructed in conformance with all relevant City ordinances, regulations and standards, and to assure the City that all expenses incurred for labor and materials used in the construction of the same are paid for by the developer.

- A. Warranty Bond. A three (3) year warranty bond of ten percent (10%) of the reasonable value of all the public improvements required herein, as verified by the City Engineer's estimate, shall be in place at the time the final plat is recorded.
 - 1. If the approved bid is higher than the Engineer's estimate, the City reserves the right to require the amount be increased to 10% of the approved bid. (Ord. No. 2018-014, 10/23/2018)
- B. Public improvement completion security. To ensure completion of the public improvements required herein, a public improvement completion security shall be in place at the time the final plat is recorded.
 - 1. Amount: The amount determined by the City Engineer shall be equal to at least One Hundred Ten percent (110%) of the reasonable value of the improvements required herein.
 - 2. If the approved bid is higher than the Engineer's estimate, the City reserves the right to

require the amount be increased to 110% of the approved bid. (Ord. No. 2018-014, 10/23/2018) Methods: The public improvement completion security may at the City's sole discretion, be furnished by any of the following methods:

- a. By providing a performance, surety or cash bond in the amount specified and conditioned upon payment by the developer of all expenses incurred for labor and materials used in the construction of the required improvements. This method of security shall be preferred by the City.
- b. By depositing the specified amount of cash in a bank account to which the City alone has access, but only in the event it becomes necessary, in order to complete, repair or replace the improvements as set forth in this Chapter.
- c. By providing the City with an irrevocable letter of credit issued by an acceptable financial institution naming the City as the sole beneficiary with a maturity date of at least two (2) years and three (3) months from the date of recording the final plat.
- d. By depositing the specified amount of cash in a supervised bank account to which the developer has access, with the approval and signature of the City, which funds shall be used to pay for the improvements as construction is completed and evidence lien waivers. In the event it becomes necessary for the City to foreclose on the public improvements completion security and move to complete, repair or replace the improvements as set forth, then the City shall have access to said supervised bank account for the purpose of completing, repairing, or replacing improvements without the necessity of obtaining the approval of the developer.
- e. By giving other security in an amount approved by the City. This method shall be accepted only at the option of the City. In addition, the City must have official appraisals, a title report and review all encumbrances on the assets being offered before this method may be accepted.

C. In the event construction of the public improvements is not completed, or is not completed in a satisfactory manner, within the negotiated time period but not to exceed two (2) years from the date the construction drawings were approved with all required signatures, the City may proceed to install the improvements at the developer's expense by foreclosing on the developer's security of performance held by the City. If said security is insufficient to pay for said improvements, which the City shall cause to be installed, then the developer shall be liable for any deficiency and reasonable attorney fees realized by the City.

D. In the event the public improvements fail to meet the standards as set forth in the developer's written guarantee, the City shall so notify the developer who shall be given a reasonable time to repair or otherwise correct as requested or the City may proceed to repair or replace the unsatisfactory improvements at the developer's expense by foreclosing on any security of performance still held by the City; and , in addition, the City may avail itself of any other remedy provided to it under the laws of the State and of the City.

11-5-8: **REPEALED:** (Ord No. 009-2008 08/12/2008)

11-5-9: **ADJACENT STREETS:** It shall become the responsibility of the developer to pay for all of the required public improvements as determined by the City; including, but not limited to a complete street cross section with all underground improvements.

11-5-10: **PRIVATE ROADS:** (Ordinance Modification 98-026 11/10/98)

A. Definition: A private road is a road which is built to City Standards and Specifications, but is privately owned and maintained.

B. Definition: A driveway is a primary drive access serving no more than two (2) parcels.

11-5-11: **EXTENSION OF PUBLIC WORKS FACILITIES:** The extension of any City public works facilities, including but not limited to, roads, bridges, storm drains, water mains, sewer lines, and secondary water systems, shall be installed by the developer of any development. Layout must provide for future extension to adjacent development and be compatible with the contour of the ground for proper drainage. All public improvements shall be installed to the boundary lines of the development. There shall be no consideration or return to the developer within the area. The City, however, will consider cost sharing on any water line that is in excess of an eight inch (8") diameter or any sewer line that is in excess of a ten inch (10") diameter, in the event the City desires to participate for future planning purposes. (Subd. Ord., 1-24-1990)

11-5-12: **UTILITIES:** All utilities, privately or publicly owned, shall be placed underground. This will include, but shall not be limited to, telephone, gas, electric power, water, sewer, cable T.V. and irrigation lines. Exceptions to this may be considered.

11-5-13: **CITY WATER AND SEWER SYSTEMS:** All developments located within the corporate boundaries of the City shall be required to connect to the water and sewer systems of the City, except as provided by a resolution to the contrary. (Subd. Ord., 1-24-1990)

11-5-14: **SHARING DEVELOPMENT COSTS:** (Ordinance Modification 004-00 01/25/00)
Public works improvements shall be paid for by the developers and land owners who will benefit by their existence and use as set forth in this Section.

A. Compensation: Circumstances where the original developer may be compensated by adjacent land owners or by the City for a portion of the cost for these improvements:

1. Adjacent Land Owner: The owner of any parcel of land that has frontage along and/or is immediately adjacent to any public works improvements, which land owner would benefit from connecting onto or accessing the public works improvements without additional easements or right of ways. Parcels of land that could only be served by an extension of the public improvements beyond the end of those that were installed by the original developer are not included.

2. City Compensation: The City may use Providence City Code 11-5-11 as a guide for determining whether or not to assist a developer where the potential for future growth may present a demand for up-sized water or sewer lines or extra width for a road.

- a. In addition to 11-5-11, the City may provide funds from impact fees or sales tax rebate incentives that would expand and improve public works in already existing public rights of way, or in areas where upgrades are needed but not done, provided the use of impact fees is in compliance with State and City law.
 - b. The City may use impact fees to assist with off-site improvements as allowed by law so that reimbursement to the developer will not have to be tracked in the future.
 - c. All agreements and the dollar amounts of the financial commitment by the City must be part of the development agreement.
 - d. When the City participates with a developer as herein mentioned, then there will be no additional compensation due from adjacent land owners to the developer.
 - e. In the event the City determines to participate in the costs of certain public works improvements proposed by a developer, the City's participation will generally involve the expenditure of impact fees as allowed by law, in the anticipation that the City will be reimbursed through the collection of impact fees at the time building permits are issued as development occurs and/or through receipt of sales tax revenues.
3. Compensation from adjacent land owners: Where an adjacent land owner may benefit from the installation of public works improvements, a developer may contact the adjacent land owner and solicit participation in the costs for such improvements from the adjacent land owner(s).
- a. If an agreement is reached, a written agreement for sharing development costs by adjacent landowners that may use the improvements shall be submitted by the developer initially responsible for the improvements, along with the final plat.
4. No participation from adjacent land owners: Where adjacent land owners do not participate as described in C. above, and the City does not participate as described in B. City Compensation, above, then the original developer may be entitled to compensation from adjacent land owners as follows:
- a. Submitting a statement of costs: The original developer must file a letter or other written notice with the City by not later than the date of final plat approval by the City Council, indicating the original developer's intent to be considered for reimbursement of a portion of the costs of constructing public works improvements as provided in this ordinance.
 - i. The letter or other written notice must provide an estimate of costs for the public works improvements to be installed by the Developer.

- ii. This letter or other written notice will be used by the City to alert future adjacent land owners or their developers of their responsibility to the original developer, if they should begin to develop their adjacent real property before the original developer has completed installation of the required public works improvements.
 - iii. The failure to submit the referenced letter or other written notice to the City by the date of final plat approval by the City Council shall constitute a waiver by the original developer of the right to request reimbursement as contemplated by this section.
- 5. No developer may use this ordinance for shared development costs as a basis for unapproved private compensation or to control, direct, or deter growth within the City.
 - a. The City requires that all compensation of one developer to another be accomplished by using this ordinance and be done in writing and in conjunction with the City.
 - b. Developers may continue, however, to combine their resources and work together in developing areas or a combination of areas, as proposals are made, as described in paragraph 3 above.

B. Completion

- 1. When the original development's public improvements are completed and accepted in writing by the City, the original developer has 30 days from the date of acceptance of said improvement by the City, to file a statement of actual expenses incurred for the public works improvements.
 - a. Itemize each item of the public improvements, with complete itemization of the costs incurred for each item. Statement may include engineering costs. Statement shall include developer's proposed division of such costs between the developer and adjacent landowners.
 - b. Should the original developer fail to file the statement of actual expenses incurred for the public works improvements as required by this subsection 2, within 30 days from the date of acceptance of the public works improvements by the City, or fail to submit the as-built drawings as required by the City's subdivision ordinance, the original developer's request for compensation/reimbursement and any determination made by the commission and/or the City Council shall become null and void.
- 2. Future Development: Pro-rata Share: Future development by owners of land adjacent to these public improvements will not be approved by the City until the new developer agrees in writing to compensate the original developer, or the developer's legal agent, for a pro-rata share of the costs of the public works improvements, as was approved by the City.
- 3. Reimbursement to the Original Developer: Reimbursement to the original developer

shall be one hundred percent (100%) of the pro-rata share during the first five (5) years following the date of completion and acceptance by the City of the public works improvements. The pro-rata share shall be depreciated twenty percent (20%) per year thereafter, and no pro rata share shall be due to the developer after ten (10) years following the acceptance date by the City.

11-5-15: **Moved to Title 11 Chapter 2**