

1005.080 Improvements Installed or Guaranteed.

1. After the improvement plans have been approved and all inspection fees paid, but before approval of the record subdivision plat, the developer shall guarantee the completion of improvements and creation of a maintenance guarantee for public streets. The developer shall either:
 - a) Complete the improvements in accordance with the approved improvement plans under the observation and inspection of the appropriate public agency and create the required public street maintenance guarantee; or
 - b) Deposit cash or an irrevocable letter of credit under a deposit agreement with St. Louis County, or post a land subdivision bond 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, which shall not exceed three years.
 - c) For plats approved after the effective date of this ordinance, no guarantee or deposit is required with the County 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.
2. Deposit agreements shall provide that there shall be deposited with the St. Louis County Department of Administration:
 - a) A cash amount not less than the Department's estimate of the cost of the construction, completion and installation of the improvements indicated on approved improvement plans; or
 - b) A sight draft irrevocable letter of credit which may be renewable, issued under the Uniform Customs and Practice for Documentary Credits (1983 Revision) (International Chamber of Commerce Brochure No. 400), as amended, or as otherwise approved by the County Counselor, payable at a local financial institution, in an amount not less than the Department's estimate of the cost of the construction completion and installation of the improvements indicated on the approved improvement plans, with a final expiration date of not less than six (6) months after the initial period allowed for completion of subdivision improvements, drawn in favor of the Treasurer of St. Louis County and guaranteeing to St. Louis County the availability, from time to time upon demand, the balance under the deposit agreement and letter of credit not theretofore released.
3. The land subdivision bond shall be approved by the Director and County Counselor prior to being sent to the County Council for approval and shall be issued by a surety company qualified to do business in Missouri and shall insure or guarantee, to the extent of the Department's estimate of the cost thereof, the construction, completion and installation of the improvements indicated on the approved improvement plans and creation of the public streets and related storm water facilities maintenance guarantee as specified in subsection (4)(c) herein.

4. The deposit agreement shall be held by St. Louis County and remain in effect until such time as the Director shall release the cash, reduce the obligation secured under the letter of credit, or release the bond. Such releases or reductions may be in part and may occur from time to time, as work on constructing improvements is performed, provided, however that:
 - a) The Director shall release the cash or reduce the letter of credit obligation or release the surety from all or any part of its obligation only after construction, completion and installation of some phase of work on the improvements indicated on the approved improvement plans, receipt of requisite written notification from the appropriate inspecting public authority, and approval by the Department. In order to accommodate the development process while protecting the public from deficient and uncompleted improvements, St. Louis County will accomplish releases within thirty days of written request to approve improvements when practicable. Such a written request shall be in such form as required by the Director and shall not be made until the improvements are susceptible of inspection and approval in accordance with standards established by the Director (i.e., concrete work has reached final cure, street lights have been activated, etc.). In any instance where more than thirty days elapses from receipt of a written request from a developer for inspection until either release or report to the developer of defects or deficiencies, the Director shall promptly convene an inter-departmental task force representing the Planning Department, the Department of Highways and Traffic, the Department of Public Works and the County Counselor to review the County's failure to respond in such time. The task force may direct release if it finds that failure to respond was unjustified and that the public interest will not be materially harmed by such release. The Director shall report the actions of the task force in writing to the County Council each quarter; and
 - b) If, at the end of the improvement completion period, all the improvements shown on the approved improvement plans have not been completed, the Director may extend the improvement completion period for a period of up to two (2) years if after review by the Department such longer period is deemed necessary to facilitate adequate and coordinated provisions for transportation, water, sewerage, schools, parks, playgrounds, or other public improvements, facilities, or requirements so long as all guarantees are extended and approved by the County Counselor; and
 - c) The Director shall not release more than 90% of the sum estimated for the construction cost of public streets and related storm water facilities. The developer continues to be responsible for defects, deficiencies and damage to public streets and related storm water improvements during development. Upon acceptance of the public streets and related storm water facilities for County maintenance, the remaining 10% of the original construction cost estimate therefor shall be transferred from the deposit account to a special transit account and shall be subject to the order of the Director of Highways and Traffic to defray or reimburse any cost to the County of maintenance or repair of public streets and related storm water facilities related to the subdivision which the developer fails or refuses to perform. Funds shall be so held until such time as the development is complete, as determined by the Director. Street and related storm water improvement funds relating to streets which were constructed to the new standards adopted by the Director of Highways and Traffic after the adoption of this ordinance shall be held until the earlier of completion of development, as determined by the Director, or one year after acceptance. Funds shall then be released if there are no defects or deficiencies found on inspection thereof, or at such time thereafter as any defects or deficiencies are cured with the permission of, and within the time allowed by, the Director of Highways and Traffic. At the election of the developer, the cash deposit may be replaced with a letter of credit approved by the County Counselor in the same amount.

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5. The obligation of the developer to construct, complete and install the improvements indicated on the approved improvement plans and provide for street maintenance shall not cease until the developer shall be finally released by the Director. If, after the initial improvement completion period, or after a later period as extended pursuant to this section, the improvements indicated on the approved improvement plans are not constructed, completed, installed, and accepted, or if the developer shall violate any provision of the deposit agreement as determined by the Director, the Director shall notify the developer and surety or letter of credit provider to show cause within not less than ten days why the developer should not be declared in default. If the developer or surety or letter of credit provider fails to cure any default or present compelling reason why no default should be declared, the Director shall declare the developer in default and may take any one or more of the following acts:
 - a) deem the balance under the deposit agreement not theretofore released as forfeited to the County, to be then placed in an appropriate trust and agency account subject to the order of the Director of Planning for such purposes as letting contracts to bring about the completion of the improvements indicated on the approved improvement plans or other appropriate purposes in the interest of the public safety, health, and welfare; or
 - b) require the surety to perform on the bond and pay to the Department the balance of the bond not theretofore released; or
 - c) require the developer to submit an additional cash sum or letter of credit sufficient to guarantee the completion of the improvements indicated on the approved improvement plans after recalculation in order to allow for any inflated or increased costs of constructing improvements.
6. If the surety fails to comply with the Director's requirements under 5(b) above, or if the Director determines that forfeiture of the remaining deposit or surety balance under 5(a) or 5(b) above will not allow completion of the required improvements and if the developer fails to comply with the Director's requirements under 5(c) above, the Director may:
 - a) suspend the right of anyone to build or construct on the undeveloped portion of the subdivision. For the purpose of this subsection the undeveloped portion of the subdivision means all lots other than lots which have been sold for personal use and occupancy or are under bona fide contract for sale to any person for personal use or occupancy. The Director shall give the developer ten days written notice of an order under this subsection, with copies to all issuers of letters of credit or sureties, as appropriate, who have outstanding obligations for any undeveloped portion of the subdivision, and shall record an affidavit of such notice with the recorder of deeds.

If, within the ten day period after notice is given, the Director is not convinced by compelling evidence that completion of the improvements is adequately assured and maintenance of streets assured as provided herein, the Director shall order construction suspended on the undeveloped portion of the subdivision. The order shall be served upon the developer, with a copy to the issuer of the letter of credit or surety as appropriate, and a copy recorded with the recorder of deeds. Public notice of said order shall be conspicuously and prominently posted by the Director at the subdivisions or lots subject to said order. The notice shall contain the following minimum language, which may be supplemented at the discretion of the Director:

- (i) If said notice is for a subdivision:

THIS SUBDIVISION, (name of subdivision), HAS BEEN DECLARED IN DEFAULT BY THE ST. LOUIS COUNTY DIRECTOR OF PLANNING. NO DEVELOPMENT, CONSTRUCTION, BUILDING, OR DEMOLITION IN ANY MANNER SHALL TAKE PLACE WITHIN THE LIMITS OF THIS SUBDIVISION UNTIL SUCH TIME AS THE ST. LOUIS COUNTY DIRECTOR OF PLANNING REMOVES THIS PROHIBITION. ANY DEVELOPMENT, CONSTRUCTION, BUILDING, OR DEMOLITION IN ANY MANNER WHILE THIS PROHIBITION IS IN EFFECT IS ILLEGAL AND SHALL BE ENFORCED PURSUANT TO CHAPTER 1005, ST. LOUIS COUNTY REVISED ORDINANCES.

- (ii) If said notice is for a lot:

THIS LOT, (lot number), HAS BEEN DECLARED IN DEFAULT BY THE ST. LOUIS COUNTY DIRECTOR OF PLANNING. NO DEVELOPMENT, CONSTRUCTION, BUILDING, OR DEMOLITION IN ANY MANNER SHALL TAKE PLACE WITHIN THE LIMITS OF THIS LOT UNTIL SUCH TIME AS THE ST. LOUIS COUNTY DIRECTOR OF PLANNING REMOVES THIS PROHIBITION. ANY DEVELOPMENT, CONSTRUCTION, BUILDING, OR DEMOLITION IN ANY MANNER WHILE THIS PROHIBITION IS IN EFFECT IS ILLEGAL AND SHALL BE ENFORCED PURSUANT TO CHAPTER 1005, ST. LOUIS COUNTY REVISED ORDINANCES.

The Director of Public Works shall not thereafter authorize construction to take place contrary to the Director's order. The suspension shall be rescinded in whole or in part only when the Director is convinced that completion of the improvements is adequately assured in all or an appropriate part of the subdivision and a guarantee of public street maintenance provided; or

- b) suspend the rights of the Developer, or any related entity, to construct structures in any development platted after the effective date of such suspension throughout unincorporated St. Louis County and such incorporated areas as are under St. Louis County jurisdiction. The Director shall give the developer ten days written notice of an order under this clause, with a copy to issuers of letters of credit or sureties known to the Director to have obligations outstanding on behalf of the developer or related entities and shall record an affidavit of such notice with the recorder of deeds. If, within the ten day period after notice is given, the Director is not convinced by compelling evidence that completion of the improvements is adequately assured and maintenance of streets assured as provided herein, the Director shall order construction suspended. The order shall be served upon the developer, with a copy to the issuer of the letter of credit or surety as appropriate, and a copy recorded with the recorder of deeds. The Director of Public Works shall not thereafter authorize construction to take place contrary to the Director's order. The suspension shall be rescinded only when the Director is convinced that completion of the improvements is adequately assured and public street maintenance assured.

7. From and after the effective date of this Ordinance if a developer, or any related entity, has a subdivision development improvement guarantee that is in default, as determined by the Director, including any escrow or bond under any prior version of this Section,

- a) the Director shall be authorized, but not be limited, to thereafter pursue the remedies of Section 6 of this section; and

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- b) the rights of the Developer, or any related entity, to receive approval, which approval shall include, but not be limited to, approval of any plat or deposit agreement for new or further development, shall be suspended. The suspension shall be rescinded only when the Director is convinced that completion of the improvements is adequately assured and public street maintenance assured.
8. If the surety fails to perform on the bond or any other party fails to comply with any provision of this section, the Director may recommend that the St. Louis County Counselor take appropriate legal action.
9. No surety shall be eligible to provide the performance bond required herein, nor shall any financial institution be eligible to provide a letter of credit, unless approved in advance by the Director of Planning and the County Counselor on such terms and criteria as may be established by the Accounting Officer and the County Counselor.
10. For purposes of this section, "related entity" has the following meaning: a developer is a "related entity" of another person
 1. if either has a principal or controlling interest in the other; or
 2. if any person, firm, corporation, association, partnership, or other entity with a controlling interest in one has a principal or controlling interest in the other.
11. Transition.
 1. Escrow agreements approved and provided under prior versions of this section shall continue to be enforceable in accordance with their terms and the provisions of the ordinance in effect at the time of their approval, and shall in addition be subject to the remedies provided in this section.
 2. Escrow agreements approved and provided under prior versions of this section under which the original term for completion of improvements has not lapsed may be submitted to the Director for extension or replacement in accordance with the terms of the ordinance in effect at the time of their original approval provided that such an extended or replacement escrow may only be held by a financial institution approved by the County Counselor.
 3. Until April 1, 1994, notwithstanding the other provisions of this ordinance, with respect to an escrow agreement under prior versions of this section under which the original term for completion of improvements has lapsed, the Director may approve and submit to the County Council for approval a replacement escrow agreement with a third party escrow holder in a form substantially similar to escrow agreements permissible under prior versions of this section provided that such an escrow may only be held by a financial institution approved by the County Counselor, and shall be approved only if accompanied by a schedule of when improvements are to be completed approved by the Director. (O. No. 16792 - Adopted 12/9/93)

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