

Article 16:

IMPROVEMENTS

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Sec. 9-2.1600:

General

- A. The subdivider shall construct all required improvements both on-site and off-site, in accordance with the standards approved by City Council resolution and applicable City standards as provided by this Chapter. Except as provided herein, the subdivider shall be required to install all improvements that are required as conditions of approval to the tentative map, and to install all improvements that are required by City ordinance or resolution.
- B. The applicant shall pay all impact fees, pursuant to the applicable impact fee ordinances, in the amount that is in effect at the time such fees are due.

Sec. 9-2.1605:

Improvements Required

- A. If the subdivider of a vesting tentative map is required to construct off-site improvements on land in which neither the subdivider nor the City has sufficient title or interest to allow construction, then the subdivider shall complete, that all off-site interests in property required for the project have been acquired, unless the City Engineer finds, based on substantial evidence, that the subdivision design incorporates an alternative that would comply with City standards in the absence of the off-site improvement.
- B. If the subdivider is required to construct off-site improvements on land in which neither the subdivider nor the City has sufficient title or interest to allow construction, the subdivider shall provide written evidence that a good faith effort has been made to acquire the title or interest in the land to construct required off-site improvements, in accordance with City standards. If the subdivider, after a good faith effort, is unable to acquire the property, the City shall, within one-hundred twenty (120) days of filing the final tract map, acquire by negotiation or commence condemnation of the land, in substantial compliance with the procedures set forth in Government Code Section 7260, or the City shall waive the condition for the off-site construction. Prior to approval of the final tract map, the City shall require the subdivider to enter into an agreement to complete the off-site improvements as the time that title or an interest in the land is acquired. The subdivider shall pay the cost of acquiring off-site land or an interest in the land required to construct the off-site improvements, including reasonable attorney's fees and costs, prior to initiation of acquisition proceedings by the City.

Sec. 9-2.1610:

Deferred Improvements

- A. Any request for deferred construction of on-site and off-site improvements for tentative or parcel maps may be approved by the Planning Commission, in its sole discretion, at the time of approval of the tentative map.
- B. The City Attorney shall approve the form and content of all Deferred Improvement Agreements prior to the City accepting the document.

Sec. 9-2.1615:

Design of Improvement Plans and Standards

- A. Standards for design and construction of subdivision improvements shall be in accordance with the applicable City standards, the Conditions of Approval of the tentative map, and the requirements established by the City Engineer.
- B. Public improvement plans shall be acted on by the City Engineer within the time frame set forth in Government Code Section 66456.2.
- C. Public improvement plans shall be prepared under the direction of a registered civil engineer and shall be reviewed and approved by the City Engineer, if he or she can make the following findings:
 - 1. The plans are signed and stamped by a registered civil engineer.
 - 2. The plan designs are consistent with the tentative map, the conditions of approval and applicable City standards, with the exception of minor errors or incompleteness, which do not materially affect the design or the plan constructability thereof.
 - 3. All reports and studies required to evaluate the facility design and the completeness of the plans have been prepared by a registered civil engineer and have been reviewed and approved by the City Engineer.
 - 4. All conditions of approval relative to public improvement requirements have been addressed to the satisfaction of the reviewing authority and the City Engineer.
 - 5. All title and interest has been obtained by the subdivider for off-site property interest.
 - 6. All cost estimates have been approved by the City Engineer, and payment of all applicable fees have been received.
 - 7. Approval of designs and plans have been obtained from all other applicable agencies, as required by the City Engineer.
- D. All improvement plans shall be prepared in accordance with the City standards in effect at the time the tentative map is deemed complete. However, the City Engineer may modify those City standards under the following conditions:
 - 1. When necessary to protect public health, safety and welfare.
 - 2. When needed to comply with state or Federal laws.

3. When, in the opinion of the City Engineer, with the consent of the subdivider, a new standard or requirement is needed which will not materially affect the intent of the subdivider or the conditions of approval. This shall include the adoption of other agency standards for use by the City Engineer.
- E. The City Engineer approval of any public improvement plans, or any grading plans that are required as part of the approval of the final or parcel map, shall expire upon the expiration of any applicable Subdivision Improvement Agreement, or two (2) years from the date the City Engineer approves the plans, whichever is later. Upon expiration of those plans, new approvals from the City Engineer, together with the payment of new plan review fees, shall be required for any portions of the subdivision for which grading and improvements have not been completed.

Sec. 9-2.1620:**Subdivision Improvement Agreements and Improvement Security**

Pursuant to the Subdivision Map Act, if any public improvement required as part of the approval of the subdivision will not be completed and accepted in accordance with Sec. 9-2.0910 prior to approval of the final tract map, then prior to a determination of a complete and timely filing of the final tract map by the City Engineer, the Subdivider, at his expense, shall be required to enter into a Subdivision Improvement Agreement, with the City to complete said public improvements in accordance with Section 9-2.0910. Performance of said agreement shall be guaranteed by the security specified in this section and Section 66499 et seq. Of the Subdivision Map Act.

- A. The form and content of Subdivision Improvement Agreements shall be approved by the City Attorney. The agreement shall include, but not limited to, the following minimum terms and conditions.
 1. Construction of all improvements as set forth in the approved plans and specifications.
 2. The maximum period within which all improvements shall be completed to the satisfaction of the City Engineer.
 3. Provisions for inspection of all improvements by the City Engineer and payment of fees by the subdivider for the cost of such inspection and all other incidental costs incurred by the City in enforcing the agreement.
 4. A provision that if the subdivider fails to complete the work within the specified period of time, or any extended period of time that may have lawfully been granted to the subdivider, the City may, at its option, complete the required improvement work and the subdivider and his surety shall be firmly bound, under a continuing obligation, for payment of the full cost and expense incurred or expended by the City in completing such work, including interest from the date of notice of said cost and expense until paid.
 5. A provision that, in the event of litigation occasioned by a default of the owner or subdivider, his successors or assignees, the owner or subdivider, his successors or assignees will pay all costs involved, including reasonable attorney's fees, and that the same may be recovered as part of a lien against the real property.
 6. Additional terms or provisions, as may be necessary, pertaining to the forfeiture, collection, and disposition of improvement security upon the failure of the contracting party to comply with the terms and provisions thereof or with the terms and provisions of this Code.
- B. Subdivision Improvement Agreements shall be valid for a period specified in the agreement, but not to exceed two (2) years from the effective date of the agreement. The City Engineer may, in his discretion, extend the term of the Subdivision Improvement Agreement. The agreement shall not only bind the present subdivider, but also his heirs, successors, executors, administrators, and assignees so that the

obligation runs with the real property. All agreements shall be executed by all those parties executing the final or parcel map.

- C. Improvement securities shall be required to be posted as a guarantee of the performance of any act, improvement, or obligation required as a condition of approval of any final tract map, parcel map waiver, lot line adjustment, or lot merger. Unless otherwise provided herein, all such improvement securities shall be provided in one of the following forms, subject to the approval of the City Engineer and City Attorney:
1. A bond or bonds by one or more duly authorized corporate sureties substantially in the form prescribed in the subdivision Map Act and subject to the approval and acceptance of the City Attorney and City Council.
 2. A deposit with the City of either, immediately negotiable bonds or a letter of credit.
 3. Any other form of security, including a lien or other security interests in real property, which the City Engineer and the City Attorney may, in their discretion, allow provided they determine that it is equivalent to the foregoing forms of security in terms of security and liquidity.

Any written contract or document creating security interest established pursuant to subsection (C.3) above shall be recorded in the Office of the County Recorder. From the time of recordation, a lien shall attach to the real property described therein, which lien shall have the priority of a judgment lien in the amounts specified.

- D. The subdivider shall provide as security to the City:

1. For performance and guarantee: An amount determined by the City Engineer equal to one hundred (100) percent of the total estimated cost of the improvement to be performed, including costs and fees incurred by the City. The estimated cost of improvement shall include a ten (10) percent contingency and a ten (10) percent increase for projected inflation computed to the estimated mid-point of construction.
2. For payment: An amount determined by the City Engineer equal to one hundred (100) percent of the total estimated cost of the improvement to be performed, excluding grading and monumentation.

- E. **Release of Improvement Security.** Improvement security may be released upon the final completion and acceptance of the act or work by the City Engineer; provided, however, such release shall not apply to the amount of security deemed necessary by the City Engineer for the guarantee and warranty period, nor to costs and reasonable expense fees, including reasonable attorney's fees incurred by the City in enforcing any improvement agreement. The subdivider shall not be entitled to any reduction in security, except in accordance with Sec. 9-2.1620(F), until all improvements have been completed to the satisfaction of the City Engineer.

- F. **Partial Release of Improvement Security.** A partial release of performance security may be requested by the subdivider by filing an application with the Engineering Department. The application shall state the amount of work completed/accepted. The portion of the performance security, in conjunction with acceptance of the satisfactory completion of a part of the improvements as the work progresses, may be released upon the approval of the City Engineer. The following conditions shall be applied to applications submitted requesting partial release of security.

1. No release shall be considered until at least fifty (50) percent of the improvements are completed and accepted by the City;
2. No release shall be for an amount less than ten (10) percent of the original total improvement security given for performance and guarantee.

3. The substitute security (or the remaining security) shall not be less than one hundred fifty (150) percent of the revised estimated construction cost for the remaining required improvements.
4. The City Engineer, or his or her designated representative, is responsible for reviewing all applications and shall determine the amount of substitute security required in accordance with Sec. 9-2.1620(F)(3).
5. The original performance security may be released only upon receiving the proper substitute security, which has been determined acceptable by the City Attorney and the City Engineer.

Sec. 9-2.1625:
Completion of Improvements

- A. Public improvements required as a condition of approval shall be completed in accordance with this Title, unless they are deferred pursuant to Section 9-2.0910. The City Engineer shall review and approve any improvement agreement, conduct an inspection, and approve any constructed public improvement necessary to satisfy this provision, with the City Council delegating final approval to the City Engineer of any agreement or acceptance of any completed public improvement.
- B. Once begun, public improvements for a final tract map, or a parcel map when required, shall be constructed to completion without interruption. The subdivider shall exercise due diligence to ensure that this provision is met to the satisfaction of the City Engineer. Construction and inspection of public improvements shall be governed by City standards and the requirements of any applicable permit.
- C. Notwithstanding any applicable agreement, the ownership of and responsibility for the construction and maintenance of any public improvement is held by the subdivider and shall remain so until such time as the City Council accepts the completed public improvements.
- D. Upon acceptance of a public improvement, the City Engineer shall provide a notice of completion for that public improvement, and it shall authorize the City Engineer to release applicable securities for that public improvement. This action shall serve to transfer ownership and maintenance responsibility of the public improvement from the subdivider to the City, and to provide full acceptance of the applicable dedication or easement, which acceptance had been contingent upon completion and acceptance of public improvements within said dedication or easement, subject to the terms of any applicable agreement.

Sec. 9-2.1630:
Dedications

- A. Dedication of land or payment of fees in lieu of dedication of parkland shall be pursuant to the provisions of Sec. 9-2.1500 of the Ontario Development Code.
- B. Right-of-way dedications, irrevocable offers of dedication, and grants of easements required upon a final or parcel map shall either be accepted, consented for recordation, accepted subject to improvement, or rejected at the time the final or parcel map is approved. Acceptance of the dedication or easement shall serve to transfer the appropriate interest to the City, subject to the terms of the offer and the acceptance certificate. Rejection of the dedication or easement shall reserve the City's ability to accept all or part of the dedication or easement in accordance with State law. The City Engineer shall determine whether the dedication, irrevocable offer of dedication, or easement shall be accepted, accepted subject to improvement or rejected pursuant to City standards.

- C.** Fee title shall be granted by the subdivider when in the opinion of the City Council in consultation with the City Engineer, it is necessary to carry out policies and requirements of the General Plan and any City ordinance, resolution or standard.
- D.** The types of dedications, easements or grants of fee title that a subdivision may be subject to shall include, but shall not be limited to: streets, alleys, access rights, drainage, public utility, landscape, slope and sewer.