

TITLE 11

CHAPTER 5

**PUBLIC IMPROVEMENTS**

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**11-5-1: CONSTRUCTION OF PUBLIC IMPROVEMENTS**

- A. Construction Drawings: The subdivider's engineer shall be a professional engineer licensed in the state and shall prepare, or shall be responsible for the preparation of, all construction drawings relative to public improvements in and out of the subdivision. The subdivider's engineer shall also prepare, as part of the construction documents, an estimate of the cost of construction of all the public improvements. All such drawings shall be reviewed and approved by the city, and two (2) copies, in addition to one reproducible set of such drawings, must be submitted with the final plat to the planning commission. One of the two (2) copies submitted will be returned to the subdivider with an approval mark of the city engineer. This approved set shall be kept at the construction site. The subdivider shall coordinate all preparation and construction activities with the city engineer. The city engineer shall review the estimate of the cost of construction for the purpose of determining the amount required as security of performance.
- B. Security of Performance: The security of performance required by this subsection 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 subdivider.
  - 1. Amount: The amount of the security of performance shall be equal to at least one and one-half (1 1/2) times the reasonable value of the improvements required herein, as determined by the subdivider's engineer and approved by the city engineer.
  - 2. Methods: The security of performance required by this subsection 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 subdivider of all expenses incurred for labor and materials used in the construction of the required improvements. This method of security is 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 under the following conditions: to repair, replace or complete the improvements as set forth below.
  - 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.
3. **Guarantee of Work:** The city may hold five percent (5%) of the security of performance provided by the subdivider until one year following the final inspection by the city engineer, or for such other period of time less than one year as the city deems necessary to ensure compliance as set forth herein. (See River Heights City Construction Specifications/Standards.) (1-2015, 6-23-15)
  4. **Foreclosure on Security:** 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 final plat was approved with all required signatures, the city may proceed to install the improvements at the subdivider's expense by foreclosing on the subdivider's security of performance. If said security is insufficient to pay for said improvements which the city shall cause to be installed, then the subdivider shall be liable for any deficiency and reasonable attorney fees realized by the city.
  5. **Failure to Meet Standards:** In the event the public improvements fail to meet the standards as set forth in the subdivider's written guarantee, the city shall so notify the subdivider, 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 subdivider'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.

C. **Construction and Inspection:**

1. **Minimum Improvements:** 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 subdivider for the proposed subdivision only after the final plat has been recorded. The following minimum improvements shall be complete and in place before the city will issue a building permit for any lot within the proposed subdivision:

- a. Completion of roadways and street lighting, as shown on the approved construction drawings; (1-2016, 3-22-16) (2-2017, 3-14-17)
  - b. Water, sewer, power and all other utilities that will be placed in the roadbed as identified on the approved construction drawings; and
  - c. Egress and ingress to provide acceptable and safe travel to and from each lot in the approved subdivision.
2. Time of Construction: All public improvements shall be completed within a negotiated time period (as per the development agreement), but not to exceed two (2) years from the date the construction drawings were approved by all required entities. The city engineer shall inspect the construction at appropriate times as construction proceeds. The subdivider shall give the city engineer a minimum of one working day's notice for any inspection.
  3. Inspection upon Completion: At the completion of construction, or at the end of the maximum two (2) year time period, whichever comes first, the city engineer shall make an inspection of all improvements and inform the subdivider and the city of the results of the inspection. If, at the completion of construction, the subdivider shall call for inspection by the city engineer, then said inspection shall be made within ten (10) days of the request. The subdivider's engineer shall provide the city engineer 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 by the city engineer indicating the items missed or needing correction prior to acceptance of the improvements by the city engineer, and all required replacements or repairs shall be completed by the subdivider, at the subdivider's expense, prior to acceptance by the city.
  4. Statement of Completion and Compliance: The subdivision of lands shall not be accepted by the city without the city and subdivider first receiving a statement signed by the city engineer that the improvements described in the construction drawings have been completed and that they meet the minimum requirements of all the ordinances, resolutions, rules and regulations of the city, that they comply with the recommendations of the county board of health, the planning commission, the fire department, and with the standards, rules, regulations and policies formulated by the city engineer and by the various city departments and approved by the city council; which standards, rules, regulations and policies the city council is hereby empowered to approve and adopt by resolution or ordinance, and the same are hereby incorporated in this title by reference. Additionally, any subdivision of lands shall not be accepted without the subdivider having first provided the city with a one-year written guarantee on all public improvements installed therein.
  5. Delay of Improvements: As mentioned above, some improvements, such as sidewalks, may be delayed until home or building construction is reasonably complete; provided, that the subdivider furnishes to the city a security of performance, as set forth in subsection B of this section. The amount of the said security shall be estimated by the subdivider's engineer and approved by the city engineer. Said security shall be required for the purpose of assuring

payment by the subdivider of all expenses incurred for labor and materials used in construction of the required improvements. In no event shall the city be deemed liable under this section for any claim asserted by a laborer or material person. (Ord., 8-12-2003)

**11-5-2: PARKS, RECREATION USE AND OTHER PUBLIC SPACES**

The subdivider and the city shall review the proposed development to consider dedication of a portion of the subdivision land for park or recreation use. At the option of the city and through negotiation, a percentage of the total area of the subdivision shall be deeded to the city for parks and recreation use. The exact location of such deeded property shall be subject to approval by the city. (Ord., 8-12-2003)

**11-5-3: ADJACENT STREETS**

It is the responsibility of the subdivider to pay for all of the necessary public improvements on streets adjacent to the proposed subdivision. Street improvements that are adjacent to and benefit neighboring landowners will be negotiated with the adjacent landowners as to participation and time of construction. No partial roads shall be allowed. The value of the improvements shall be included in the security of performance herein described. (Ord., 8-12-2003)

**11-5-4: PRIVATE LANES**

- A. Permitted; Conditions: Private lanes will be permitted only when terrain or other geographical conditions do not permit any other standard street development. All private lanes shall be negotiated with the city. Private lanes shall be governed by a signed agreement of the homeowners residing on the private lane, which agreement the city shall have power to enforce. The city, however, shall have no responsibility or liability in the maintenance, snow removal or garbage pick up on private lanes. In order to accommodate all properties equitably, and to serve and maintain utilities on all properties, lanes shall not be obstructed. Sidewalks, curbs and gutters and roads shall conform to the city standards. Road improvements shall also conform to the following:
1. For one or two (2) houses, the right of way shall be twenty feet (20') in width with asphalt pavement of twelve feet (12') in width minimum. No sidewalk or curb and gutter shall be required.
  2. For three (3) or four (4) houses, the right of way shall be twenty six feet (26') in width with asphalt pavement of eighteen feet (18') in width minimum. No sidewalk or curb and gutter shall be required.
  3. For five (5) or more houses, the right of way shall be thirty feet (30') in width with asphalt pavement of twenty four feet (24') in width minimum. Sidewalk and curb and gutter on both sides of the road may be required. A "T" shaped turnaround approved by the fire department shall be provided sufficient for a fire truck to maneuver with a minimal amount of backing.

- B. Code Compliance: The subdivider shall comply with all fire, safety and beautification codes and regulations of this title. Street drainage shall be designed consistent with acceptable engineering practices and the city master plan. A garbage disposal method shall be negotiated with the city, including the solid waste department. No street signs indicating limited access will be permitted. Lanes shall be properly named as approved by the city.
- C. Homeowners' Agreement: The approved homeowners' agreement shall be placed with the lots affected at the time of recording by the city attorney. In addition, a recorded restriction will be placed on all lots on the private lane stating that all of the above mentioned minimum improvements shall be complete before the city will issue any building permits for subdivided lots on the private lane. (Ord., 8-12-2003)

**11-5-5: 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 subdivider of any subdivision. There shall be no consideration or return to the subdivider for this work. The city, however, will consider cost sharing on any water line that is in excess of eight inches (8") in diameter or any sewer line that is in excess of ten inches (10") in diameter, in the event the city desires to participate for future planning purposes. (Ord., 8-12-2003)

**11-5-6: UTILITIES**

All utilities, privately or publicly owned, shall be placed underground. This will include, but not be limited to: telephone, gas, electric power, water, sewer, etc. These underground utilities shall be installed after cutting the road to rough grade and before the surfacing of the streets and installation of road base, curb and gutter, sidewalks, etc., except as otherwise approved by the city in writing. (Ord., 8-12-2003)

**11-5-7: MANDATORY USE OF CITY WATER AND SEWER SYSTEMS**

All subdivisions 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. (Ord., 8-12-2003)

**11-5-8: APPEALS**

All appeals shall be as governed by state law. (Ord., 8-12-2003)

**11-5-9: WRITTEN AGREEMENTS**

When written agreements are deemed to be necessary for the protection and understanding of all parties concerned, they shall be entered into by all parties; i.e., to cover areas of concern not specifically addressed by this title or other requirements of the city. Written agreements shall be completed before the mayor places signature on the final plat. (Ord., 8-12-2003)

**11-5-10: GUIDELINES AND CHECKLISTS**

The city is hereby authorized and empowered to promulgate by way of resolution certain guidelines and/or checklists relative to this title. These materials shall be provided to any interested person upon request and upon payment of a fee if required by the city. These materials shall be for instructional purposes only and represent an attempt to aid those seeking to comply with this title. (Ord., 8-12-2003; amd. 2005 Code)