



STAFF REPORT
DATE: 2-12-2024
Item#: – Public Hearing
Motion

TO: Planning Commission
FROM: Nathan Fuerst, AICP, Consulting City Planner
AGENDA ITEM: **PUBLIC HEARING - Zoning Text Amendment – Housekeeping Items (part II)**
REVIEWED BY: Sophia Jensen, City Planner
Jenni Faulkner, Bolton and Menk Senior Consulting Planner

BACKGROUND:

In the process of preparing Ordinance No. 2024-03 to make corrections on zoning ordinance housekeeping issues, staff identified two more corrections that were determined necessary but not part of the public hearing and review process for this Ordinance.

ISSUE BEFORE THE PLANNING COMMISSION:

The Planning Commission is being asked to hold a public hearing and make a recommendation to the City Council on the proposed amendments to the City’s Subdivision Regulations and Zoning Code.

PROPOSAL DETAILS:

City Subdivision Regulations and Zoning Code Sections under review:

- **103.00.160 (Subdivision Regulations - Required Improvements; Financial Arrangements)**
- **105.08.100 (Zoning Code – Security Escrow for Construction)**
- **105.12.260 (Zoning Code – Permits, Certificates and Licenses)**

ANALYSIS OF PROPOSALS:

Proposed language is underlined. Deleted language is shown with a ~~strikethrough~~.

103.00.160(i)(Subdivision Regulations – Required Improvements; Financial Arrangements):

The intent of these amendments is to create consistent language relating to the release of development securities. The proposed language is already the City’s policy relating to the release of securities.

Proposed Language:

- (i) *Developers agreement/security. Subsequent to approval by the council of a final plat and before execution by the city of the final plat or other appropriate forms of city approval, the developer shall:
 - (1) Enter into a developer's agreement whereby developer shall undertake performance of the obligations imposed by this title, or by council condition, and containing the other terms and provisions and in the form as shall be acceptable to the city attorney, including, but not limited to, provisions for default; and*

- (2) *Submit a letter of credit or cash deposit (security) which guarantees completion of all improvements within the times specified by the city engineer. The amount of the security shall be 125 percent of the estimated construction cost of the improvements. The security shall be in the form and contain the other provisions and terms as may be required by the city engineer and city attorney. The developer's registered engineer shall make, and submit for approval to the city engineer, a written estimate of the costs of the improvements in order for the city to determine the amount of the security required. Reduction of security shall be as outlined per the development agreement.*
- (3) *The security shall be returned upon successful completion of the following:*
 - a. *Compliance with the state building code;*
 - b. *Compliance with the city code; and*
 - c. *Compliance with requirements of the development agreement as determined by the city.*

105.08.100 (Zoning Code – Security Escrow for Construction): The intent of these changes is to simplify the process for single- and two-family projects, or other small residential commercial or industrial projects (for example, minor additions or alterations), that do not trigger an automatic requirement for a grading permit, site improvement agreement, or development agreement. The changes also provide more clarity on requirements and procedures for the release of the financial security.

Proposed Language:

- (a) *Security escrow. A security escrow in an amount established by the city's fee schedule ~~or building official shall be paid before a building permit is issued for the construction of all new~~ single and two-family residential structures and site work for other construction related projects that do not require a grading agreement, site improvement agreement, or development agreement as required by Sections 103.00.160 or 105.12.260 of the City Code. ~~structures and other significant construction related projects at the discretion of the city.~~ The security shall be returned to the applicant upon the successful completion of the following:
 - (1) *Compliance with the state building code;*
 - (2) *Compliance with the city Code; and*
 - (3) *Compliance with specified requirements as determined by the building official.**
 - (a) *Form. The city will accept a security escrow in the form of cash or a letter of credit in the form approved by the City Attorney.*
 - (b) *Purpose. The security may be used at any time for the remediation of construction or development site improvement-related damage or debris on and around the site and for other violations of the city Code, including, but not limited to, unpaid fees, unpaid fines, unpaid contracted service fees, erosion control, street maintenance, boulevard repair and restoration, and landscaping. If the security items, landscaping, or building exterior, are not completed within six months of start of construction, excluding the time between November 1 and April 1, or upon the builder filing bankruptcy, or if the job is abandoned for 30 days or more, the city may enter the lot, perform the work, and apply the security toward the cost, plus administrative fees.*
 - (c) *Action against the financial security. The city shall use the security to finance remedial work undertaken by the city, or a private contractor under contract to the city including a fee to the city for processing equal to ten percent of any contractor's invoice for materials and services, to reimburse the city for all costs incurred in the process of remedial work, including, but not limited to, staff time, engineering fees and attorney's fees.*
 - (d) *Maintenance of financial security. If at any time the financial security is drawn upon, the applicant may be required to submit additional security to restore the security to the full amount as originally established. Restoring the full security is a requirement prior to resuming work on the site. The city maintains the right to stop all site/building work until the financial security has been replenished.*
 - (e) *Release of financial security. The financial security shall be in place at the city's discretion until all work is completed, including the building final inspection and all site work and landscaping or other requirements including all punch list corrective items identified through city inspections.*
-

105.12.260 (Zoning Code – Permits, Certificates and Licenses): The intent of these amendments is to correct standard references and language in Table 11-2.

Proposed Language:

(a) Building permits.

- (1) Compliance. A building permit is required for the construction or structural alteration of a building or any part thereof. Other construction activity may require a permit in accordance with the state building code. Demolition, wrecking or removal of any structure shall require a demolition or moving permit. No building permit shall be issued for any construction, enlargement, alteration or repair, demolition or moving of any building or structure on any lot or parcel until all requirements of the state building code as adopted by the city pursuant to LEC Chapter 105.08 have been fully met.*
- (2) Concurrent applications. If the proposed development requires a zoning amendment, variance or conditional use permit, or other permit required under this article, the applicant shall secure all required permits prior to the issuance of a building permit for said development.*
- (3) Administrative review of permits for existing platted lots. If the proposed development does not involve a zoning amendment, variance or conditional use permit, and proposes a use, structure or expansion of an existing structure on an existing platted lot, the director of community development may review the application and authorize the building official to approve or to deny the permit.*
- (4) Expiration. All building permits shall expire pursuant to Minnesota Rules Part 1300.0120, as it may be amended from time to time. ~~Any building permit issued by the city shall expire and by limitation be null and void if a certificate of occupancy and final completion has not been issued within the following applicable period of time after the date of permit issuance:~~
 - ~~a.—Single family residential dwellings, including new construction, remodeling or additions: 12 months;~~
 - ~~b.—Multifamily and nonresidential construction: 12 months, unless a longer time is specified by the city council at the time the original permit is issued;~~
 - ~~c.—Extension. The building official may grant an extension prior to the expiration of any building permits in accordance with state building code. An expired building permit may be reissued once, by the building official, for one half the original permit fee. Thereafter, if the permitted work is not completed within the applicable time period, a new permit may be issued only upon such conditions as the city council by resolution may prescribe, including financial guarantees to guarantee completion by a specified date;~~
 - ~~d.—Time limitations for exterior work. All exterior work shall be completed as follows:
 - ~~1.—All disturbed and exposed ground shall be covered with landscaping in accordance with LEC 105.04.080 through LEC 105.04.160.~~
 - ~~2.—All exterior construction, including siding, roofing, doors, windows and finish shall be completed and present a finished appearance within six months of the start of construction. Tar paper, unfinished plywood, fiberboard insulation, foam insulation, brown coat or scratch coat of stucco, plastic sheeting and other similar materials not designed to be an exterior finish shall not be considered an acceptable exterior finish. Extensions for weather sensitive work may be granted by the building official.~~
 - ~~3.—Failure to complete exterior work as required herein shall result in suspension of the existing permit until a reinstatement fee equal to 100 percent of the original building permit has been made. Reinstatement of a building permit does not extend the original term of the permit. The reinstatement fee shall also be paid prior to re-issuance of any subsequent permit for exterior work that was not completed under a prior permit that expired.~~~~*

(b) *Certificate of zoning compliance.* A certificate of zoning compliance is a zoning permit that is intended as a means of administratively reviewing a new use, change in use, or structural change that does not require a building permit.

- (1) *When required.* A certificate of zoning compliance or other city issued permit is required for the following activities:
 - a. A new use classification within an existing building or structure;
 - b. A change of use classification within an existing building or structure;
 - c. Addition, removal or change in parking or other on-site improvements including patios;
 - d. Small accessory structures that do not require a building permit;
 - e. Swimming pools;
 - f. Tennis courts, sport courts, or other similar improvement;
 - g. Antennas, including amateur radio antennas and wireless communications facilities that meet the criteria for administrative review in LEC 105.04.240(c);
 - h. Fences six feet and less in height;
 - i. Driveways that are not authorized as part of an approved building permit;
 - j. Stormwater management activities and structures not otherwise permitted as part of a development application;
 - k. Other situations or improvements requiring additional review or interpretation, as specified elsewhere in this article.
 - (2) *Expiration of a certificate of zoning compliance.* Where a certificate of zoning compliance use has been established and is discontinued for any reason for a period of one year or longer, the certificate of zoning compliance shall become null and void.
- (c) *Certificate of occupancy.* No vacant land shall be occupied or used and no buildings hereafter erected, altered or moved shall be occupied until a certificate of occupancy has been issued by the building official. Such certificates shall show that the building or premises or part thereof and the use thereof are in conformity with the state building code and the provisions of this chapter. Such certificate shall be issued only when the building or premises and the use thereof conform to all the requirements of the city Code. A temporary certificate of occupancy shall not be issued in the growing season, unless otherwise approved by the building official.
- (d) *Sign permit.* A sign permit shall be authorized for a sign that conforms to the sign regulations in LEC 105.12.430. An application, on a form provided by the director of planning, shall be submitted with the required fee by the owner of the proposed sign. The director of planning shall issue a sign permit if all of the regulations in LEC 105.12.430 are met.
- (e) *Special event permit.* A special event permit may be issued for certain events for activities or events not otherwise permitted under the zoning ordinance in accordance with LEC 11.04.070.
- (f) *Grading permit.*
- (1) *Required.* A permit shall be required for all non-agricultural projects or activities that will result in the movement of more than 50 cubic yards of earth or the disturbance of more than one-half acre of land, and for construction of a building or structure on steep slopes, as specified in LEC 105.12.1230(c)(7)e. The ~~director of planning~~ community development director may issue a grading permit only if the grading plan meets the requirements of the city stormwater management and erosion and sediment control ordinance.
 - (2) *Public hearing.* All grading and excavating applications, for the purpose of creating wetlands, berming, landscape amenities, and other natural features that result in the moving of more than 400 cubic yards of material per acre of site area shall require a public hearing.
 - (3) *Grading Agreement.* A grading agreement, in the city's standard form of agreement, and approved by the City Attorney, shall be executed for all non-single family or two-family projects requiring a grading permit.
 - a. Grading agreements shall require financial securities, in an amount determined by the city on a case by case basis, and to ensure the proper completion and implementation of site restoration, tree preservation, and erosion controls.

- b. *Grading agreements shall require escrowed funds for engineering review, administration, and inspections.*
 - c. *Grading agreement provisions may be included within a development agreement associated with a plat or subdivision or included within a site improvement agreement, in which case, a separate grading agreement is not required.*
- (g) *Site Improvement Agreement. A site improvement agreement, in the city's standard form of agreement, and approved by the City Attorney, is required for any project that contains construction work that includes public improvements, including, but not limited to, public utilities, streets, trails, sidewalks and boulevards, and to ensure private site work, including erosion control, stormwater management and landscaping, whether public or private, are completed as required by the City.*
- (1) *The site improvement agreement must be executed prior to issuance of a building permit.*
 - (2) *Site improvement agreements shall require financial securities in the estimated amount of the required site improvements to ensure the proper completion and implementation of site restoration, tree preservation, public improvements, erosion controls, and other site work.*
 - (3) *Site improvement agreements shall require escrowed funds for engineering review, administration, and inspections.*
 - (4) *Site improvement agreement provisions may be included within a development agreement associated with a plat or subdivision, in which case, a separate site improvement agreement is not required.*

PUBLIC HEARING:

A notice of public hearing was published in the City's official newspaper on February ____, 2024. No public comments have been received at the time of writing this report.

FISCAL IMPACT:

None.

OPTIONS:

- Recommend approval of the proposed amendments.
- Recommend changes to the proposed amendments.
- Recommend denial of the proposed amendments.

RECOMMENDATION:

Staff recommends the Planning Commission recommend approval of the proposed text amendments as presented by Staff.

“Motion to recommend approval of the proposed text amendments as presented by Staff”

ATTACHMENTS:

- None