

III.D.

Memorandum Department of Planning

To: Mike Geisel, P.E., City Administrator

From: Justin Wyse, Director of Planning

Date: April 20, 2023



RE: **P.Z. 08-2023 City of Chesterfield (Unified Development Code – Article 4)**: An ordinance amending Article 4 of the Unified Development Code to revise regulations pertaining to escrow requirements for MSD related subdivision improvements.

Summary

Section 89.410 of the Revised Statutes of the State of Missouri allow cities to require guarantees of improvements associated with the subdivision process and these requirements are codified in Section 405.02.120 of the Unified Development Code. These regulations are put in place to ensure required improvements to serve the subdivided area are completed to serve the new lots.

The City, following the framework of RSMo 89.410, accepts cash or a letter of credit for construction deposits and maintenance deposits for items including streets and sidewalks, street lights, grading, water mains, storm and sanitary sewers, bioretention, and other required items.

RSMo 89.410.3 states:

The regulations shall provide that any escrow or bond amount held by the city, town or village to secure actual construction and installation on each component of the improvements or utilities shall be released within thirty days of completion of each category of improvement or utility work to be installed, minus a maximum retention of five percent which shall be released upon completion of all improvements and utility work.

The City currently retains 5% of all construction items until the completion of all improvements. However, as regulations have changed, this practice is having an unintended consequence of delaying completion of subdivision improvements as MSD water quality elements are not completed until after construction of all homes within a subdivision. We have several developments in the City that have been in the construction phase of improvements for years. While this does have some advantages for the City as an organization in delaying acceptance of the improvements, it can also be at the detriment of homeowners within the subdivision due to the inconvenience of incomplete subdivision improvements and additional costs (e.g. snowplowing) over an extended period as the City has not accepted the roadways.

One of the goals of the City's subdivision requirements is to complete improvements within two years.

Staff from the departments of Planning and Public Works have coordinated on solutions to better achieve the outcomes of the intent of the City's regulations and have identified three possible solutions.

1. Remove escrow requirements for items that are completed following all construction activity.

Storm, sanitary, and water quality elements are generally under MSD requirements, inspection, and acceptance (if public improvements) and MSD has escrow requirements for these items. As these items are under the jurisdiction and escrow requirements of another public agency, this requirement could be removed. This would allow City staff to focus on getting non-MSD related improvements completed in a more timely fashion.

2. Allow multiple agreements segregating items that cannot be completed until completion of all construction in the subdivision.

This strategy would include additional agreements to allow for acceptance of most subdivision improvements to achieve the goal of subdivision completion. This would increase the number of agreements being managed by the City on these projects and would carry administrative costs associated with that process.

3. Pursue default of the developer instead of extensions to the time for construction.

This is the most aggressive option available. While this would help in completing items more timely, it also would require the City to complete the improvements following collection of the funds guaranteeing the improvements. Aside from the potential staff concerns with managing additional construction activities, the City requires guarantees for amenities associated with projects as well. This could result in the City having to complete prior improvements associated with the development that are outside of our typical work product.

Additionally, staff would recommend a minor change to allow replacement agreements and guarantees in the event that a bank changes during the process. Currently, these items are brought back to P&PW and then to City Council for approval of the replacement agreement and deposit. RSMo requires cities to accept replacement escrows in the amount of the escrow of letter of credit currently being held. Staff would recommend consideration of authorizing the department to accept these changes without having to be reviewed by P&PW and City Council.

A draft of these changes is attached for your review.

Recommendation

In reviewing the options above, Staff is recommending that we consider amending the code to implement option 1 above. This would remove the barrier of completion of final stormwater improvements to completion of other subdivision improvements.

This item should be forwarded to the P&PW. With concurrence from P&PW, the change would need to be forwarded to the Planning Commission and a Public Hearing held. A formal recommendation would then be presented to P&PW prior to consideration of City Council.

Attachments: October 24, 2022 Planning Commission Report
Draft Ordinance (Unified Development Code)

Please forward to PPW for further review and direction.

A couple of additional considerations:

- 1) It should be understood that if the City declares a development in default, there is a legal process that follows to attach any sureties. Rarely does a financial institution simply transfer escrowed funds to the City for completion of improvements.
- 2) Frequently, completion of improvements require the cooperation and coordination across multiple properties where easements or rights of access do not exist, or where the City may not be the beneficiary of such easements.
- 3) The City lacks the project management resources to initiate and complete the installation of improvements.
- 4) It should also be readily understood that due to the public contracting requirements, it is more costly for the City to contract for improvements than it does for a private developer or contractor.

 2023-4-10

DRAFT UDC AMENDMNT LANGUAGE

Section 405.02.120 Improvements Installed Or Guaranteed.

- A. Completion Guarantee By Developer. After the improvement plans have been substantially completed and all inspection fees and review fees paid, but before approval of the record subdivision plat, the developer shall guarantee the completion of required improvements. The developer shall either:
1. Complete the improvements in accordance with the approved improvement plans under the observation and inspection of the appropriate inspection agency; or
 2. Deposit cash under an escrow agreement or post a land subdivision bond or provide the appropriate surety as set forth in this UDC to guarantee the construction, completion, and installation of the improvements shown on the approved improvement plans within the improvement completion period approved by the Director of Planning, which shall not exceed two (2) years. The land subdivision bond or escrow agreement or other required surety shall be prepared and executed on forms furnished by the Department and shall be submitted to the City Council for approval or disapproval after review and approval by the Director of Planning and the City Attorney.
 3. For plats approved after the effective date of this UDC, ~~any guarantee or deposit required by the City for sanitary and storm sewers within the jurisdiction of MSD may be reduced proportionally, by the amount of any guarantee or escrow collected and held by MSD if MSD confirms that its requirement for assurance of completion is satisfied. This provision shall not affect the intent or enforcement of any existing guarantee, escrow, or renewal, extension or replacement thereof.~~ **no guarantee or deposit is required with the City for sanitary and storm sewers within the jurisdiction of MSD if MSD confirms that its requirements for assurance of completion are satisfied. This provision shall not affect the intent or enforcement of any existing guarantee, escrow or renewal, extension or replacement thereof.**
 4. The Director of Planning may require any specific improvement to be installed prior to approval of the record plat where failure to install such improvement prior to further development could result in damage to the site or surrounding properties.
 5. **Following approval of the guarantee or deposit, the Director of Planning shall administer the guarantee in accordance with RSMo 89.410 and City Code including replacement of such agreements and guarantees.**

6. The City shall not permit or accept the posting of any bond issued or proposed to be issued by a surety or an affiliate of a surety which has, in the preceding ten (10) years, refused to pay upon formal demand all or part of a claim of the City on any other surety bond. Any individual, corporation or property owner aggrieved by this Section may appeal to the City Council to request the City to accept the posting of such bond. The City Council may consider whether the refusal to pay resulted in litigation, mediation or arbitration of the claim, whether the claim was wholly or partially determined in favor of the City, whether the prior refusal to pay was settled between the City and surety or any other hardship evidence presented by the individual, corporation or property owner. In no instance shall a bond be accepted from a surety while in litigation, mediation or arbitration with the City.

7. The City shall not accept the posting of any bond issued or proposed by any surety or an affiliate who has refused to pay upon formal demand of the City or been involved in any litigation pertaining to said failure to pay within the past ten (10) years as of the effective date of this Section of the UDC.