



TOQUERVILLE CITY

ORDINANCE 2017.14

AN ORDINANCE AMENDING SECTIONS OF TITLE 10, CHAPTER 5 OF THE TOQUERVILLE CITY CODE TO ALLOW FOR THE DEFERMENT OF THE INSTALLATION OF PUBLIC IMPROVEMENTS AND SITE WORK REQUIRED BY THE CITY DURING THE CONSTRUCTION OF A BUILDING OR DWELLING.

RECITALS

WHEREAS, Toquerville City, as a municipal corporation and political subdivision of the State of Utah ("City"), has authority pursuant to its constitutionally granted police powers, to protect the health, safety and general welfare of the residents of the City by regulating land uses within the City; and

WHEREAS, the Toquerville City Council ("City Council") is the governing body of the City.

WHEREAS, the City has determined that there is a need, in addition to traditional forms of security to insure future installation of deferred public improvements and site work to provide a way to allow an owner/developer, in unusual circumstances, to defer installation of public improvements and site work by written agreement with the City that is recorded against the property where a building or dwelling has been constructed but the public improvements and site work have not been completed.

ORDINANCE

NOW THEREFORE, BE IT HEREBY ORDAINED by the City Council of Toquerville City, State of Utah, as follows:

1. AMENDMENT AND RESTATEMENT OF TITLE 10, CHAPTER 5, SECTIONS 2 & 3 OF THE TOQUERVILLE CITY CODE. The following section of the Toquerville City Code is hereby amended and restated in its entirety as follows:

10-5-2: COMPLETION OF IMPROVEMENTS PRIOR TO RECORDATION OF FINAL PLAT, SITE PLAN OR THE ISSUANCE OF A CERTIFICATE OF OCCUPANCY:

- A. *Policy: In order to protect residents and property owners of the City from dangerous and undesirable conditions that result from unfinished public improvements and site work, such as erosion or flooding, as well as a lack of fire protection and emergency response facilities and access and pedestrian access, it is the policy of the City that no certificate of occupancy will be*



issued by the City unless and until all public improvements and site work for the property upon which the building or dwelling is located has been completed or in instances where the installation of said public improvements and site work would be pointless, the owner has agreed in a written recorded covenant that runs with the land, that when the installation of said public improvements and site work is appropriate and warranted (as determined by the City) that the owner will participate financially and otherwise in the City's installation of said public improvements and site work.

B. For the construction of a building or dwelling, the owner (or its developer) shall provide to the City the following:

- 1. Application: A building permit application designating the name and contact information for the owner of the property, the developer (if different), the contactor (and license number), the size and dimensions of the building (in square feet), the names and contact information of all anticipated subcontractors performing a material sub-trade.*
- 2. Detailed Building Plans: A detailed set of building plans showing all components of the building including foundation, framing, plumbing, electrical, HVAC, roofing that have been engineered reviewed and approved by licensed and bonded structural engineer.*
- 3. Detailed Site Plan. A detailed site plan showing the location and nature of drainage work, grade changes, retaining walls, buildings, permanent structures, utility connections, service lines and meters shall be submitted to the City's Building Department prior to issuance of building permit. The Site Plan shall be reviewed and approved by a licensed and bonded civil engineer and surveyor.*
- 4. Fees (Impact and Connection). Payment of all impact and connection fees as calculated by the City's staff in compliance with the City's Uniform Fee Schedule.*
- 5. Other Information. All other information, reports, certificates, proof of insurance or licensure as may be required by the City's Building Department and Chapter 6 of Title 10 of the Toquerville City Code.*

C. Construction According To Approved Plans: The City shall not issue a certificate of occupancy for a building or dwelling unless all required public improvements and site work have been constructed in accordance with the plans approved by the City's Building Department, in its sole discretion, except as specified in Section 10-5-3 of this Chapter.



10-5-3: SECURITY FOR COMPLETION:

A. *Approval Conditions: In the event that public improvements and site work are not completed, inspected and City approved by the time a building or dwelling is completed and ready for occupancy, the City may issue an occupancy permit; provided, that all of the following conditions are met:*

1. *The building or buildings, or portions thereof to be occupied have been constructed in accordance with the approved plans for those buildings, and are in full compliance with applicable building and safety codes, and are completed to the extent that only public improvements and site work remains unfinished;*
2. *The City Building Department determines that occupancy of the buildings, or portions thereof, prior to completion of required public improvements and site work is safe, and that access for emergency vehicles is adequate with the site improvements unfinished; and*
3. *The owner/developer posts adequate security for the benefit of the City and the public to ensure completion of the public improvements and site work in full compliance with the approved Building and Site Plans, the City's Standards and Specifications for Public Improvements and all building and safety codes adopted by the City.*

B. *Form Of Security Arrangement; The security arrangement to be provided to the City by the owner/developer in exchange for a deferral of the City's requirement to install all necessary public improvements and site work prior to the issuance of a certificate of occupancy for a building or dwelling, may only be one of the following types:*

1. *Cash on Deposit. A cashier's check or a money market certificate made payable only to the City and deposited into one of the City's accounts maintained with the State of Utah or a federally insured financial institution. The amount of the deposit shall be determined by the City and shall be equal to one hundred twenty five percent (125%) of the amount reasonably estimated by the City engineer as being necessary to complete all remaining public improvements and site work shown on the approved building and site plans. In the event that the owner/developer disputes the cost estimate of the City engineer, the owner/developer may prove lower construction cost by providing binding contracts between the owner/developer and a licensed and insured general contractor or subcontractor appropriate to perform the required work at a stated, fixed price. These contracts must be supported by a full security agreement, ensuring performance by the subcontractor or contractor. Bid proposals are not satisfactory for this purpose. If the contracts submitted are acceptable in form, the amount of security required shall be one hundred*



twenty five percent (125%) of the total contract price of all such contracts submitted, plus the estimated reasonable cost of performing any work not covered by the contracts. Specifications in such contracts shall be sufficiently clear to identify the work called for under the contract.

2. *Security Escrow: A trust or escrow account maintained by i) a state or federally chartered (and federally insured) financial institution, ii) law firm with an Utah IOLTA Trust Account, or iii) an escrow company licensed in the State of Utah, containing immediately available funds in the amount designated in Subsection 10-5-3.B.1. The Trust or Escrow Account shall be subject to a Cash on Deposit Control Agreement in a form acceptable to the City attorney which is executed by both the owner/developer, the City and the financial institution, escrow company or law firm where the proceeds of the account are being held in trust for the City.*
3. *Recorded Deferral Agreement: In lieu of any other type of Security Arrangement, upon submittal of a deferral application, the City Council, upon making a finding of unusual circumstances, such as the inability to determine the proper grade and dimensions of necessary public improvements or the likely construction of the public improvements and site work as part of a larger City project or Special Assessment Area ("SAA") project, may allow an owner or developer to defer completion of required public improvements and site work pursuant to written deferral agreement recorded in the Official Records on file in the Office of the Recorder of Washington County, State of Utah. Said deferral agreement must be signed by all owners of the affected property and at a minimum shall require the owner to: (1) covenant to pay for completion of the public improvements and site work relating to their property at such time as the City determines, in the City's sole discretion and in the manner the City determines, including but not limited to, through a Special Assessment Area (SAA), and/or (2) waive and release any objection to the creation of any SAA that would fund the completion of the improvements. When recorded, the benefits and the burdens of said deferral agreement shall attach to the entirety of the property and shall be a covenant that runs with the land.*

C. *General Terms Applicable to all Security Arrangements: The terms of any security arrangement, whether expressly incorporated therein or not, shall include, but is not limited to:*

1. *An incorporation by reference of the City approved building plans and site plan for the building or dwelling and all data required by Section 10-6-2 of this Title,*



2. *The covenant to complete the public improvements and site work within a period of time not to exceed one (1) year from the date the Certificate of Occupancy is issued by the City,*
3. *In Cash on Deposit or Security Escrow situations, a stipulation that the security proceeds may be reduced upon request of the owner/developer as the public improvements and site work are installed. The amount of the reduction shall be determined by the City. Such requests may be made only once every thirty (30) days, and no reductions shall be authorized until such time as the City Building Department or Public Works Department (as the case may be) has inspected the public improvements and/or site work and found them to be in compliance with City specifications and approved plans. All reductions shall be granted only by the written authorization of the Mayor or his/her designee.*
4. *In Cash on Deposit or Security Escrow situations, a covenant that if the security proceeds are inadequate to pay the cost of the completion of the public improvements and site work according to City specifications for whatever reason, including previous reductions, then the owner/developer shall be responsible for the deficiency.*
5. *In Cash on Deposit or Security Escrow situations, if, after giving the owner/developer a written demand for payment pursuant to a deferral agreement or control agreement and the expiration of 30 days, funds are not received by, or transferred to, the City within thirty (30) days of the demand, then the City's costs of obtaining the demanded amount, including attorney's fees and costs or outside attorney fees and court costs, shall be deducted from the security proceeds.*
6. *An acknowledgement that the cost of completing public improvements and site work shall include reimbursement to the City's Public Works Department and/or City Engineer and all other City departments for the costs of administration of the completion of the improvements, including inspection costs.*
7. *A covenant to hold the City harmless and defend it from any and all liability that may arise as a result of the public which are installed until such time as the City accepts the improvements.*
8. *A stipulation that the time period for the completion of the required public improvements and site work may only be extended in the following manner:*
 - a. *Upon approval of the City Council, the time period may be extended an additional one year from the expiration date of the original security agreement.*



- b. *Said approval shall be in a form approved by the City attorney's office and in compliance with all provisions of this section.*
9. *All public improvements and site work required under this title and the City's standards and specifications for public improvements shall be designed and installed by an engineer, contractor or subcontractors licensed by the State of Utah.*
- D. *Payment of Interest: Any interest accruing while cash is on deposit with the City or on deposit with a 3rd party such as a financial institution, escrow company or law firm, shall, unless expended for completion of public improvements and site work required, inure to the benefit of the City and not the owner/developer. Accordingly, the City shall not be required to pay interest to an owner/developer on any funds deposited as part of a Security Arrangement.*
- E. *Release of Funds: The City shall relinquish and return funds held on deposit with the City or under a Security Escrow with financial institution, escrow company or law firm for the purpose of paying for public improvements and Site Work once completed and accepted by the City. The City shall release funds equal to the actual cost of performing the public improvements and site work as the work progresses, minus ten percent (-10%). Upon satisfactory completion of all required public improvements and site work, all funds shall be immediately released to the owner/developer, except those funds required to secure project during the one year warranty period.*
- F. *Modification of Plans: An owner/developer may request modifications to plans covering public improvements and site work by submitting revised building plans and site plans to the City Engineer for review and final action. If the modification of the building plans and site plans increases the cost of required site public improvements, additional security must be provided by the owner/developer to cover the increased costs.*
- G. *Phased Projects: Public improvements and site work applicable to each phase of a phased project or development pursuant to Chapter 19, Article F of this title shall be completed or security for completion provided as each phase is constructed and either platted or occupied. Site improvements or other phases of the project shall be completed or security offered as those phases are completed.*
2. REPEALER. This Ordinance shall repeal and supersede all prior ordinances and resolutions governing the same.
3. SAVINGS CLAUSE: If any provision or clause in this Ordinance or the application thereof to any person or entity or circumstance is held to be unconstitutional or otherwise



invalid by any court of competent jurisdiction, such invalidity shall not affect other sections, provisions, clauses, or applications hereof which can be implemented without the invalid provision, clause, or application hereof, and to this end the provisions and clauses of this Ordinance are declared to be severable.

4. EFFECTIVE DATE. This Ordinance shall take effect immediately upon approved by the City Council.

PASSED AND APPROVED this 9th day of November, 2017.

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| Paul Heideman | Aye <u>X</u> | Nay <u> </u> | Absent <u> </u> |
| Keen Ellsworth | Aye <u>X</u> | Nay <u> </u> | Absent <u> </u> |
| Mark Fahrenkamp | Aye <u>X</u> | Nay <u> </u> | Absent <u> </u> |
| Brad Langston | Aye <u>X</u> | Nay <u> </u> | Absent <u> </u> |
| Ty Bringhurst | Aye <u> </u> | Nay <u> </u> | Absent <u>X</u> |

CITY OF TOQUERVILLE
a Utah Municipal Corporation



M. Darrin LeFevre, Mayor

Date: 11-15-2017

ATTEST:



Dana McKim, City Recorder

Date: 11-15-2017

