

Town of Hinckley
ORDINANCE 26-08-20

**AMENDING HINCKLEY TOWN CODE, TITLE 11 LAND USE, CHAPTER 19
SUBDIVISION, SECTION 6 DEFINITIONS AND SECTION 21 IMPROVEMENT
GUARANTEES, COMPLETION ASSURANCES, AND WARRANTIES**

**AN ORDINANCE AMENDING 11.19.6 DEFINITIONS TO INCLUDE "COMPLETION
ASSURANCE" AND 11.19.21 C.3 TO INCLUDE ACCEPTANCE OF AN
IRREVOCABLE LETTER OF CREDIT**

WHEREAS, 10-20-501 of the Utah State Code (as amended) authorizes a legislative body to weigh policy considerations and enact land use regulations; and

WHEREAS, pursuant to 10-8-84 of the Utah State Code (as amended) the legislative body may pass all ordinances and rules, and make all regulations, not repugnant to law, necessary for carrying into effect or discharging all powers and duties conferred by this chapter, and as are necessary and proper to provide for the safety and preserve the health, and promote the prosperity, improve the morals, peace and good order, comfort and convenience of the municipality and its inhabitants, and for the protection of property in the municipality; and

WHEREAS, the Planning Commission conducted a public hearing to review the proposed amendments and made a positive recommendation to the Town Council for adoption; and

WHEREAS, the Town Council has reviewed the Planning Commission's recommendation and finds it to be in the best interest of the health, safety, and welfare of its citizens to make the proposed amendments to the Town's Code.

WHEREAS, pursuant to 10-3-702.1 of the Utah State Code (as amended) the Town Council finds this ordinance will not impact family health, stability, and formation.

NOW THEREFORE, be it ordained by the Town Council of Town of Hinckley, UT as follows:

SECTION 1: Repealer. If any provisions of the municipal code previously adopted are inconsistent herewith they are hereby repealed.

SECTION 2: Amendment. Section "11.19.6" is hereby amended as follows.

The following words and phrases, as used throughout Town ordinances, shall have the following meanings. Definitions in a particular title, chapter, or section shall apply narrowly to only that title, chapter, or section. Words and phrases not defined in Town ordinances shall have the meaning defined in

state law. Words and phrases not defined in Town ordinances or state law shall have their plain meaning in common usage:

A. "Association" means the same as that term is defined in Utah Code Section 57-8a-102, as amended.

B. "Common Area" means property that an Association owns, maintains, repairs, or administers.

C. "Condominium" means a multi-unit development in which individual units are separately owned and each owner receives a recordable deed to the unit, together with an undivided interest in any common elements. A condominium development shall be regarded as a subdivision.

~~D. "Declarant" means the person who executes a declaration and submits it for recording to the County Recorder's Office in which the property described in the declaration is located; "declarant" includes the person's successor and assignee.~~

~~E. "Declaration" means the instrument by which the property is submitted to the provisions of this act, as it from time to time may be lawfully amended.~~

~~F. "Development Agreement" means a contract between the Town and a property owner or developer that:~~

D. "Completion Assurance" means a bond with corporate surety, cash deposit, escrow, or irrevocable letter of credit posted by an applicant pursuant to Section 11.19.21 to guarantee the proper completion of required improvements.

E. "Declarant" means the person who executes a declaration and submits it for recording to the County Recorder's Office in which the property described in the declaration is located; "declarant" includes the person's successor and assignee.

F. "Declaration" means the instrument by which the property is submitted to the provisions of this act, as it from time to time may be lawfully amended.

G. "Development Agreement" means a contract between the Town and a property owner or developer that:

1. Specifies the conditions, terms, restrictions, and requirements for development of the property;
2. Is approved by the Town Council;
3. Is recorded against the property in the Millard County Recorder's Office; and
4. Runs with the land.

~~G. "Facility owner" means the same as that term is defined in state law and includes a canal owner or associated canal operator contact described in different sections of state law.~~

~~H. "Hard Surfaced", in the context of street construction, means a street that is paved using asphalt according to the Hinekey Town Subdivision Design Standards.~~

~~I. "Improvement plan" means a plan to complete permanent infrastructure on the subdivision that is essential for the public health and safety, that is required for human occupation, or is required by applicable law and which an applicant must install in accordance with public installation and inspection specifications for public improvements and as a condition of recording a subdivision plat. The engineering drawings and specifications for the construction of subdivision improvements including:~~

H. "Facility owner" means the same as that term is defined in state law and includes a canal owner or associated canal operator contact described in different sections of state law.

I. "Hard Surfaced", in the context of street construction, means a street that is paved using asphalt according to the Hinckley Town Subdivision Design Standards.

J. "Improvement plan" means a plan to complete permanent infrastructure on the subdivision that is essential for the public health and safety, that is required for human occupation, or is required by applicable law and which an applicant must install in accordance with public installation and inspection specifications for public improvements and as a condition of recording a subdivision plat. The engineering drawings and specifications for the construction of subdivision improvements including:

1. Street construction and paving plans as required by Section 11.19.21;
2. Drainage and storm water control systems as required by Section 11.19.32;
3. Utility installation plans as required by Sections 11.19.29 through 11.19.31;
4. Any other improvements required by this Title; and
5. Cost estimates for all required improvements as specified in Section 11.19.20.

~~J. "Improvement Warranty" means an applicant's unconditional warranty that the applicant's installed and accepted landscaping or infrastructure improvement:~~

K. "Improvement Warranty" means an applicant's unconditional warranty that the applicant's installed and accepted landscaping or infrastructure improvement:

1. complies with the Town's written standards for design, materials, and workmanship; and
2. will not fail in any material respect, as a result of poor workmanship or materials, within the improvement warranty period.

~~K. "Improvement Warranty Period" means a period:~~

L. "Improvement Warranty Period" means a period:

1. No later than one year after a Town's acceptance of required landscaping; or
2. No later than one year after a Town's acceptance of required infrastructure, unless the Town:
 - a. Determines for good cause that a one-year period would be inadequate to protect the public health, safety, and welfare; and
 - b. Has substantial evidence, on record:
 - (1) Of prior poor performance by the applicant; or
 - (2) That the area upon which the infrastructure will be constructed contains suspect soil and the Town has not otherwise required the applicant to mitigate the suspect soil.

~~L. "Land Use Application" means an application required by the Town and submitted by a land use applicant to obtain a land use approval; this does not mean an application to enact, amend, or repeal a land use regulation.~~

~~M. "Land Use Authority" means an individual, board, or commission appointed or employed by a municipality to make land use decisions. "Land Use Authority" includes any appropriately authorized designees. Specifically for subdivisions, the "Land Use Authority" means:~~

M. "Land Use Application" means an application required by the Town and submitted by a land use applicant to obtain a land use approval; this does not mean an application to enact, amend, or repeal a land use regulation.

N. "Land Use Authority" means an individual, board, or commission appointed or employed by a municipality to make land use decisions. "Land Use Authority" includes any appropriately authorized designees. Specifically for subdivisions, the "Land Use Authority" means:

1. For preliminary subdivision applications, the Planning Commission;
2. For final subdivision applications, the Town Council;
3. For administrative interpretations of this Title, the Town Staff; or
4. Any appropriately authorized designees of the above.

~~N. "Minor Subdivision" means the division of land into three (3) or fewer lots where:~~

O. "Minor Subdivision" means the division of land into three (3) or fewer lots where:

1. Each lot fronts on an existing public street;
2. No new street, road, or utility infrastructure is required; and
3. The subdivision meets all other applicable requirements of this Title.

~~O. "Period of Administrative Control": the period in which the person who filed the association's governing documents or the person's successor in interest retains authority to appoint or remove members of the association's board of directors or exercise power or authority assigned to the association under the association's governing documents.~~

~~P. "Plat" means an instrument subdividing property into lots as depicted on a map or other graphic representation of land that a licensed professional land surveyor makes and prepares in accordance with §10-20-803 or §57-8-13 of Utah State Code (as amended).~~

~~Q. "Public Landscaping Improvement" means landscaping that an applicant is required to install to comply with published installation and inspection specifications for public improvements that (1) will be dedicated to and maintained by the Town or (2) are associated with and proximate to trail improvements that connect to planned or existing public infrastructure.~~

~~R. "Review Cycle" means the occurrence of the applicant's submittal of a complete subdivision application; the Town's review of that subdivision application; the Town's response to that subdivision application; and the applicant's reply to the Town's response that addresses each of the Town's required modifications or requests for additional information.~~

~~S. "Subdivision" means any land that is divided, subdivided, or proposed to be divided into two or more lots or other division of land for the purpose, whether immediate or future, for offer, sale, lease, or development either on the installment plan or upon any and all other plans, terms, and conditions.~~

P. "Period of Administrative Control": the period in which the person who filed the association's governing documents or the person's successor in interest retains authority to appoint or remove members of the association's board of directors or exercise power or authority assigned to the association under the association's governing documents.

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modifications or requests for additional information.

T. “Subdivision” means any land that is divided, subdivided, or proposed to be divided into two or more lots or other division of land for the purpose, whether immediate or future, for offer, sale, lease, or development either on the installment plan or upon any and all other plans, terms, and conditions.

1. Subdivision includes:

a. The division or development of land, whether by deed, metes and bounds description, devise and testacy, map, plat, or other recorded instrument, regardless of whether the division includes all or a portion of a parcel or lot; and

b. Except as provided below, divisions of land for residential and nonresidential uses, including land used or to be used for commercial, agricultural, and industrial purposes.

2. Subdivision does not include:

a. A bona fide division or partition of agricultural land for the purpose of joining one of the resulting separate parcels to a contiguous parcel of unsubdivided agricultural land, if neither the resulting combined parcel nor the parcel remaining from the division or partition violates an applicable land use ordinance;

b. A boundary line agreement recorded with the Office of the County Recorder between owners of adjoining parcels adjusting the mutual boundary in accordance with §10-20-906 of Utah State Code (as amended) if no new parcel is created;

c. A recorded document, executed by the owner of record revising the legal descriptions of multiple parcels into one legal description encompassing all such parcels or joining a lot to parcel;

d. A joining of one or more lots to a parcel;

e. A road, street, or highway dedication plat; or

f. A deed or easement for a road, street, or highway purpose.

~~T. “Subdivision ordinance review” means review by the Town to verify that a subdivision application meets the criteria of the Town’s ordinances.~~

~~U. “State engineer’s inventory of canals” means the state engineer’s inventory of water conveyance systems established in state law.~~

~~V. “Underground facility” means the same as that term is defined in state law.~~

~~W. “Water conveyance facility” means a ditch, canal, flume, pipeline, or other watercourse used to convey water used for irrigation or storm water drainage and any related easement for the ditch, canal, flume, pipeline, or other watercourse. “Water conveyance facility” does not mean a ditch, canal, flume, pipeline, or other watercourse used to convey water used for culinary or industrial water, or any federal water project facility.~~

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W. “Underground facility” means the same as that term is defined in state law.

X. “Water conveyance facility” means a ditch, canal, flume, pipeline, or other watercourse used to convey water used for irrigation or storm water drainage and any related easement for the ditch, canal, flume, pipeline, or other watercourse. “Water conveyance facility” does not mean a ditch, canal, flume,

pipeline, or other watercourse used to convey water used for culinary or industrial water, or any federal water project facility.

HISTORY:

Ord 2026-04-23, 4/23/2026

SECTION 3: Amendment. Section "11.19.21" is hereby amended as follows.

~~A. If an applicant elects to guarantee any required improvement, the applicant shall provide completion assurance for 110% of the cost of the improvement, guaranteeing that the improvements will be completed within two years after the date of the guarantee; The sum of the completion assurance shall not exceed:~~

A. If an applicant elects to guarantee any required improvement, the applicant shall provide completion assurance for 110% of the cost of the improvement, guaranteeing that the improvements will be completed two (2) years from the date the Town accepts the completion assurance; The sum of the completion assurance shall not exceed:

1. 100% of the estimated cost of the public landscaping improvements or infrastructure improvements, as evidenced by an engineer's estimate or licensed contractor's bid; and

2. 10% of the amount of the bond to cover administrative costs incurred by the municipality to complete the improvements, if necessary.

B. For the purpose of posting an improvement guarantee, the cost of the improvement shall be determined by an engineer's estimate or licensed contractor's bid.

~~C. The Town shall accept any of the following forms of guarantee for an improvement:~~

C. The Town shall accept any of the following forms of completion assurance for an improvement, at the applicant's election. While a completion assurance is required, the applicant may substitute one permitted form for another, provided that: (1) the replacement assurance satisfies all requirements of state law and this Section for that form; (2) the replacement assurance is in an amount not less than the remaining amount secured; and (3) the Town Attorney has approved and the Town has accepted the replacement assurance before the existing assurance is released. No substitution shall result in any lapse in coverage.

1. Bond. The applicant may furnish a bond with corporate surety, which bond shall be approved by the Town Attorney and filed with the Town Clerk.

~~a. The bond shall have an express irrevocable term of two (2) years from the date of approval of the final plat of the subdivision. Further, such a bond shall contain language unconditionally guaranteeing the performance of the developer. A provision shall be provided for unconditional payment of the face amount of the bond within thirty (30) days from the day the Town declares, for cause, that the developer is in default.~~

~~b. If the Town accepts a cash deposit as a form of improvement completion assurance, the Town shall deposit the funds in an interest-bearing account upon receipt and shall return any interest earned to the applicant with the return of the completion assurance.~~

~~2. Escrow. The applicant may make a deposit in escrow with an escrow holder approved by the Town Council, under an escrow agreement approved by the Town Attorney and filed with the Town~~

~~Clerk.~~

~~D. As improvements are completed, inspected, and accepted by the Town, the Town Council shall, each quarter, at the option of the applicant, issue a partial release of bonded or escrow funds proportional to the improvements accepted during the prior quarter.~~

a. The bond shall have an express irrevocable term of two (2) years from the date the Town accepts the completion assurance. Further, such a bond shall contain language unconditionally guaranteeing the performance of the developer. A provision shall be provided for unconditional payment of the face amount of the bond within thirty (30) days from the day the Town declares, for cause, that the developer is in default.

2. Cash. If the Town accepts a cash deposit as a form of improvement completion assurance, the Town shall deposit the funds in an interest-bearing account upon receipt and shall return any interest earned to the applicant with the return of the completion assurance.

3. Escrow. The applicant may make a deposit in escrow with an escrow holder approved by the Town Council, under an escrow agreement approved by the Town Attorney and filed with the Town Clerk.

4. Irrevocable Letter of Credit. The applicant may file with the Town Clerk an irrevocable standby letter of credit issued in favor of the Town, in a form approved by the Town Attorney, by a duly chartered state or national bank or savings and loan institution that maintains a physical branch office within Utah at which the Town may present draws and that possesses a financial strength rating of no less than A- from S&P or A3 from Moody's. The letter of credit shall provide that: (a) draws are payable at sight upon presentation of a certificate signed by the Mayor or the Mayor's designee stating that the applicant is in default or that required improvements have not been completed and accepted, with no other documentary conditions; (b) partial and multiple draws are permitted; (c) the face amount may be reduced only with the Town's written consent in connection with partial releases under Subsection D; and (d) the letter is governed by the International Standby Practices (ISP98). The letter of credit shall contain a clause stating that it is automatically extended for successive one-year periods unless the issuing bank gives written notice to the Town Clerk, by certified mail, at least sixty (60) days before the then-current expiration date, of its intent not to renew. If the Town receives a notice of intent not to renew and the applicant fails to provide a replacement completion assurance acceptable to the Town at least thirty (30) days before the expiration date, the applicant shall be in default and the Town shall have the right to immediately draw the full remaining face amount, to be held in an interest-bearing Town account to ensure completion of the improvements.

D. As improvements are completed, inspected, and accepted by the Town, the Town Council shall, monthly, at the option of the applicant, issue a partial release of the completion assurance, including a corresponding reduction in the face amount of any letter of credit, proportional to the improvements accepted during the prior month.

1. Subject to maintenance provisions contained in this Code below, the Town will not accept dedication of required improvements, or release or reduce a performance guarantee, until the Town Engineer has submitted a certificate stating that all required improvements have been satisfactorily completed and until the applicant's engineer or surveyor has certified to the Town Engineer, through submission of detailed "as-built" survey plats of, the subdivision, indicating location, dimensions,

materials, improvements and other information required by the Planning Commission and Town Engineer, that the layout of the line and grade of all public improvements is in accordance with the Town approved construction plans for the subdivision and that a title insurance policy has been furnished to the Town and Town Engineer indicating that the improvements have been completed, are ready for dedication to the local government and are free and clear of any and all liens and encumbrances.

2. In no event shall a performance guarantee be reduced below 25% retainage of the principal amount until total completion.

~~E. If all required improvements are not completed within two years from the day of final application approval, the party who guaranteed the improvements shall be in default, and at the option of the Town Council, shall relinquish the remaining amount of the performance guarantee to the Town.~~

~~F. Even if the infrastructure improvement is not complete, the Town shall still issue a building permit as long as the improvement is essential for issuing a building improvement under the building and fire codes or for which the Town has accepted a completion assurance; but the Town may deny it if there is another valid reason besides the incomplete improvement.~~

E. Default; Notice and Opportunity to Cure.

1. The applicant shall be in default if the required improvements are not completed and accepted by the Town within two (2) years from the date the Town accepts the completion assurance, or if the applicant otherwise fails to perform an obligation secured by the completion assurance.

2. Before declaring a default and drawing upon or forfeiting any completion assurance, the Town shall give written notice to the applicant and to the surety, escrow holder, or issuing bank, as applicable, sent by certified mail to the last address provided to the Town Clerk, identifying each claimed deficiency with reasonable particularity and stating the action required to cure it.

3. The applicant shall have thirty (30) days from the date the notice is mailed to cure the deficiencies or, if a deficiency cannot reasonably be cured within thirty (30) days, to commence the cure within that period and diligently pursue it to completion under a written schedule approved by the Town. If the applicant fails to do so, the Town may declare a default and draw upon or forfeit the completion assurance without further notice.

4. No notice or cure period is required, and the Town may draw or act immediately, if: (a) delay would allow the completion assurance to expire or lapse, including a draw under Subsection C.3 following an issuing bank's notice of intent not to renew a letter of credit; or (b) the deficiency presents an imminent threat to public health or safety. In either case the Town shall give the applicant notice of its action as soon as reasonably practicable.

F. If the applicant has posted a completion assurance accepted by the Town for required improvements, the Town shall not deny a building permit on the ground that those improvements are incomplete if the development meets the requirements for the issuance of a building permit under the building code and fire code. The Town may deny or withhold a building permit for any other valid reason.

G. The Town shall not require improvement guarantees for any of the prohibited uses listed in Utah Code §10-20-807, including improvements the Town has previously inspected and accepted, private improvements that are not essential to meet the building code, fire code, flood or storm water management provisions, street and access requirements, or other essential necessary public safety

improvements adopted in a land use regulation.

H. Upon acceptance of all required improvements, the applicant shall warrant that said improvements shall remain free from defects in material and workmanship for a period of twelve (12) months after the date of acceptance by the Town. The subdivider shall be solely responsible for all repairs and maintenance required to keep the improvements in good working condition for this twelve-month period.

HISTORY:

Ord 2026-04-23, 4/23/2026

SECTION 4: Severability. If any section, subsection, sentence, clause, or phrase of this amendment is declared invalid or unconstitutional by a court of competent jurisdiction, said portion shall be severed and such declaration shall not affect the validity of the remainder of this amendment.

SECTION 5: Effective Date. This ordinance being necessary for the peace, health, and safety of Town of Hinckley, shall go into effect at the expiration of the 20th day after publication or posting or the 30th day after final passage as noted below or whichever of said days is the more remote from the date of passage thereof.

****Signatures On Next Page****

PASSED AND ADOPTED by Town of Hinckley Town Council this _____.

ALAN MILLER, Mayor
Town of Hinckley

Attest:

TRESA TAYLOR, Town Clerk
Town of Hinckley

Town Council Vote as Recorded:	AYE	NAY	ABSTAIN	ABSENT
Alan Miller	_____	_____	_____	_____
Chris Mork	_____	_____	_____	_____
Skip Taylor	_____	_____	_____	_____
Ron Black	_____	_____	_____	_____
Kristi Townsend	_____	_____	_____	_____

RECORDED this _____.
PUBLISHED OR POSTED this _____.

CERTIFICATE OF PASSAGE AND PUBLICATION OR POSTING

In accordance with Utah Code Annotated §10-3-713, 1953 as amended, I, the Town Clerk of Town of Hinckley, hereby certifies that the foregoing Amendment was duly passed and published or posted at:

- 1. Town Office
- 2. U.S. Post Office
- 3. Hinckley Station

on the above referenced dates.

TRESA TAYLOR, Town Clerk
Town of Hinckley