

CHAPTER 13.01 GENERAL PROVISION AND ADMINISTRATION

13.01.100: IMPROVEMENTS COMPLETION ASSURANCE; PERFORMANCE BONDS(GUARANTEE):

~~A. Improvements Required: Any improvements required under this title or by the planning commission, including, but not limited to, curb, gutter and sidewalk, fences, landscaping, streets, fire hydrants and parking, shall be satisfactorily installed, as per City Standards set forth in title 14, prior to the city authorizing electrical service being provided; or, if no electrical service is required, prior to issuance of any occupancy permit for the land being developed. In lieu of actual completion of such improvements prior to electrical service being provided or occupancy permit, a developer may file with the city a completion bond, in form and amount specified by the city, to ensure completion of improvements within one year. Twenty five percent (25%) of the bond amount for public improvements, such as curb, gutter, sidewalk, road surfacing and fire hydrants, shall extend for a period of one year beyond the date the improvements are completed, to guarantee replacement of such defective public improvements. Upon completion of the improvements for which a completion bond has been filed, the developer shall call for inspections of the improvements by the Community and Economic Development Director or his authorized agent.~~

~~—B. Completion Within Specified Sequence Or Time Period: If the city determines that the required improvements should be completed in a specified sequence and/or in less than a one-year period in order to protect the health, safety and welfare of the city or its residents from traffic, flood, drainage or other hazards, it may require in approving the completion bond that the improvements be installed in a specified sequence and period which may be less than one year and shall incorporate such requirements in the completion bond.~~

A. Purpose of this section:

1. To ensure that all required improvements of development are completed pursuant to the land use and development regulations adopted by City of Holladay and are subject to warranty;
2. To set forth the requirements for improvement competition agreements and financial warranty assurance including, for construction improvements after, or prior to, recording a plat or obtaining a building permit; and
3. To comply with the provisions of the Utah Municipal Land Use, Development, and Management Act by, among other things, setting forth forms of acceptable improvement completion assurance and a method of partial release

B. Definitions: The following words and phrases, when used in this Section, shall have the meanings ascribed to them in this Subsection, except where the context clearly indicates a different meaning:

1. "City Engineer's calculation" ("Calculation") means a document prepared by the City Engineer that shows a list of Improvements for which financial assurance is required, the quantity, unit type, unit cost, and extended cost of each item, as well as a total dollar amount for all the items listed on the Calculation. The unit prices are intended to be the cost of construction and to include the cost of materials, overhead, mobilization, traffic control, special inspections, testing, audits by third parties, and all other expenditures needed for the completion of the Improvements listed on

1 the Calculation. The Calculation determines the dollar amount of the improvement completion
2 assurance.

3 2. "Cost of construction" means the estimated cost of completing the Improvements, as determined
4 by the City Engineer.

5 3. "Improvement" means permanent public infrastructure, items, structures, facilities, systems, or
6 landscaping required as a condition to recording a subdivision plat, obtaining a building permit, or
7 developing a commercial, office, industrial, mixed use, or multifamily-residential Development.

8 4. "Improvement completion assurance" ("Guarantee") means a cash bond, escrow bond, or letter
9 of credit required by City to guarantee the proper completion of public Improvements required as
10 a condition precedent to: (a) recording a subdivision plat; or (b) development of a commercial,
11 office, industrial, mixed use, or multifamily project.

12 C. Applicability: The provisions of this Section shall apply to all development requiring improvements.
13 As a condition precedent to recording a plat, obtaining a building permit, or commencing
14 development, the following are required:

15 1. An improvement agreement is to be executed for all required for all improvements.

16 2. A guarantee for all improvements that have not been inspected and accepted by the City, and
17 that are:

18 a. Publicly owned and maintained;

19 b. Public landscaping improvements;

20 b. Essential or required to meet the building code or fire code;

21 c. Required to meet natural hazard mitigation and storm water management
22 requirements;

23 d. Required to meet street standards and access requirements; or

24 e. Essential to public safety requirements adopted in a land use regulation, as
25 determined by the City Engineer or Director.

26 D. Improvement Agreement and Guarantee: Prior to recording a plat or commencing any development,
27 the developer shall provide to the City an improvement agreement and a guarantee in accordance
28 with the following requirements.

29 1. Developer Responsibility. The developer is responsible for compliant completion and warranty
30 of all improvements. Developer shall timely complete the improvements and guarantee the
31 improvements to be free of defects in materials and workmanship in accordance with this Title,
32 the improvement agreement, and all other applicable approvals, regulations, standards, and
33 specifications.

34 2. Forms, Duration, Terms. The developer shall execute an improvement agreement and guarantee
35 using forms that are acceptable to the City. The guarantee shall run to the benefit of the City and
36 shall remain in effect until the City approves a partial release. The improvement agreement and
37 guarantee shall contain language that promises and ensures compliant completion and warranty
38 of the improvements by the developer. The guarantee shall contain a provision for unconditional
39 payment of the face amount of the guarantee within ten business days from the date the City
40 makes a written declaration of developer's failure to perform pursuant to this Section.

1 3. Improvement Assurance Warranty Period; Improvement Warranty Guarantee.

2 a. Developer shall provide an unconditional warranty that improvements comply with
3 the City's standards for design, materials, and workmanship and will be free of
4 defects in materials and workmanship for 12 months following the date when the
5 improvements are inspected and approved by the City Engineer, unless the City
6 Engineer determines, for good cause, that a 12- month period would be inadequate
7 to protect the public health, safety, and welfare; or has substantial evidence, on
8 record of prior poor performance by the developer; or has substantial evidence
9 that the area upon which the improvements will be constructed contains suspect
10 soil and the City has not otherwise required the applicant to mitigate the suspect
11 soil. Improvements listed on the same calculation shall have the same
12 improvement warranty period.

13 b. Financial assurance shall be required for the duration of the improvement warranty
14 period, in the amount set forth in this Section, to secure performance of
15 replacement and repairs of improvements in accordance with developer's
16 unconditional warranty.

17 4. Amount of the Guarantee and Improvement Warranty Guarantee.

18 a. The amount of the guarantee shall be determined by the City Engineer. The
19 amount of the guarantee shall be 100 percent of the cost of construction plus ten
20 percent (10%) of that amount to cover administrative costs incurred by the City to
21 complete the improvements, if necessary.

22 b. During the improvement warranty period the amount of the improvement
23 assurance warranty guarantee shall be either (a) ten percent (10%) of the amount
24 shown on the calculation or (b) ten percent (10%) of the developer's reasonable
25 proven cost of completed improvements, whichever is less, except the guarantee
26 for the Storm Water Pollution Prevention Plan requirements shall not be reduced
27 and shall remain at 100 percent.

28 5. Developer Shall Complete Improvements in a Timely Manner. All improvements shall be
29 completed to the satisfaction of the City Engineer within one year from the date the guarantee is
30 posted with the City, unless the developer requests an extension in writing, and the extension is
31 approved by the Director and City Engineer for good cause. The developer shall execute an
32 improvement agreement promising completion within the required time, and the improvement
33 agreement shall be amended accordingly.

34 6. Sequence for Completion of Improvements. To protect the health, safety and welfare of the City
35 and its residents from traffic, flood, drainage or other hazards, the City Engineer may require that
36 the improvements be completed or repaired in a specified sequence and/or within a specified
37 period of time, which may be less than one year. The City Engineer will notify the developer in
38 writing of that requirement if the City Engineer deems such action necessary.

39 7. Failure to Complete Improvements in a Timely Manner. If the developer fails to satisfactorily
40 complete the improvements within one year from the date when the guarantee is posted, or
41 within the shorter time period specified by the City Engineer in order to protect the health, safety
42 and welfare of the City and its residents from traffic, flood, drainage or other hazards, or as
43 extended by the City Engineer pursuant to this Section, the City may, in its sole discretion, pursue
44 all lawful remedies, including without limitation, declaring the developer in default of the
45 improvement agreement, declaring the guarantee forfeited by the developer, and demanding

1 payment pursuant to the terms of the guarantee. The City may spend the funds to pay for
2 construction, replacement, or repair of incomplete or defective improvements, as well as the
3 City's administrative overhead and any other associated costs incurred by the City. The City may
4 take any other action it deems appropriate to enforce the improvement agreement, collect on the
5 guarantee, recover amounts not covered by the guarantee and any other civil or criminal
6 remedies allowable by law, which may include liens

7 8. Initiating Inspections. The developer on record shall request inspections when installed
8 improvements are complete, at the end of an improvement warranty period, and/or after
9 correcting deficiencies noted in a prior inspection. The request shall contain a statement affirming
10 that all improvements are complete and/or all deficiencies have been corrected. Inspections will
11 be scheduled by the City Engineer upon receiving the developer's written request. The City
12 Engineer may schedule an inspection, without written request from the developer, upon
13 determination that time for completion of an improvement warranty period has expired.

14 9 Developer Shall Correct Deficiencies in a Timely Manner. The developer shall correct any
15 deficiencies noted by City inspectors within 30 days from the time the inspector notifies the
16 developer. Extensions may be authorized by the City Engineer for good cause beyond the
17 developer's control after receipt of a written request and explanation from the developer.

18 10. Partial Release of Guarantee. Upon completion of the improvements listed on an individual
19 calculation, and inspection and approval of those improvements by the City Engineer, the City
20 may release up to 90 percent (90%) of the portion of the calculated guarantee amount.

21 11. Final Release of Guarantee. Upon completion of the improvements warranty period for the
22 improvements listed on an individual calculation, and the subsequent inspection and approval of
23 those improvements by the City Engineer, the City will release all remaining portions of the
24 guarantee amount shown on that calculation.

25 12. Acceptable Types of Guarantees. Guarantees shall be approved by the City and may be either:

26 a. An irrevocable letter of credit, containing information required by the City, from a
27 bank or credit union chartered under the laws of the State of Utah or the United
28 States of America, licensed and regulated by the Department of Financial
29 Institutions of the State of Utah or its successor, insured by the Federal Depository
30 Insurance Corporation or National Credit Union Share Insurance Fund, and having
31 an office in the State of Utah. The letter of credit shall be signed by the guarantor,
32 with the signature notarized and attested and shall be automatically extended upon
33 expiration, unless released by a letter issued by the City Engineer;

34 b. An escrow bond, submitted on forms provided by the City, having as a guarantor
35 an organization licensed and regulated by the Department of Financial Institutions
36 of the State of Utah, or its successor, having an office in the State of Utah, and
37 which is insured by the Federal Depository Insurance Corporation or National
38 Credit Union Share Insurance Fund. Escrow bonds shall consist of a letter of
39 commitment, signed by both the guarantor and the developer, with the signatures
40 notarized and attested; or,

41 c. A cash bond, submitted on forms provided by the City and signed by the developer,
42 with the signature notarized and attested.

43 13. Developer's Certification of Notification to Subcontractors. The developer may be required to
44 sign a statement that certifies that the developer has or will notify all contractors and

1 subcontractors that the City will not release any portion of the guarantee until all improvements
2 on a calculation are completed and the work has been inspected and accepted by the City
3 Engineer, at which time the City will release no more than the portions allowed under this Section.

4 E. Construction of Improvements Prior to Plat Recordation or Issuance of Building Permit. If the
5 developer desires to complete the improvements prior to recording a subdivision plat or prior to
6 receiving a building permit, the developer may post an alternative guarantee in accordance with the
7 following requirements.

8 1. The alternative guarantee shall be in an amount determined by the City Engineer to remove
9 incomplete improvements and restore disturbed property, including, without limitation, a base rate
10 of \$10,000 per disturbed acre (rounded up to the full acre), and \$10,000 per stormwater main line
11 connection.

12 2. After posting the alternative guarantee, the developer may complete all improvements, except
13 that no plat will be recorded, and no building permit will be issued by the City.

14 3. When the improvements have been completed, inspected and approved by the City Engineer,
15 the developer shall provide the improvement warranty guarantee as set forth in D.4b. Upon the
16 developer posting the improvement warranty guarantee, the City will release the subdivision plat
17 to be recorded, or the City will issue the building permit, provided all other City requirements have
18 been satisfied.

19 C.F. Fee In Lieu Of Required Improvements:

20 1. Where present conditions exist which make it unfeasible or impractical to install any required
21 public improvements, the city may require the subdivider to pay to the city a fee equal to the estimated
22 cost of such improvements as determined by the director of community development. Upon payment of
23 the fee by the developer, the city shall assume the responsibility for future installation of such
24 improvements.

25 2. The City Manager or designee shall establish a special account for such fees and shall credit to
26 such account a proportioned share of interest earned from investment of city monies. Records relating to
27 identification of properties for which fees have been collected, fee amounts collected for such properties
28 and money transfer requests shall be the responsibility of the community development department.

29 ~~-D. Process And Release Procedures: Such completion bonds shall be processed and released in~~
30 ~~accordance with the procedures set forth in title 14, chapter 14.16 of this code.~~

31 EG. Waiver For Political Subdivisions: When the developer is a school district, municipality, service
32 area, special purpose district or other political subdivision of the state, the city may waive the bond and
33 accept a letter from the governing body guaranteeing installation of the improvements. Before approving
34 any such waiver, the city shall receive a recommendation from the Community and Economic
35 Development Director.

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1 **13.04.040: DEFINITIONS OF TERMS:**

2 For the purpose of this title the following terms have the following meanings:

3 COMPLETION BOND: A cashier's check, irrevocable letter of credit, or escrow agreement, in amount,
4 form and content specified by the City and filed with the City for the purpose of ensuring completion of
5 improvements required under this title.

6 IMPROVEMENT ASSURANCE: A surety bond, letter of credit, cash, or other security to guaranty the
7 proper completion of an improvement that is required as a condition precedent to recording a subdivision
8 plat; or beginning development activity; and offered to a Land Use Authority to induce the Land Use
9 Authority, before actual construction of required improvements, to consent to the recording of a
10 subdivision plat; or issue a permit for development activity.

11 IMPROVEMENT ASSURANCE WARRANTY: A promise that the materials and workmanship of
12 improvements comport with standards that the Municipality has officially adopted; and will not fail in a
13 material respect within a warranty period.

14 PUBLIC LANDSCAPING IMPROVEMENT: Landscaping that an applicant is required to install to comply
15 with published installation and inspection specifications for public improvements that: (a) will be dedicated
16 to and maintained by the municipality; or (b) are associated with and abut trail improvements that connect
17 to planned or existing public infrastructure."

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20 **13.10.130: REQUIRED IMPROVEMENTS:**

21 A. Certification Of Improvements: No final plat of a subdivision of land shall be recorded, except as
22 provided in 13.01.100 of this title, ~~without receiving a statement signed by the community development~~
23 ~~department. Community and economic development department shall certify accordingly prior to~~
24 ~~issuance of building permits certifying~~ that the improvements described in the subdivider's plat and
25 specifications have been completed, that they meet the minimum requirements of this title and other
26 applicable ordinances of the city, and any other county, state or federal agency having jurisdiction over
27 individual improvements.

28 B. Storm Sewers: Storm sewers shall be constructed throughout the entire subdivision to carry off
29 water from all inlets and catch basins, and shall be connected to an adequate outfall. A stormwater
30 drainage system subject to the approval of the technical review committee shall be provided, and shall
31 be separate and independent of the sanitary sewer system. Final plats for the drainage system shall be
32 prepared by a licensed engineer not in the employ of the city.

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1 **13.10.140: CONSTRUCTION OF IMPROVEMENTS:**

2 A. Preconstruction Meeting: At least seven (7) days prior to construction of any required
3 improvements, the community development director shall be notified by the applicant so that a
4 preconstruction meeting may be scheduled between the applicant, the city, and other parties as
5 appropriate. Attendance at this meeting by the applicant or the applicant's designee is mandatory.

6 1. The preconstruction meeting shall include the following items

7 a. Submittal of the improvements completion assurance warranty as required by
8 section 13.01.100 of this title.

9 B. As Built Plans And Drawings: As built plan and profile drawings shall be furnished to the community
10 development director of all street improvements, storm sewer, sanitary sewer, and water systems
11 constructed within public rights of way. The city shall retain the subdivider's improvement warranty
12 guarantee bond until such plans have been submitted and accepted.

13 C. Protection And Maintenance Of Existing Improvements: Extreme care should be exercised on the
14 part of the subdivider, the contractor, and all other associated agencies for the protection and
15 maintenance of all existing or newly placed improvements or facilities within roadway sections during
16 development.

17 D. Responsibility For Damages: Any damage to any bonded improvement or facility incurred during
18 the period of development shall be the sole responsibility of the subdivider. Damage caused by the
19 subdivider or any agents of the subdivider shall be repaired by the subdivider to the satisfaction of the
20 city prior to final acceptance and bond-improvement warranty guarantee release.

21 ~~E.— Performance Bond: The subdivider shall post a performance bond as required by section 13.01.100~~
22 ~~of this title.~~

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24 **13.72.030: DEVELOPMENT STANDARDS:**

25 H. Tree And Vegetation Protection: (See section 13.72.080, figure 13 of this chapter.)

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27 4. Replacement Of Significant Trees: When a "significant tree" or trees, as defined in section
28 13.04.040 of this title, are removed from either inside or outside the established limits of disturbance, the
29 applicant or developer shall replace such trees on the lot, either inside or outside the established limits
30 of disturbance, according to the following schedule and requirements:

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32 d. Replacement trees shall be maintained through an establishment period of at least three (3)
33 years, except that single-family dwellings shall have an applicable establishment period of only one year.
34 The applicant shall post a bond-improvement warranty bond for all public street trees guaranteeing the
35 survival and health of all replacement street trees during the establishment period.

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1 **13.72.060: ADMINISTRATION AND ENFORCEMENT:**

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3 D. ~~Improvement Competition Assurance Bonds For Improvements: Guarantee b~~Bonds for required
4 public improvements required under this chapter shall be subject to the provisions of the subdivision
5 regulations set out at chapter 13.10 and section 13.01.100 of this title. (Ord. 2012-15, 9-20-2012)

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7 **13.77.050: MINIMUM LANDSCAPING REQUIREMENTS BY ZONE:**

8 The following requirements are the minimum landscaped area required by each zone except where
9 modified by the Planning Commission as an administrative relief allowed by section 13.77.130 of this
10 chapter. Landscape features shall incorporate Locascapes® (as defined 13.04.040) design elements
11 meant to reduce, minimize and or eliminate water use by activity area:

12 A. Single-Family Residential Zones (FR, R-1): The front yard of all lots on which buildings are located
13 shall be landscaped ~~within one year of the date of prior to~~ the issuance of a final certificate of occupancy
14 or final inspection, except as provided in 13.77.120C of this chapter.-

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17 **13.77.120: INSTALLATION:**

18 A. Substitutions: All substitutions of plant material on an approved landscape plan must be approved
19 by the community development director.

20 B. Inspections: Landscaping shall be installed and completed in compliance with the approved
21 landscape plan. A certificate of occupancy shall not be issued until the improvements are inspected and
22 approved by the community development director, unless an assurance is provided and approved
23 according to subsection C of this section.

24 C. Assurance: In extenuating circumstances where occupancy or final inspection is requested prior to
25 completion of landscaping, the owner or developer shall enter into an enforcement delay agreement with
26 the city guaranteeing-certifying that the required landscaping will be completed within the next planting
27 season at a date specified by the community development director but not to exceed one year. Violation
28 of this agreement is subject to zoning enforcement

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30 **13.83.110: NONMAINTAINED OR ABANDONED FACILITIES:**

31 The community development director may require each nonmaintained or abandoned
32 telecommunications facility to be removed from the building or premises when such a facility has not
33 been repaired or put into use by the owner or agent within ninety (90) calendar days after notice of
34 nonmaintenance or abandonment is given to the owner or agent. ~~The applicant shall post a site specific~~
35 ~~bond when a permit is issued to guarantee removal of the facility and site restoration. The type of bond~~
36 ~~and amount shall be determined upon review by City staff. No bond shall be required for roof or wall~~
37 ~~mounted facilities.~~