



### 30-4-20 Performance Guarantees

#### 30-4-20.1 Agreement and Guarantee

In lieu of requiring the completion, installation, and dedication of all required improvements prior to final plat approval or issuance of the Certificate of Occupancy, the city may enter into an agreement with the developer whereby the developer agrees to complete all required improvements within a specified period of time. Once the agreement is signed by the developer and the required financial guarantee is provided, the final plat may be approved or the Certificate of Occupancy may be issued if all other requirements of this ordinance are met. To secure this agreement, the developer must provide one or more of the following financial guarantees to cover the costs of the uncompleted improvements:

##### A. Cash, Irrevocable Letter of Credit, or Equivalent Security

1. The developer must deposit cash, an irrevocable letter of credit, or other instrument readily convertible into cash at face value either with the city or in escrow with a financial institution. The amount of deposit must be adequate to cover at least the entire probable cost of installing all uncompleted improvements, as approved by the city.
2. If cash or other instrument is deposited in escrow with a financial institution, an agreement between the financial institution and the developer must be filed with the city guaranteeing the following:
  - a. that the escrow account will be held in trust until released by the city and may not be used or pledged by the developer for any other matter during the term of the escrow; and
  - b. that in case of a failure on the part of the developer to complete required improvements covered by the guarantee, the financial institution must, upon notification by the city, immediately pay the funds deemed necessary by the city to complete the improvements up to the full balance of the escrow account, or deliver to the city any other instruments fully endorsed or otherwise made payable in full to the city.

##### B. Surety Bond

1. The developer must obtain a surety bond from a surety bonding company authorized to issue surety bonds in North Carolina.
2. The bond must be payable to the city and must be in an amount covering the entire probable cost of installing all uncompleted improvements, as approved by the city.

#### 30-4-20.2 Duration of Performance Guarantees

The duration of a performance guarantee must be of a reasonable period to allow for completion and acceptance of improvements. In no case may the duration of the performance guarantee exceed 2 years, unless the guarantee is extended with the consent of the city. The city may release a portion or all of any financial guarantee posted as the improvements are completed and approved by the city. All infrastructure necessary to serve off-site development must be completed before final release of the financial guarantee.

#### 30-4-20.3 Default

##### A. Public Improvements

Developments with public improvements that are not completed and accepted at least 30 days before the expiration of the performance guarantee will be considered to be in default. Upon default the surety bonding company or the financial institution holding the escrow account must, if requested by the city, pay to the city all or any portion of the bond or escrow fund in an amount deemed necessary by the city to complete the improvements. Upon payment, the city must expend the funds, or portion of the funds, to complete all or any portion of the required improvements. The city must return any funds not spent in completing the improvements. Default on a project does not release the developer from liability and responsibility for completion of the required improvements.

##### B. Private Improvements (engineered stormwater controls or other improvements to remain privately owned)

Developments with private improvements that are not completed and accepted at least 30 days before the expiration of the performance guarantee will be considered to be in default. Upon default the surety bonding company or the financial institution holding the escrow account must, if requested by the city, pay to the city all or any portion of the bond or escrow fund in an amount deemed necessary by the city to have the improvements completed. Upon payment, the city shall require completion of all required improvements and shall use such funds or portion thereof from the bond or escrow account to reimburse costs for all or any portion of the required improvements the city must return any funds not spent in completing the improvements. Default on a project does not release the original subdivider or developer and all subsequent subdividers and developers from liability and responsibility for completion of the required improvements.

#### 30-4-20.4 Improper Release of Financial Guarantee

If the city releases a financial guarantee through error, that error does not release the developer from responsibility for the completion of all improvements required by this ordinance.

#### 30-4-20.5 Fee in Lieu of Required Sidewalk Installation

Where the installation of sidewalk is required by an ordinance of the city, and the Transportation Director determines that installation at the time of development would conflict with a city, state, or federal roadway project planned or programmed to begin construction within 4 years, the developer must submit a fee in lieu of such installation. Fees submitted in lieu of required sidewalk installation must be in an amount of the entire estimated cost of concrete and concrete installation for sidewalks and wheelchair ramps, based on current prices as determined by the Transportation Director. All fees collected by the city pursuant to this subsection must be deposited in a city fund to be used for construction of sidewalks on the site, or in the street right-of-way abutting the site, for which the fee is collected. Use of submitted funds to construct sidewalks must be coordinated with the appropriate phase of the conflicting roadway project.

*(Amended by Ord. 10-161 on 12/1/10)*