



UNIFIED DEVELOPMENT CODE COMMITTEE A G E N D A

UNIFIED DEVELOPMENT CODE COMMITTEE
REGULAR MEETING
WEDNESDAY, OCTOBER 6, 2010
10:00 AM

DOWNSTAIRS CONFERENCE ROOM
CITY HALL
201 S. CORTEZ STREET
PRESCOTT, ARIZONA
(928) 777-1205

The following agenda will be considered by the **UNIFIED DEVELOPMENT CODE COMMITTEE** at its **REGULAR MEETING** to be held on **WEDNESDAY, OCTOBER 6, 2010, at 10:00 AM**, in **COUNCIL CHAMBERS, CITY HALL**, located at **201 S. CORTEZ STREET**. Notice of this meeting is given pursuant to *Arizona Revised Statute*, Section 38-431.02.

I. CALL TO ORDER

II. ATTENDANCE

MEMBERS

Len Scamardo, Chairman
John Hanna, Sr., Councilman
Tom Kayn
Jim Lamerson, Councilman

Tom Menser
Dick Rosa
Mary Ann Suttles, Councilwoman

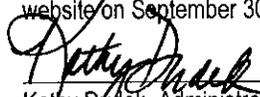
III. REGULAR ACTION ITEMS

- 1. Approve the minutes** of the June 6, 2010 meeting.
- 2. Financial Assurances.** Richard Mastin, Development Services Manager.
- 3. Off-Site Improvements.** Richard Mastin, Development Services Manager.
- 4. Building Code.** Randy Pluimer, Chief Building Official.
- 5. Other Items, Discussion Items and Future Agenda Items.**

IV. ADJOURNMENT

CERTIFICATION OF POSTING OF NOTICE

The undersigned hereby certifies that a copy of the foregoing notice was duly posted at Prescott City Hall and on the City's website on September 30, 2010 @ 4:00 P.M. in accordance with the statement filed with the City Clerk's Office.


Kathy Dudek, Administrative Assistant
Community Development Department

**UNIFIED DEVELOPMENT CODE
COMMITTEE MEETING
JUNE 2, 2010
PRESCOTT, ARIZONA**

MINUTES OF THE MEETING OF THE UNIFIED CODE COMMITTEE held on JUNE 2, 2010, in COUNCIL CHAMBERS , CITY HALL located at 201 S. CORTEZ STREET, Prescott, Arizona.

I. CALL TO ORDER

Chairman Scamardo called the meeting to order at 9:30 AM.

II. ATTENDANCE

| | |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| MEMBERS PRESENT Len Scamardo, Chairman John Hanna, Councilman Tom Kayn Jim Lamerson, Councilman Tom Menser Richard Rosa Mary Ann Suttles, Councilwoman | STAFF PRESENT Tom Guice, Community Development Director George Worley, Planning Manager Matt Podracky, Sr. Asst. City Attorney Randy Pluimer, Chief Building Official Kelly Sammeli, Code Enforcement Supervisor |
| | TRANSCRIPTION of MEETING Kathy Dudek, Administrative Assistant |

III. REGULAR ACTION ITEMS

- 1. Approve the minutes** of the May 5, 2010 meeting.

Mr. Kayn, **MOTION: to approve the minutes** of the May 5, 2010 meeting. Mr. Rosa, 2nd. **Vote: 6-0.**

- 2. Banner Regulations – LDC Table 6.12.5.C.**

Mr. Worley reviewed the proposed changes and overview of the former meeting discussions which included:

- the language as written makes banners very hard to enforce, especially the 45 day maximum;
- an annual permit with a yearly fee for one banner that would give the business the ability to change the banner during the year; and,
- a quarterly permit with a quarterly fee for one banner that would give the business the ability to determine which quarters of the year a banner might be beneficial (*this is a Chamber of Commerce suggestion*).

Members queried and remarked on:

- permanent vs. temporary signage;
- the need for regulation as the banners have gotten out of control;
- the permit fee for signs vs. banners [Mr. Worley: typically a business is allowed 50 square feet of signage with the permit fee of approximately \$39, and a banner permit for 45-days is also approximately \$39];

- what would happen if a business wanted to put up a banner in the middle of a quarter [Mr. Worley: they would have to pay that quarter's fee];
- quarterly would cause more attention from staff, more money from businesses [Mr. Worley: Council establishes fees by resolution, and the Council could modify the fees] [Mr. Guice noted that the proposed changes would not limit the number of days to 45 and would be more flexible than what now exists];
- another option would be to pay for a particular banner for a specified number of days, this would be more definitive than just 45 days, but would most likely create a larger problem for Code Enforcement;
- with a yearly permit fee, the business owner would not have to come to City Hall several times and could have one banner at a time for the year;
- the yearly fee could "roll", i.e., if the fee is paid on May 15, it would be expire on May 14 of the following year.

Ms. Sammeli noted that Code Enforcement is looking for limitations for one banner for a specified period of time. Mr. Guice noted that dealing with the problem on an annual, rolling basis would be preferred.

After extensive discussion, a consensus to have an annual permit for one banner not to exceed 24 square feet per business was reached. The present, Council-adopted fee schedule of approximately \$39, subject to increase yearly by Council resolution, will be maintained. Fees are not being increased for FY2011.

3. Citation - Hearing Officer Process, LDC, Building & Fire Codes – City Code Chapter 1-3 and 7-5.

(This item was discussed after Item #4).

A consensus was reached to modify the *Land Development Code* and *City Code* to allow a hearing officer process for violations of the Codes.

4. Downtown Parking – LDC Section 4.9.4.C.

(This item was discussed prior to Item #3).

Mr. Worley reviewed the proposed changes and the basic consensus of the Committee at the last meeting where the item was discussed. Mr. Worley indicated:

- the parking requirements will exempt buildings constructed prior to 1968;
- if a building constructed by 1968 adds additional floor space, or if a building existing prior to 1968 is torn down, or a new building is constructed, parking requirements will then apply;
- if the second or third story of a building constructed prior to 1968 wants to develop office or residential space, the building would still be exempt from parking requirements;
- the in-lieu fee will be a parking alternative for businesses that require parking, and for buildings constructed post-1968; and,
- the in-lieu fee will be paid into a fund for the City to acquire parking.

5. Parking Aisle Design Requirements – including turning radius and aisle width minimums – LDC Section 6.2.5.

Mr. Menser proposed a minor text amendment to correct a discrepancy in the *Land Development Code*. A consensus was reached by the Committee.

6. Other Items - Future Agendas, as Identified by UDC Committee.

None. Staff noted additional items will be presented for consideration at future meetings.

IV. ADJOURNMENT

Chairman Scamardo adjourned the meeting at 10:33 a.m.

Len Scamardo, Chairman

DRAFT

UDC COMMITTEE

MEMORANDUM

October 6, 2010

CITY OF PRESCOTT
PUBLIC WORKS DEPARTMENT – ENGINEERING DIVISION

TO: Unified Development Code Committee Members

FROM: Mark Nietupski, Public Works Director
Scott Tkach, City Engineer
Richard Mastin, Development Services Manager

TOPIC: Financial Assurances

INTRODUCTION:

The purpose of this item is to discuss the Financial Assurance requirements for private development of public infrastructure associated with platted subdivisions and to explore options which may be more acceptable to the financial institutions and development community while complying with the requirements of Arizona Revised Statutes.

BACKGROUND:

Financial Assurances (FA) are required to provide a funding mechanism to complete public infrastructure within platted subdivision projects should the developer begin lot sales after Plat approval and then fail to complete the public improvements leaving unsuspecting lot owners with incomplete developments and unable to secure building permits.

Arizona Revised Statutes (ARS) Title 9-463.01.C.8 follows: ***“Require the posting of performance bonds, assurances or such other security as may be appropriate and necessary to assure the installation of required street, sewer, electric and water utilities, drainage, flood control and improvements meeting established minimum standards of design and construction”*** (attached). The City of Prescott Land Development Code (LDC) Section 7.6 / Subdivision and Land Split Improvement Guarantees, requires the posting of financial assurances such as Performance Bond, Trust Agreement or Unconditional Guarantee from a Bank. Currently Financial Assurances must be posted, with no expiration date, prior to recording the Final Plat.

DISCUSSION:

Given the recent meltdown of the financial world and weak overall economy, banks and lending institutions are very reluctant to furnish any form of assurance and have not been willing to issue an open ended assurance without an expiration date. The few developments that have been processed have either posted a Performance Bond with a renewal provision (Granite Dells Estates) or several small infrastructure projects that have posted cash with the City.

Public Works performed a comprehensive survey (attached) of nineteen (19) Arizona Municipalities to determine which form(s) of financial assurance they used, if they are open ended (no expiration date) and pros and cons for the various assurance methods. The most widely accepted assurance forms are Performance or Surety Bonds, Cash and Letters of Credit. Most communities required an expiration date which is in contrast to Prescott.

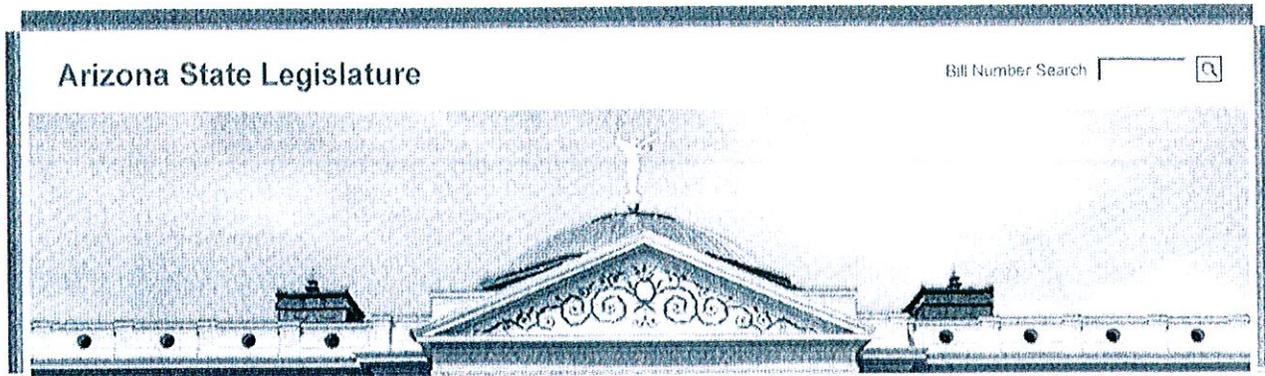
In the past Prescott has used the Assurance of Construction of Subdivision Improvements (attached) for posting the majority of FA. The developer would secure a loan with the lending institution or deposit other monies; subsequently the financial institution would prepare the FA based on the estimate from the engineer of record for City approval. This method worked well until the financial meltdown occurred.

The developers of the Tamarack Estates subdivision have recently asked the City if the requirement for FA could be released. The subdivision was approved by Council on November 13, 2007; the FAs were posted on July 2, 2008. We have been told that due to the economy the developers have not sold any lots or begun any infrastructure improvements to date. They are paying approximately \$5,000.00 per year in bond premium, which continues to add-on to the overall subdivision lot cost and hence the reason for their request.

The City Attorney's office is currently canvassing other Arizona Municipalities to determine their experience with FA and if they have received similar requests to release the FA requirement for developments which have no lot sales and have not begun any public infrastructure construction. They will report their findings at the Meeting.

DISCUSSION POINTS:

1. Should the City continue requiring open ended FA with no expiration date?
2. For developments with no lot sales and no infrastructure begun, should the City prepare and record an agreement with the developer, that "runs with the land" to release the FA, which would prohibit any lot sales or infrastructure construction until such time as the FA are posted again and the infrastructure plans are approved?
3. Should the City require a title report with insurance verifying, that at the time of recording the FA release agreement, all subdivision lots are owned by the developer?



Forty-ninth Legislature - Second Regular Session

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9-463.01. Authority

A. Pursuant to this article, the legislative body of every municipality shall regulate the subdivision of all lands within its corporate limits.

B. The legislative body of a municipality shall exercise the authority granted in subsection A of this section by ordinance prescribing:

1. Procedures to be followed in the preparation, submission, review and approval or rejection of all final plats.
2. Standards governing the design of subdivision plats.

3. Minimum requirements and standards for the installation of subdivision streets, sewer and water utilities and improvements as a condition of final plat approval.

C. By ordinance, the legislative body of any municipality shall:

1. Require the preparation, submission and approval of a preliminary plat as a condition precedent to submission of a final plat.

2. Establish the procedures to be followed in the preparation, submission, review and approval of preliminary plats.

3. Make requirements as to the form and content of preliminary plats.

4. Either determine that certain lands may not be subdivided, by reason of adverse topography, periodic inundation, adverse soils, subsidence of the earth's surface, high water table, lack of water or other natural or man-made hazard to life or property, or control the lot size, establish special grading and drainage requirements and impose other regulations deemed reasonable and necessary for the public health, safety or general welfare on any lands to be subdivided affected by such characteristics.

5. Require payment of a proper and reasonable fee by the subdivider based upon the number of lots or parcels on the surface of the land to defray municipal costs of plat review and site inspection.

6. Require the dedication of public streets, sewer and water utility easements or rights-of-way, within the proposed subdivision.

7. Require the preparation and submission of acceptable engineering plans and specifications for the installation of required street, sewer, electric and water utilities, drainage, flood control, adequacy of water and improvements as a condition precedent to recordation of an approved final plat.

8. Require the posting of performance bonds, assurances or such other security as may be appropriate and necessary to assure the installation of required street, sewer, electric and water utilities, drainage, flood control and improvements meeting established minimum standards of design and construction.

D. The legislative body of any municipality may require by ordinance that land areas within a subdivision be reserved for parks, recreational facilities, school sites and fire stations subject to the following conditions:

1. The requirement may only be made upon preliminary plats filed at least thirty days after the adoption of a general or specific plan affecting the land area to be reserved.

2. The required reservations are in accordance with definite principles and standards adopted by the legislative body.

3. The land area reserved shall be of such a size and shape as to permit the remainder of the land area of the subdivision within which the reservation is located to develop in an orderly and efficient manner.

4. The land area reserved shall be in such multiples of streets and parcels as to permit an efficient division of the reserved area in the event that it is not acquired within the prescribed period.

5. The public agency for whose benefit an area has been reserved shall have a period of one year after recording the final subdivision plat to enter into an agreement to acquire such reserved land area. The purchase price shall be the fair market value of the reserved land area at the time of the filing of the preliminary subdivision plat plus



Financial Assurances in the State of Arizona
January 25, 2010

Over the past 6 weeks staff has surveyed responses from 19 communities in the State of Arizona relating to financial assurances. Staff researched City/Town Code requirements and had personal conversations with representatives of those communities to determine how their financial assurances fared in the downward market trend and how their community performed in terms of failing projects and the ability to deal with defunct projects and bankrupt developers.

Every community surveyed has codes in place requiring a financial assurance to facilitate the completion of the infrastructure to municipal standards prior to recording of the final plat. The most commonly used financial assurances are Surety or Performance Bonds, Cash, Letters of Credit, Loan Commitment, Trust or Third Party Trust Agreements, Lot Sale Prohibition Agreements and Certificate of Occupancy Holds. Exhibit A lists these forms of assurance and the advantages and disadvantages of each as experienced by the communities surveyed. Alternative forms of assurances may also be considered, but generally they must be approved by Council and sometimes the P&Z Commission.

Results of the survey indicate that the main reason so many communities are now left with partially done projects is because private developers were able to post financial assurances and record a final plat prior to the infrastructure being completed and accepted by the City. After the plat is recorded a developer can file for a public report through the Department of Real Estate (DRE) and begin selling lots if they have met all other DRE requirements.

Those communities that entered into agreements preventing the recordation of the plats and/or the ultimate sales of the lots fared better than those that did not in terms of completing abandoned projects. Cities like Flagstaff, Bullhead City, Queen Creek and Tucson fared the best statewide due to the fact that they used Lot Sale Prohibition Agreements and Land Trust or other types of Trust Agreements, which prevented the sale of lots to individuals. Communities that were able to effectively monitor the expiration dates on Bonds or Letters of Credit prior to completion of infrastructure and had the public financial resources to complete an unfinished project also fared well in terms of getting projects finished.

Several communities, such as Cave Creek, Flagstaff, Scottsdale and Maricopa have already revised or are in the process of amending their ordinances and policies to more effectively enforce the assurances needed to complete infrastructure on projects defaulted on by the development community in these challenging economic times.

In addition to dealing with partially completed infrastructure, Cities and Towns have been faced with mitigating other issues such as air quality and erosion control from mass graded areas that did not install or maintain best management practices (BMP). Life/safety concerns are being addressed through nuisance laws and abatement. Most of the communities surveyed do not have the financial or manpower resources to collect the financial assurances and complete the development. As a

result several communities state-wide have chosen to secure these partially developed sites for life/safety issues in order to mitigate potential litigation until a new developer comes in to finish them. The cost of nuisance abatement is then recorded as a lien against the property.

There is no simple solution to this issue because it is not just about adopting new codes. Even if a City/Town will accept specific forms of financial assurances it does not mean a bank or lending institution will readily give them one. According to David Jensen, Senior Vice-President for Willis of Arizona, Surety companies are still writing bonds for developers, but have tightened up their underwriting requirements. Bonds are still written using a form similar to the City of Prescott's form without an expiration date but it requires strong financial underwriting of the developer and the project. There are no new industry standards, but the Surety Companies have experienced some losses in the hardest hit areas of the U.S. If contractors and developers aren't able to get bonds, it is most likely due to their financial condition and lack of financing for the project.

Within the last year, Dick Mastin, PW Department has had several discussions with Wells Fargo, Country Bank and National Bank regarding expiring financial assurances and defunct projects here within the City limits. Wells Fargo and Country Bank are no longer providing any assurances or bonds for construction and National Bank will post bonds but they must have an expiration date.

Attached to this report is a comparison of the types of assurances accepted by all 19 City/Towns that participated in this survey. (Exhibit B)

Based on staff's research, a bulletproof assurance program would be difficult to achieve as the City is faced with various challenges. Primarily the issues are:

#1 Is the City obligated to cash in a financial assurance and complete a project which a developer fails to complete?

When the City requires a financial assurance from a developer there is an assumption by individual owners that the City has an obligation to complete the project if the developer does not. Even though this presumption is not true the public perception is the City is financially responsible to complete the project and the partially completed project can become a public issue if the City does not deal with basic nuisance and life/safety issues.

#2 What does the City do with projects that started construction but did not finish and the financial assurance is no longer valid?

When there is no longer a valid financial assurance projects should be secured for life/safety issues as well as nuisances and wait until a new developer/owner comes in to complete the project. The City can file a lien for abatement costs against the property, which would be recovered when a new developer/owner bought it.

#3 What will the City do with projects that posted a financial assurance and recorded a plat but did not start the work and the financial assurance is no longer valid?

When a developer records the final plat this allows the selling of lots to unsuspecting business and home owners. In lieu of un-recording the plat or attempting to pull the public report, the City should consider entering into a Lot Sale Prohibition Agreement with the current owner to prevent the selling of lots until infrastructure has been completed. The benefit to the developer is they do not have to un-record the plat or pull the public report, which enables them to market the project to

other developers who would then post their own financial assurance to complete the work. One of the drawbacks to this scenario is the committed allocation of water for a project may not come to fruition for some time and the new developer may run the risk of missing the opportunity to secure assured water for the project.

#4 Does the City have the resources to complete a project that started but was not finished when the financial assurance is still valid?

If the financial assurance is still valid but the developer has not completed the work, the project could be completed if there are sufficient monies left in the financial assurance for the City to do so. This would need to be evaluated on a case by case basis. Several factors must be considered: 1) How far along is the project? 2) Are there concerns for life/safety and nuisance issues? 3) Are there sufficient public resources to complete the project? 4) What is the estimated cost to complete the project infrastructure to City standards?

#5 What does the City do with projects that have an approved final plat from the Council but did not post a financial assurance or start any work?

During the market decline over the last couple years several developers have come before the Council requesting that the Council grant an extension on an already approved Final Plat. In those instances, developers have not recorded the plat and Council approval expires after only one year. In this example the City could consider approving the plat and entering into a Lot Sale Prohibition Agreement, effectively giving the developer an unlimited amount of time to market the project. This would allow a developer to record the plat and market the lots in phases either for themselves or to another developer who would then come in and post a valid financial assurance. One drawback to this scenario is the committed allocation of water for a project that may not come to fruition for some time and the new developer may run the risk of missing the opportunity to secure assured water for the project.

#6 Should the Code be amended to allow for more flexibility with future financial assurances?

The City should look at amending its code to include other forms of financial assurance. The ultimate goal is to achieve balance between allowing a developer to record a plat, file for public report and market lots but not selling them or closing escrow with unsuspecting buyers until the improvements are complete. This can be accomplished with financial assurances such as Lot Sale Prohibition Agreements, Property Escrow Accounts and Trust Agreements which have a third party, generally a title company, that monitors the release of lots based on the City's approval. The title company becomes an ally of the City because they can charge fees to the owner/developer for maintaining the trust as well as when escrow closes. Therefore they have a vested interest in monitoring assurance expiration dates so they can bill their clients. These types of assurances will show up on a title report and most buyers are savvy enough to question the encumbrance upon their title.

Bonds are still the preferred method of assurance since the obligation for action always remains with either the applicant or the surety company. Because banks are taking less risk, Bonds and Letters of Credit will be more difficult to secure without expiration dates based on the developer's credit and funding availability. Expiration dates however add administrative oversight from Public Works staff for every project.

FORMS OF FINANCIAL ASSURANCES USED IN ARIZONA

Assurance through Loan Commitment

This form of assurance is similar to cash as monies are deposited with a lending institution and the City/Town is the beneficiary of the agreement. The City Engineer releases disbursements of funds to the developer as the project progresses. The Town of Cave Creek, Town of Prescott Valley, Town of Chino Valley and City of Goodyear employ this form of Assurance.

Advantage: The advantage to using a loan commitment is the City/Town could perform the work themselves or contract to have work completed if the developer does not complete the work. Expiration dates don't need to be monitored by staff and building permits can be withheld by the City until an acceptable level and standard of improvements have been completed.

Disadvantage: The disadvantage is that the final plat can be recorded and lots could be sold, thus putting private property owners at the mercy of the developer's schedule, the City's schedule and the requirements of the local and state procurement policies should they default. Additionally, the quality of the infrastructure and the timing of the work is dependent on whether or not there are enough funds left in the financial assurance to cover the remaining cost of improvements as time passes and cost fluctuation, as a function of the market, could be a factor in whether or not the City/Town can complete a project.

Bonds (Surety, Performance or Warranty)

Surety or Performance Bonds are accepted by all nineteen of the communities surveyed. Of those, twelve require that the document have an expiration date. This date normally coincides with the required completion date of the work as set by Council with approval of the final plat. Warranty or maintenance bonds are also common and may be posted separately at the completion of the construction during the warranty period of the project to protect against default after the lots have been sold.

Advantage: The advantage to using a Surety Bond is that the obligation for action always remains with either the applicant or the surety company; where with other forms, the City would be financially obligated to complete the construction of the developer's infrastructure.

Disadvantage: The disadvantage to using bonds is staff must monitor the expiration date(s) and not allowing them to expire before the work is done. Several communities use software programs to monitor the expiration dates of these documents, similar to TrakIt. One development can have several at the same time with varying expiration dates.

Cash or Certificates of Deposit

Cash deposits are generally accepted in all of the communities surveyed. Of the nineteen, sixteen specifically accept cash. Cash assurances are required to be deposited into an account or have a trust agreement document that guarantees that the money may only be released from the bank and/or title company with City/Town approval. Certificates of deposit and certified checks are also monitored and released like cash deposits.

Advantage: The advantage to cash deposited in a bank is the City/Town could perform the work themselves or contract to have work completed if the developer does not complete the work. Staff is not required to monitor expiration dates and building permits can be withheld by the City until an acceptable level of improvements has been completed.

Disadvantage: The disadvantage is that the final plat can be recorded and lots could be sold, thus putting private property owners at the mercy of the developer's schedule, the City's schedule and the requirements of the local and state procurement policies should they default. Additionally, the quality of the infrastructure and the timing of the work is dependent on whether or not there are enough funds left in the financial assurance to cover the remaining cost of improvements as time passes and cost fluctuation, as a function of the market, could be a factor in whether or not the City/Town can complete a project.

Certificate of Occupancy Hold

Of the communities staff talked to, several considered the use of C of O Holds, but ultimately rejected it as an acceptable form of assurance. In this case the City would issue building permits regardless of the status of the infrastructure however no Certificates of Occupancy would be granted until the infrastructure was complete. Only the City of Peoria allows residential C of O holds by code. The City of Phoenix and Pima County did not participate in this survey however research revealed that they accept residential C of O Holds. This method of assurance is more commonly used for commercial projects.

Advantage: The developer can record the plat, sell lots and begin building homes right away. If the timing is right this method can save the developer a lot of time by building the houses and the infrastructure at the same time. Also, there are no expiration dates to monitor.

Disadvantage: If a developer fails to perform the City/Town has no recourse to make the developer finish and unsuspecting property owners cannot occupy their finished homes. The political backlash of having home owners standing in front of council or the media complaining about not being able to occupy their completed home and wanting to know what the City is going to do about it could become both a political and management nightmare.

Completion of Work First

Completion of infrastructure prior to recording of the final plat is not an official form of assurance, but it is a method used by at least four communities to ensure that infrastructure is completed prior to the recording of the plat and sale of lots. In this case the developer would receive Council approval of the plat, enter into a "Financial Assurance Agreement" or "Subdivision Improvement Agreement" and then have a 1-2 year expiration date to complete the work. If work is completed

and accepted within the specified timeframe then the plat can be recorded. This is used in Bull Head City, Chino Valley, Camp Verde, Kingman, Cave Creek and Carefree.

Advantage: The final plat is not recorded until work is done and accepted by the City/Town, thus lots cannot be sold to individuals until work is complete. The City/Town has recourse through the agreement with current and future owners.

Disadvantage: A project could begin and not be completed for a long period of time. The only incentive to finish is the potential sale of lots unless the City/Town requires them to enter into an agreement with a completion date, although most will grant extensions if requested. Developers which go defunct may have developments that sit for a long time until another developer can complete it. This opens the door to nuisance and life/safety issues.

Letter of Credit

A Letter of Credit is the second most commonly recognized form of financial assurance. Of the nineteen communities surveyed, sixteen accept letters of credit. Of those, fifteen require an expiration date on the document. As with bonds the expiration date runs concurrently with the required completion date of the project, which is approved by the Council. Only the Town of Camp Verde specifically prohibits a Letter of Credit from having an expiration date. The Town of Prescott Valley does not accept letters of credit at all because they believe they are only as good as the credit of the developer. If a development is in trouble most likely the developer credit rating is too.

Advantage: Almost all letters of credit are irrevocable. They cannot be amended or cancelled without prior agreement of the beneficiary (the City), the issuing bank and the confirming bank. City/Town could perform the work themselves or contract to have work completed.

Disadvantage: The disadvantage is the final plat can be recorded and lots could be sold. Letters of Credit normally have an expiration date and that must be monitored by the City staff to ensure that work is completed before expiring. Completing the project is then the financial responsibility of the City/Town.

Lot Sale Prohibition Agreement

This form of Financial Assurance was created by the City of Maricopa in-lieu of un-recording final plats. The City enters into a Development Agreement with the developer, which outlines the terms of the Lot Sale Prohibition. The developer is then allowed to record the final plat and also records a Lot Sale Prohibition document against each lot in the development. The Lot Sale Prohibition Agreements are not released until such time as a new developer or the current developer posts an acceptable financial assurance to complete the infrastructure for the project. This method is also used by the Town of Queen Creek.

Advantage: It is only used for developments that have not started construction, have not sold any lots and is intended as a one-time measure with the expectation that the financial assurance will be replaced by the Lot Sale Prohibition in the future and improvements will be constructed when the market is viable. It also gives the potential for a master developer to sell off phases of the project if the new developer can post their own

financial assurance for a phase or phases of the project. Additionally, there are no expiration dates to monitor.

Disadvantage: Implementation and release of the prohibition is done on a lot by lot basis, which can generate copious amounts of paperwork and require significant amounts of staff time to manage these documents.

Property Escrow Accounts

Property Escrow Accounts or Trust Agreements are set up with a title insurance escrow company. In this scenario the plat may be recorded so that the lots may be offered for sale. The lots may not close escrow with the title company however, until they are released by the City/Town. Both Bullhead City and City of Kingman use property escrow accounts.

Advantage: Allows the developer to take lot reservations, but not sell lots or pull building permits until the required infrastructure is complete. Release of funds from the escrow account must be approved by the City/Town. There is no monitoring of expiration dates.

Disadvantage: Implementation and release is done on a lot by lot basis, which can generate copious amounts of paperwork and require significant amounts of staff time to manage these documents.

Trust Agreements or Third Party Trust Agreements

With this form of assurance the City, the developer/owner and the title company are parties of the trust. To sell a lot the developer/owner requests permission to sell a lot from the title company. The City must approve the sale of the lot or the title company cannot sell it. City of Tucson, Camp Verde and Town of Marana use Third Party Trusts or Trust Agreements to prohibit sales prior to infrastructure being complete.

Advantage: Allows developer to take lot reservations, but not sell lots or pull building permits until the required infrastructure is complete. The title company has a vested interest in monitoring lot releases as they get paid for each close of escrow and collect fees to monitor the trust until all lots are released. Additionally, there are no expiration dates to monitor.

Disadvantage: Implementation and release of the Trust is done on a lot by lot basis, which can generate copious amounts of paperwork and require significant amounts of staff time to manage these documents.

Alternative Methods of Financial Assurance

Alternative methods of financial assurances that are not listed above are always considered, but they often require P&Z and/or Council approval.

CITY/TOWN COMPARISON OF FINANCIAL ASSURANCES

| City/Town | Bonds | Bond Expire? | Cash | C of O Hold | Letter of Credit (LOC) | LOC Expire? | Complete improvements prior to recording FP | Other |
|-----------------------------------------------------------|-----------------------|----------------------------------------------|------------------|-------------|----------------------------------------------------------------------------------------------------------------|-------------|---------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Avondale Tracy Stevens 623-333-4012 | Yes | Yes | Yes | | Yes | Yes | | 1. All developers are required to enter into an "Agreement to Install Improvements when the plat is approved." 2. They only have one development where the owner went bankrupt and didn't finish the project. City fixed nuisances and safety hazards. Sold the 2 models that were being vandalized and the rest of the development sits for someone else to pick it up. Monitor expiration dates on other assurances. |
| Bull Head City Janice Paul 928-763-9400 | Yes, Performance Bond | Yes, All assurances have a 2 year expiration | Yes | No | Yes, Unconditional guarantee from bank or savings and loan company. All assurances have a 2-year expiration | Yes 2-years | Yes | 1. All assurances or partial assurances must be released by CC action. 2. Use property escrow accounts with a title insurance escrow company. Agreement between escrow company and City Council where property held in escrow until released by Council. Not lots shall be offered for sale until improvements are completed. |
| Camp Verde Mike Jenkins 928-567-8513 x119 | Yes, Performance Bond | No | Yes, Trust Agrmt | | Yes, Unconditional guarantee from a local bank. | No | Yes | 1. Trust Agreements deposited in a bank with periodic withdrawals approved by the Town. 2. Other methods of assurance must be receive a recommendation by P&Z Commission and approved by Council. |
| Carefree Gary Neiss 480-488-3686 | Yes, Surety Bond | No | Yes Escrow Acct | No | No | N/A | | 1. The property owner is required to execute a "Subdivision Improvement Agreement" prior to the approval of the Final Plat which obligates the current or future owner to maintain a financial assurance. Events of Default are defined in the agreement (Section 3.3)(<i>Example Agreement Attached</i>) 2. Also accept Certificate of Deposits or certified checks held in an escrow account. |

| City/Town | Bonds | Bond Expire? | Cash | C of O Hold | Letter of Credit (LOC) | LOC Expire? | Complete improvements prior to recording FP | Other |
|-----------------------------------------------------|-------------------------|------------------------|------|-------------|------------------------------------------------------------------------------|-----------------------|---------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Cave Creek Ian Cordwell 480-488-6626 | Yes Performance Bond | Yes NLT 2- years | Yes | No | Yes | Yes NLT 2-years | | <p>1. Assurance through Loan Commitment also an alternative by depositing monies with a lending institution and the Town is the beneficiary of the agreement with Town Engineer approving each disbursement.</p> <p>2. Redoing their subdivision ordinance including FA. Will send draft ordinance over for this report.</p> <p>3. Had a bonding company that went under, also had developer sell 75% of lots without a public report, still dealing with those. C of O holds was suggested but not yet adopted.</p> |
| Chandler Darrel 480-782-3336 | Yes, Surety Bond | No, Surety Bonds | | | Yes, have a rider to leave open until the construction project is completed. | Yes 1-year | | <p>1. If developer is dissolved then the bonds are released. When a new developer takes over they start all over with a new assurance.</p> <p>2. Warranty Bonds ok – 1 year expiration with 3 month extensions done automatically until work completed.</p> |
| Chino Valley Pat Clingman 928-636-4427 | Yes, Surety Bond | No | Yes | No | No | N/A | Yes | <p>1. Allow Assurance of Construction through Loan Commitment. Town is beneficiary, PW Director approves disbursements.</p> <p>2. Alternative assurances are considered by Council such as contractual agreements with an approved lender or a Performance Deed of Trust placing the Town in first lien position.</p> |
| El Mirage Mark Smith 623-876-2935 | Yes | Yes | | No | Yes | Yes | | <p>1. City Council specifies a completion date for the improvements as part of plat approval, extensions must be requested to CC.</p> <p>2. This City is largely built out so they have few pending improvements. They do require that performance bonds do not expire for a minimum of 1 year after acceptance of project through the warranty period.</p> |
| | | | | | | | | |

| City/Town | Bonds | Bond Expire? | Cash | C of O Hold | Letter of Credit (LOC) | LOC Expire? | Complete improvements prior to recording FP | Other |
|---------------------------------------------------|-------------------------|--------------|---------------------|-------------|------------------------|---------------|---------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Flagstaff Chris Darnell 928-779-7692 | Yes Performance Bond | Yes/No | Yes | | Yes | Yes 1-year | | <p>1. Most but not all bonds and LOC have an expiration date of 1-year. Flagstaff also allows certificate of deposit and pledge of collateral. Code says the period within which the improvements must be completed shall be incorporated in the docs of the assurance and shall not exceed 1-year from date of Final Plat approval.</p> <p>2. They currently have one large (700+) lot development that they are cashing in the bond and will finish this year.</p> |
| Goodyear Harvey Krauss 623-882-7950 | Yes | Yes | Yes | No | Yes | Yes | | <p>1. Letter of Assurance from a Bank is acceptable if City is beneficiary and City Engineer approves all disbursements.</p> <p>2. They do have several ½ finished or bankrupt developments, but there is no occupancy and no building permits until all improvements are completed. OR if minimum level of basic improvements are done (ig water, sewer, utilities, roadways) then building permits can be issued but the amount of the assurance is reduced until parks and miscellaneous items are done.</p> <p>3. Fencing and other safety items are addressed for partially completed developments through the City's nuisance laws. The new developer would then pay any costs associated with securing the site.</p> |
| Kingman Tom Duranceau 928-753-8131 | Yes | Yes | Yes, Escrow Acct | | Yes | Yes | Yes | <p>1. Council currently unwilling to go in and use the assurances they have to finish jobs in process. Only moving forward with completing projects that affect current residents or other projects. All other assurances and project are sitting.</p> <p>2. Property Escrow Account can be set up with a title insurance company, whereby no lots may be offered for sale until improvements are completed. The Council must release the property for sale by the Developer.</p> |

| City/Town | Bonds | Bond Expire? | Cash | C of O Hold | Letter of Credit (LOC) | LOC Expire? | Complete improvements prior to recording FP | Other |
|----------------------------------------------------------|--------------------|----------------|--------------------|-------------|------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------|---------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Marana Keith Brandt 520-382-2600 | Yes | Yes 2-years | Yes | No | Yes | Yes 2-years | | <p>1. Third party trusts in which funds and lot releases are monitored by a title company after approval by the Town. Only those lots are released which have accepted infrastructure.</p> <p>2. Still have several ½ built developments with people living in houses that have water, sewer and streets, but no parks or other amenities because the developer walked away. They secure the sites and wait for next developer to come in and pick up where the last one left off.</p> |
| Maricopa Brent Billingsly 520-316-6942 | Yes | No | Yes | No | Yes, are difficult to track. The same development could have several and from different companies and often expire without being caught. | Yes 2-years | | <p>1. C of O Hold is an option they chose not to use because it is politically difficult.</p> <p>2. Lot Sale Prohibition Agreement. Tied to a DA. Allows recording of Final Plat but no sale of lots until financial assurances are posted and improvements are done. Do not deviate from financial assurance policy but do have to release the lots from the Prohibition Agreement through a recorded document. <i>(Example Attached)</i></p> |
| Peoria Andy Granger 623-773-7215 | Yes Surety Bond | No | Yes Escrow Acct | Yes | Yes | Yes By completion date per City | | <p>1. They don't have the staff to go after bonding companies so unless there are significant safety issues they are waiting for new developers to come in and complete the project.</p> <p>2. There are standard assurance templates used by the City for bonds, letters of credit, escrow accounts and C of O Holds <i>(Examples attached)</i></p> |
| Prescott Valley Richard Parker 928-759-3051 | Yes | No | Yes | | Do not accept Letters of Credit because they are only as good as the credit of the developer. | N/A | | <p>Recently abandoned a plat and pulled the public report so that lots could not be sold on a subdivision that started improvements but did not complete them.</p> <p>Assurance of Construction through loan commitment allowed with Town as the beneficiary.</p> <p>Releases of funds by Town Engineering.</p> |

| City/Town | Bonds | Bond Expire? | Cash | C of O Hold | Letter of Credit (LOC) | LOC Expire? | Complete improvements prior to recording FP | Other |
|-------------------------------------------------------------------------|------------------------------|--------------------------------|------|-------------|-------------------------------------------------------------------------------------------------------------------|---------------|---------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Queen Creek Pam Weisshaar 480-358-3000 | Yes | Yes Warranty Bonds – 1 year | Yes | | Yes, City may draw on the LOC up to 10 days before the assurance expires if the developer fails to renew the LOC. | Yes | | 1. Lot Sale Prohibition can be offered to a developer in-lieu of un-recording the plat. This option is only available for projects that have not started construction and have not sold any lots and is intended as a one-time measure with the expectation that the assurance be replaced and the improvements constructed. Recorded document on all lots and tracts that no lots or tracts can be sold, conveyed or leased by owner until a termination of the prohibition is signed and recorded by the Town. <i>(Sample Attached)</i> |
| Scottsdale Joe Morris | Yes Corporate Surety Bond | Yes | Yes | | Yes | Yes | | 1. Must use City forms when providing assurance of construction. 2. Best insurance is to with hold building permits until the infrastructure is complete. 3. Only accept bonds, LOC or Cash. No alternate methods are allowed and time limits are always used, but established by the developer within reason. |
| Tucson Matt Flick 520-837-4931 | Yes Performance Bond | Yes 2-year | | | Yes | Yes 2-year | | Third party land trusts are used naming the City as a party. The title company holds the trust for the beneficiary, the developer/owner. When they request permission to sell a lot the City must ok it first. Only 75% of residential lots and 60% of commercial lots can be released prior to acceptance of all infrastructure. |
| Yuma Richard Files or Andrew McArvy (Attorney) 928-373-5058 | Yes Surety Bond | Yes | Yes | | Yes, They expire but they also have a clause for annual renewal that is automatic. | Yes | | 1. Personal bond co-signed by one additional person. 2. Certificates of deposit. |

Assurance of Construction of Subdivision Improvements in
_____ Subdivision
_____ (Date)
Page Two

In the event the City does not draw the undisbursed balance of the funds within 365 days of such written notice to the Financial Institution, the Financial Institution shall have the option to draw upon the undisbursed balance of said funds and complete the Subdivision Improvements through its agents or as it, in its sole discretion, may elect in accordance with the Construction Loan Agreement in order to complete construction of the Subdivision Improvements in the above-referenced subdivision.

5. The Assurance of Construction of Subdivision Improvements shall remain in full force and effect until the City of Prescott Accepts and releases the improvements.

(Financial Institution)

(Developer)

By: _____

By: _____

APPROVED BY:

City Engineer, City of Prescott

Finance Director, City of Prescott

UDC COMMITTEE

MEMORANDUM

October 6, 2010

CITY OF PRESCOTT
PUBLIC WORKS DEPARTMENT – ENGINEERING DIVISION

TO: Unified Development Code Committee Members

FROM: Mark Nietupski, Public Works Director
Scott Tkach, City Engineer
Richard Mastin, Development Services Manager

TOPIC: Off-Site Improvement Ordinance

INTRODUCTION:

The purpose of this item is to discuss the requirements of the Off-Site Improvement and the implications it has on small development projects.

BACKGROUND:

City Council adopted the Off-Site Improvement Ordinance No. 1443 on June 23, 1980. The Off-Site Improvement Ordinance is Title 14 of the City Code (attached). The intent of the Ordinance is to require any new buildings or changes and/or improvements to existing buildings and properties to construct or pay for all required off-site infrastructure improvements for the site and extend improvements across frontage(s) of the site. The improvements would include curb, gutter, sidewalks, streets, drainage facilities, alleys, right-of-way dedications and all utilities. The only exception to the requirements of the Ordinance is a structure zoned solely for a single family residence.

For residential and commercial subdivisions, the owner/developer has a basic understanding that off-site infrastructure improvements are required to serve both the proposed development and also to extend the infrastructure across the project boundaries to serve future developments. However, for small infill projects and additions or changes to existing structures, the Off-Site Improvement Ordinance is an unknown concept and difficult to understand for the individual property owner or small business owner. Sometimes the Ordinance has significant cost impact depending on the lot size, configuration, access and if it's on a corner.

Generally the Ordinance impacts property owners with smaller lots in the downtown area with multi-family and business zoning. Owners are either constructing additional residential units, converting some homes to commercial office and businesses are changing uses to meet market demands which subsequently trigger the Ordinance. Many of these properties are fronted on substandard streets and alleys which require the installation of curb, gutter, sidewalk, handicap ramps and paving improvements to bring the facilities up to current City Standards. Public Works generally requires payment for the improvements in lieu of constructing because typically there is no engineering design for these streets.

To date the City has collected \$75,800.00 for Off-Site Improvement fees.

DISCUSSION:

1. Does the City wish to consider establishing a minimum lot size, such as half-acre or one-acre to apply the Ordinance?

**TITLE XIV
OFF-SITE IMPROVEMENTS**

CHAPTERS:

14-1: OFF SITE IMPROVEMENTS

14-2: ASSESSMENT FOR STREET CONSTRUCTION

CHAPTER 14-1: OFF-SITE IMPROVEMENTS

SECTIONS:

- 14-1-1: APPLICABILITY OF CHAPTER:
- 14-1-2: OFF SITE IMPROVEMENTS REQUIRED:
- 14-1-3: DETERMINATION OF EXTENT OF OFF SITE IMPROVEMENTS:
- 14-1-4: APPROVAL OF OFF SITE IMPROVEMENT PLANS:
- 14-1-5: COMPLETION OF OFF SITE IMPROVEMENTS:
- 14-1-6: EXCEPTIONS:
- 14-1-7: NONCONFORMING LOT RESULTING FROM DEDICATION OF RIGHT OF WAY:
- 14-1-8: COMPATIBILITY WITH PRESCOTT LAND DEVELOPMENT CODE:
- 14-1-9: CIVIL VIOLATION:

14-1-1: APPLICABILITY OF CHAPTER:

- (A) This chapter shall apply:
 - 1. When a new building is being constructed.
 - 2. When an addition to an existing building is being constructed, and the addition is valued at fifty percent (50%) or more of the building's value prior to the addition.
 - 3. When an interior or exterior remodeling is done, and the value of that remodeling is fifty percent (50%) or more of the building's value prior to the remodeling.
 - 4. When there is any change in use or change in allowed use for which any city approvals are required.
- (B) This chapter shall not apply to a structure which is zoned solely for single-family residential purposes.
- (C) Subsections 14-1-2(A), (C), (E) and (F) of this chapter shall not apply to a property which is scheduled for those improvements in accordance with a capital improvement plan as adopted by the city council. (Ord. 3469, eff. 2-22-1996; amd. Ord. 3652, eff. 8-21-1997)

14-1-2: OFF SITE IMPROVEMENTS REQUIRED:

- (A) Asphalt concrete surfacing, grading, and aggregate base of a roadway or alleyway.

- (B) Traffic control devices and signalization.
- (C) Construction or repair of concrete sidewalks abutting the property.
- (D) Installation of fire hydrants to service the property.
- (E) Construction or repair of curb and gutter which abuts the property.
- (F) Dedication of right of way.
- (G) Completion of traffic area impact studies, or financial contribution towards the cost thereof.
- (H) Utility upgrades to adequately service the property.
- (I) On site and/or off site drainage facilities or improvements. (Ord. 687, 11-9-1964)

14-1-3: DETERMINATION OF EXTENT OF OFF SITE IMPROVEMENTS:

- (A) The improvements required by subsections 14-1-2(A), (B), (G) and (I) of this chapter shall be determined based upon an individualized determination to be made by the public works director that the required improvement (or proportionate amount thereof) is related both in nature and extent to the proposed use of the property.
- (B) The improvements required by subsection 14-1-2(F) of this chapter shall be determined based upon an individualized determination that the required dedication is related both in nature and extent to the proposed use of the property, said determination to be made pursuant to a traffic impact analysis. The public works director shall determine whether or not a traffic impact analysis is required; in that event that such an analysis is required, it shall be paid for by the property owner, and shall be performed by an independent third party acceptable to the public works director.
- (C) In the event that the traffic impact analysis required pursuant to subsection (B) of this section determines that right of way dedication is not required, then and in that event the city of Prescott shall be responsible for paying for the actual cost of said analysis.
- (D) Notwithstanding the provisions of subsection (B) of this section, right of way dedication may be accepted by the city if the property owner voluntarily agrees to dedicate said right of way without the necessity of obtaining a traffic impact analysis. (Ord. 3684, eff. 11-27-1997)

14-1-4: APPROVAL OF OFF SITE IMPROVEMENT PLANS:

- (A) Approval of off site improvement plans consisting of designed and engineered plans shall be prerequisite to the issuance of a building permit. Off site improvements shall be constructed in accordance with the plans approved by the public works director and in accordance with "The Standard Detail Drawings And Uniform Standard Specifications For Public Works Construction".
- (B) When off site improvements are waived and a cash deposit is made in lieu thereof in accordance with section 14-1-5 of this chapter, the submittal of off site improvement plans consisting of designed and engineered plans are not required as a prerequisite to the issuance of a building permit or the issuance of an occupancy permit by the building official. (Ord. 687, 11-9-1964)

14-1-5: COMPLETION OF OFF SITE IMPROVEMENTS:

- (A) Completion of the required off site improvements is a prerequisite to the issuance of a certificate of occupancy by the building official, unless an earlier completion date is required as a condition of city approval in accordance with subsection 14-1-1(A)4 of this chapter. Improvements will be considered complete when they have been inspected and accepted by the public works director, who shall certify in writing to the building official that the required off site improvements have been constructed in accordance with the approved plans.
- (B) If the public works director determines, in his sole discretion, that off site improvements are applicable, but should not be constructed by the property owner, the public works director may waive actual construction of said improvements and require, in their place, a deposit in cash by, or on behalf of, the applicant or property owner, in an amount estimated by the public works director to cover the costs of the installation of such off site improvements. All such sums deposited shall be used to defray the cost of any required off site improvements, and when thus installed the portion of such deposit exceeding the cost of said installation shall be refunded, without interest, to the person making the deposit. Payment of the foregoing sums shall be required prior to the issuance of a certificate of occupancy by the building official, unless an earlier date is set forth as a condition of city approval in accordance with subsection 14-1-1(A)4 of this chapter. (Ord. 3652, eff. 8-21-1997)

14-1-6: EXCEPTIONS:

Where the construction alterations or additions consist solely of the installation or replacement of mechanical equipment, or the alterations or additions do not

constitute a change in use and will not generate additional traffic, off site improvements are not a requirement under this chapter. (Ord. 687, 11-9-1964)

14-1-7: NONCONFORMING LOT RESULTING FROM DEDICATION OF RIGHT OF WAY:

When dedication is required by this chapter and the resultant lot or parcel of land whose lot area or street frontage becomes less than that required by the Prescott land development code, said lot or parcel of land shall hereafter be deemed to be a legal lot or parcel of land if said parcel had sufficient lot area and street frontage prior to the dedication. (Ord. 4449, 1-11-2005)

14-1-8: COMPATIBILITY WITH PRESCOTT LAND DEVELOPMENT CODE:

The provisions of this title are not intended to conflict with or waive any of the provisions of title X, chapter 1, "Land Development Code", of this code. (Ord. 4449, 1-11-2005)

14-1-9: CIVIL VIOLATION:

Violation of any provision of this chapter shall be a civil violation and shall be subject to the provisions of section 1-3-2 of this code for each day that the violation continues. (Ord. 687, 11-9-1964)

CHAPTER 14-2: ASSESSMENT FOR STREET CONSTRUCTION

SECTIONS:

- 14-2-1: DEFINITIONS:
- 14-2-2: LIMITATION ON ASSESSMENT:
- 14-2-3: RESOLUTION OF INTENTION:
- 14-2-4: NOTICE OF ASSESSMENT:

14-2-1: DEFINITIONS:

Unless the context otherwise requires:

ACTUAL EXPENSE: The actual cost of: a) construction of or improvements to a public street, as determined by the construction contract price; and b) inspection and permit fees; and c) engineering fees required for the preparation of plans and specifications; and d) other incidental fees and costs incurred by the city in order to complete the improvements.

ALTERATION OR MAJOR ADDITION: The construction, reconstruction, addition to, improvement of, or alteration to an existing structure in excess of fifty percent (50%) of its full cash value as shown on the most recent tax roll of the Yavapai County assessor.

CHANGE OF USE OR PURPOSE: A change of zoning on an existing parcel, lot or piece of property, or the submission of a final plat (or amendment thereto) to subdivide property, or the submission of an application for an exemption or exception to any portion of the Prescott land development code.

DEVELOPMENT OR DEVELOPED: The construction of residential, commercial or industrial buildings or structures, or major additions or alterations to existing structures, and includes new buildings or structures on property having existing buildings or structures situated on such property. When such property is zoned for agricultural or single-family residential use at the time of assessment, development shall also include a change of use or purpose.

PROPERTY OWNER: The individual, corporation, partnership, trust or other legal entity that owns real property adjacent to the street right of way.

STREET: The full width of the right of way of any road, street, highway, alley, land or sidewalk used by or for the general public.

STREET IMPROVEMENTS: Include Portland cement or asphaltic concrete surfacing, aggregate base, curb and gutter, valley gutter, and concrete sidewalk,

and includes the construction of new streets as well as improvements to existing streets. (Ord. 4105, 4-24-2001; amd. Ord. 4449, 1-11-2005)

14-2-2: LIMITATION ON ASSESSMENT:

- (A) The assessment of an individual parcel of property, if adjacent arterial streets are involved, shall not exceed the cost of improving more than one-half (1/2) of the width and not more than one thousand (1,000) linear feet of such adjacent arterial street, except that if any parcel of land is presently being used for single-family residential use and the width of such does not exceed two hundred (200) linear feet, such property shall not be assessed greater than one-half (1/2) the cost of the average residential street within the city of Prescott.
- (B) The assessment of property shall not exceed the actual expense incurred by the city at the time of construction.
- (C) Any assessment under this chapter shall abate if the property has not been developed within ten (10) years of the assessment.
- (D) Upon payment in full of any assessment under this chapter, the public works director shall record a satisfaction of assessment with the Yavapai County recorder. (Ord. 4105, 4-24-2001)

14-2-3: RESOLUTION OF INTENTION:

- (A) Upon the determination of the public works director that the public health, safety, welfare and convenience requires the construction of or improvements to streets be made prior to the development of the adjacent property, a resolution of intention to order the improvement shall be submitted to the city council, together with a description of the manner in which the proposed assessments were calculated.
- (B) Prior to action by the city council, a public hearing shall be held on the resolution of intention. Each property owner which may be subject to any assessments under this chapter shall be mailed written notice of the city council's public hearing at least ten (10) days prior to said hearing. The city council shall receive comment at the public hearing on whether the proposed improvements are required for the public health, safety, welfare and convenience.
- (C) After the public hearing is concluded, the city council shall determine whether the public health, safety, welfare and convenience require the street improvements to be made prior to the development of the adjacent property. If the city council so determines, then the city council shall adopt the resolution of intention to order the improvement, and the expense of

said construction shall be assessed against the property owner in accordance with the provisions of this chapter. Each property owner which is subject to an assessment in accordance with the resolution of intention shall be mailed a copy of the approved resolution of intention. The approved resolution of intention shall also be filed with the Yavapai County recorder within five (5) days of its approval by the city council.

- (D) The resolution of intention shall contain the following:
1. A description of the street, road or highway to be constructed or improved.
 2. A general description of the proposed improvements, including the estimated total cost and cost per linear foot.
 3. The estimated cost of assessment for each affected parcel of property.
 4. The percentage of the actual expense to be assessed against each affected parcel of property.
- (E) The city council's decision on the necessity for street improvements and construction shall be final and conclusive, subject only to appeal as provided in Arizona Revised Statutes section 9-243D. Any such appeal must be filed within twenty (20) calendar days of the council's determination of necessity. (Ord. 4105, 4-24-2001)

14-2-4: NOTICE OF ASSESSMENT:

- (A) Within ten (10) days after the completion of street improvements which are the subject of a resolution of intention approved by the city council pursuant to this chapter, the public works director will:
1. Determine the actual expense of said construction or improvements.
 2. Prepare the actual assessment for each parcel of land which was included within the notice of intention.
 3. Mail a copy of the actual assessment for each parcel of land to the property owner of said parcel.
 4. Record a notice of assessment with respect to each such parcel with the Yavapai County recorder.

- (B) Upon recording the notice of assessment, the amount so assessed shall be a lien upon the real property assessed for a period of ten (10) years thereafter, or until such assessment is paid in full, and such recording shall be notice to all persons of such lien. (Ord. 4105, 4-24-2001)

- (C) The city manager or his designee shall collect any unpaid assessments prior to issuing a building permit for development of any assessed property, or prior to a rezoning application or final plat (or amendment thereto) being approved, or prior to an exemption or exception to any portion of the Prescott land development code being approved. (Ord. 4449, 1-11-2005)

UDC COMMITTEE

MEMORANDUM

October 6, 2010

CITY OF PRESCOTT
PUBLIC WORKS DEPARTMENT – ENGINEERING DIVISION

TO: Unified Development Code Committee Members

FROM: Mark Nietupski, Public Works Director
Scott Tkach, City Engineer
Richard Mastin, Development Services Manager

TOPIC: Off-Site Improvement Ordinance

INTRODUCTION:

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For residential and commercial subdivisions, the owner/developer has a basic understanding that off-site infrastructure improvements are required to serve both the proposed development and also to extend the infrastructure across the project boundaries to serve future developments. However, for small infill projects and additions or changes to existing structures, the Off-Site Improvement Ordinance is an unknown concept and difficult to understand for the individual property owner or small business owner. Sometimes the Ordinance has significant cost impact depending on the lot size, configuration, access and if it's on a corner.

Generally the Ordinance impacts property owners with smaller lots in the downtown area with multi-family and business zoning. Owners are either constructing additional residential units, converting some homes to commercial office and businesses are changing uses to meet market demands which subsequently trigger the Ordinance. Many of these properties are fronted on substandard streets and alleys which require the installation of curb, gutter, sidewalk, handicap ramps and paving improvements to bring the facilities up to current City Standards. Public Works generally requires payment for the improvements in lieu of constructing because typically there is no engineering design for these streets.

To date the City has collected \$75,800.00 for Off-Site Improvement fees.

DISCUSSION:

1. Does the City wish to consider establishing a minimum lot size, such as half-acre or one-acre to apply the Ordinance?

TITLE XIV
OFF-SITE IMPROVEMENTS

CHAPTERS:

14-1: OFF SITE IMPROVEMENTS

14-2: ASSESSMENT FOR STREET CONSTRUCTION

CHAPTER 14-1: OFF-SITE IMPROVEMENTS

SECTIONS:

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- 14-1-9: CIVIL VIOLATION:**

14-1-1: APPLICABILITY OF CHAPTER:

- (A) This chapter shall apply:
 - 1. When a new building is being constructed.
 - 2. When an addition to an existing building is being constructed, and the addition is valued at fifty percent (50%) or more of the building's value prior to the addition.
 - 3. When an interior or exterior remodeling is done, and the value of that remodeling is fifty percent (50%) or more of the building's value prior to the remodeling.
 - 4. When there is any change in use or change in allowed use for which any city approvals are required.
- (B) This chapter shall not apply to a structure which is zoned solely for single-family residential purposes.
- (C) Subsections 14-1-2(A), (C), (E) and (F) of this chapter shall not apply to a property which is scheduled for those improvements in accordance with a capital improvement plan as adopted by the city council. (Ord. 3469, eff. 2-22-1996; amd. Ord. 3652, eff. 8-21-1997)

14-1-2: OFF SITE IMPROVEMENTS REQUIRED:

- (A) Asphalt concrete surfacing, grading, and aggregate base of a roadway or alleyway.

- (B) Traffic control devices and signalization.
- (C) Construction or repair of concrete sidewalks abutting the property.
- (D) Installation of fire hydrants to service the property.
- (E) Construction or repair of curb and gutter which abuts the property.
- (F) Dedication of right of way.
- (G) Completion of traffic area impact studies, or financial contribution towards the cost thereof.
- (H) Utility upgrades to adequately service the property.
- (I) On site and/or off site drainage facilities or improvements. (Ord. 687, 11-9-1964)

14-1-3: DETERMINATION OF EXTENT OF OFF SITE IMPROVEMENTS:

- (A) The improvements required by subsections 14-1-2(A), (B), (G) and (I) of this chapter shall be determined based upon an individualized determination to be made by the public works director that the required improvement (or proportionate amount thereof) is related both in nature and extent to the proposed use of the property.
- (B) The improvements required by subsection 14-1-2(F) of this chapter shall be determined based upon an individualized determination that the required dedication is related both in nature and extent to the proposed use of the property, said determination to be made pursuant to a traffic impact analysis. The public works director shall determine whether or not a traffic impact analysis is required; in that event that such an analysis is required, it shall be paid for by the property owner, and shall be performed by an independent third party acceptable to the public works director.
- (C) In the event that the traffic impact analysis required pursuant to subsection (B) of this section determines that right of way dedication is not required, then and in that event the city of Prescott shall be responsible for paying for the actual cost of said analysis.
- (D) Notwithstanding the provisions of subsection (B) of this section, right of way dedication may be accepted by the city if the property owner voluntarily agrees to dedicate said right of way without the necessity of obtaining a traffic impact analysis. (Ord. 3684, eff. 11-27-1997)

14-1-4: APPROVAL OF OFF SITE IMPROVEMENT PLANS:

- (A) Approval of off site improvement plans consisting of designed and engineered plans shall be prerequisite to the issuance of a building permit. Off site improvements shall be constructed in accordance with the plans approved by the public works director and in accordance with "The Standard Detail Drawings And Uniform Standard Specifications For Public Works Construction".
- (B) When off site improvements are waived and a cash deposit is made in lieu thereof in accordance with section 14-1-5 of this chapter, the submittal of off site improvement plans consisting of designed and engineered plans are not required as a prerequisite to the issuance of a building permit or the issuance of an occupancy permit by the building official. (Ord. 687, 11-9-1964)

14-1-5: COMPLETION OF OFF SITE IMPROVEMENTS:

- (A) Completion of the required off site improvements is a prerequisite to the issuance of a certificate of occupancy by the building official, unless an earlier completion date is required as a condition of city approval in accordance with subsection 14-1-1(A)4 of this chapter. Improvements will be considered complete when they have been inspected and accepted by the public works director, who shall certify in writing to the building official that the required off site improvements have been constructed in accordance with the approved plans.
- (B))If the public works director determines, in his sole discretion, that off site improvements are applicable, but should not be constructed by the property owner, the public works director may waive actual construction of said improvements and require, in their place, a deposit in cash by, or on behalf of, the applicant or property owner, in an amount estimated by the public works director to cover the costs of the installation of such off site improvements. All such sums deposited shall be used to defray the cost of any required off site improvements, and when thus installed the portion of such deposit exceeding the cost of said installation shall be refunded, without interest, to the person making the deposit. Payment of the foregoing sums shall be required prior to the issuance of a certificate of occupancy by the building official, unless an earlier date is set forth as a condition of city approval in accordance with subsection 14-1-1(A)4 of this chapter. (Ord. 3652, eff. 8-21-1997)

14-1-6: EXCEPTIONS:

Where the construction alterations or additions consist solely of the installation or replacement of mechanical equipment, or the alterations or additions do not

constitute a change in use and will not generate additional traffic, off site improvements are not a requirement under this chapter. (Ord. 687, 11-9-1964)

14-1-7: NONCONFORMING LOT RESULTING FROM DEDICATION OF RIGHT OF WAY:

When dedication is required by this chapter and the resultant lot or parcel of land whose lot area or street frontage becomes less than that required by the Prescott land development code, said lot or parcel of land shall hereafter be deemed to be a legal lot or parcel of land if said parcel had sufficient lot area and street frontage prior to the dedication. (Ord. 4449, 1-11-2005)

14-1-8: COMPATIBILITY WITH PRESCOTT LAND DEVELOPMENT CODE:

The provisions of this title are not intended to conflict with or waive any of the provisions of title X, chapter 1, "Land Development Code", of this code. (Ord. 4449, 1-11-2005)

14-1-9: CIVIL VIOLATION:

Violation of any provision of this chapter shall be a civil violation and shall be subject to the provisions of section 1-3-2 of this code for each day that the violation continues. (Ord. 687, 11-9-1964)

CHAPTER 14-2: ASSESSMENT FOR STREET CONSTRUCTION

SECTIONS:

- 14-2-1: DEFINITIONS:
- 14-2-2: LIMITATION ON ASSESSMENT:
- 14-2-3: RESOLUTION OF INTENTION:
- 14-2-4: NOTICE OF ASSESSMENT:

14-2-1: DEFINITIONS:

Unless the context otherwise requires:

ACTUAL EXPENSE: The actual cost of: a) construction of or improvements to a public street, as determined by the construction contract price; and b) inspection and permit fees; and c) engineering fees required for the preparation of plans and specifications; and d) other incidental fees and costs incurred by the city in order to complete the improvements.

ALTERATION OR MAJOR ADDITION: The construction, reconstruction, addition to, improvement of, or alteration to an existing structure in excess of fifty percent (50%) of its full cash value as shown on the most recent tax roll of the Yavapai County assessor.

CHANGE OF USE OR PURPOSE: A change of zoning on an existing parcel, lot or piece of property, or the submission of a final plat (or amendment thereto) to subdivide property, or the submission of an application for an exemption or exception to any portion of the Prescott land development code.

DEVELOPMENT OR DEVELOPED: The construction of residential, commercial or industrial buildings or structures, or major additions or alterations to existing structures, and includes new buildings or structures on property having existing buildings or structures situated on such property. When such property is zoned for agricultural or single-family residential use at the time of assessment, development shall also include a change of use or purpose.

PROPERTY OWNER: The individual, corporation, partnership, trust or other legal entity that owns real property adjacent to the street right of way.

STREET: The full width of the right of way of any road, street, highway, alley, land or sidewalk used by or for the general public.

STREET IMPROVEMENTS: Include Portland cement or asphaltic concrete surfacing, aggregate base, curb and gutter, valley gutter, and concrete sidewalk,

and includes the construction of new streets as well as improvements to existing streets. (Ord. 4105, 4-24-2001; amd. Ord. 4449, 1-11-2005)

14-2-2: LIMITATION ON ASSESSMENT:

- (A) The assessment of an individual parcel of property, if adjacent arterial streets are involved, shall not exceed the cost of improving more than one-half (1/2) of the width and not more than one thousand (1,000) linear feet of such adjacent arterial street, except that if any parcel of land is presently being used for single-family residential use and the width of such does not exceed two hundred (200) linear feet, such property shall not be assessed greater than one-half (1/2) the cost of the average residential street within the city of Prescott.
- (B) The assessment of property shall not exceed the actual expense incurred by the city at the time of construction.
- (C) Any assessment under this chapter shall abate if the property has not been developed within ten (10) years of the assessment.
- (D) Upon payment in full of any assessment under this chapter, the public works director shall record a satisfaction of assessment with the Yavapai County recorder. (Ord. 4105, 4-24-2001)

14-2-3: RESOLUTION OF INTENTION:

- (A) Upon the determination of the public works director that the public health, safety, welfare and convenience requires the construction of or improvements to streets be made prior to the development of the adjacent property, a resolution of intention to order the improvement shall be submitted to the city council, together with a description of the manner in which the proposed assessments were calculated.
- (B) Prior to action by the city council, a public hearing shall be held on the resolution of intention. Each property owner which may be subject to any assessments under this chapter shall be mailed written notice of the city council's public hearing at least ten (10) days prior to said hearing. The city council shall receive comment at the public hearing on whether the proposed improvements are required for the public health, safety, welfare and convenience.
- (C) After the public hearing is concluded, the city council shall determine whether the public health, safety, welfare and convenience require the street improvements to be made prior to the development of the adjacent property. If the city council so determines, then the city council shall adopt the resolution of intention to order the improvement, and the expense of

said construction shall be assessed against the property owner in accordance with the provisions of this chapter. Each property owner which is subject to an assessment in accordance with the resolution of intention shall be mailed a copy of the approved resolution of intention. The approved resolution of intention shall also be filed with the Yavapai County recorder within five (5) days of its approval by the city council.

- (D) The resolution of intention shall contain the following:
1. A description of the street, road or highway to be constructed or improved.
 2. A general description of the proposed improvements, including the estimated total cost and cost per linear foot.
 3. The estimated cost of assessment for each affected parcel of property.
 4. The percentage of the actual expense to be assessed against each affected parcel of property.
- (E) The city council's decision on the necessity for street improvements and construction shall be final and conclusive, subject only to appeal as provided in Arizona Revised Statutes section 9-243D. Any such appeal must be filed within twenty (20) calendar days of the council's determination of necessity. (Ord. 4105, 4-24-2001)

14-2-4: NOTICE OF ASSESSMENT:

- (A) Within ten (10) days after the completion of street improvements which are the subject of a resolution of intention approved by the city council pursuant to this chapter, the public works director will:
1. Determine the actual expense of said construction or improvements.
 2. Prepare the actual assessment for each parcel of land which was included within the notice of intention.
 3. Mail a copy of the actual assessment for each parcel of land to the property owner of said parcel.
 4. Record a notice of assessment with respect to each such parcel with the Yavapai County recorder.

- (B) Upon recording the notice of assessment, the amount so assessed shall be a lien upon the real property assessed for a period of ten (10) years thereafter, or until such assessment is paid in full, and such recording shall be notice to all persons of such lien. (Ord. 4105, 4-24-2001)

- (C) The city manager or his designee shall collect any unpaid assessments prior to issuing a building permit for development of any assessed property, or prior to a rezoning application or final plat (or amendment thereto) being approved, or prior to an exemption or exception to any portion of the Prescott land development code being approved. (Ord. 4449, 1-11-2005)

UDC COMMITTEE

MEMORANDUM

October 6, 2010

CITY OF PRESCOTT
COMMUNITY DEVELOPMENT – BUILDING SAFETY DIVISION

TO: Unified Development Code Committee Members

FROM: Tom Guice, Community Development Director
Randall Pluimer, Chief Building Official

TOPIC: International Building Codes

INTRODUCTION: The City of Prescott first adopted building codes in 1936. Over the last 74 years, there have been several modifications made to the codes; and, the building codes have been adopted to provide a minimum level of health, care and safety for the entire community.

The Building Safety division has always worked with developers, contractors and homeowners in any area that has been brought to staff's attention in order to reach the best overall conclusion that provides the community with a minimum level of health, care and safety.

The Building Safety division has made several administrative changes in an effort to address the concerns and changing environment of the construction industry:

1. *Building Permit Extensions.* The current ordinance allows for one permit extension for an additional 180 days. As the chief building official, allowances have been made for more than one extension as long as the project is: 1) currently being worked on; 2) an approved inspection has been conducted every 180 days; and, 3) no new codes have been adopted in the interim. The extension allows the homeowners and contractors that have had to delay a project due to economic or other reasons to continue without any undue financial burden.
2. *Education and Certification.* The Building Safety division, along with the quad-city area building departments, has provided and sponsored the education and certification of the installation of Tyvek™ that allows a job to move more quickly, requires fewer inspections and provides a high level of quality control and oversight.

3. *Contractors Meetings.* The Building Safety division has sponsored several contractors meetings to help educate the construction community as well as provide an open forum for all to express any concerns with staff decisions and/or regulations.
4. *Backwater valves.* Backwater valves have been a contentious item for staff, contractors and homeowners. Areas of opposition include: 1) the added expense and/or trouble of installing the backwater valve when contractors are not working in the area; and, 2) the protection provided by the backwater valve helps to eliminate health concerns associated with raw sewage from backing up onto properties; and 3) eliminates litigation and associated costs the City of Prescott incurs, and, therefore, tax dollars are not spent needlessly. The Building Safety division has tried to resolve the issue with an internal policy that allows certain types of building permits to become exempt if the homeowner signs a "hold harmless agreement" that is recorded on the property at the office of the Yavapai County Recorder. The homeowner signing and recording the agreement makes the decision of the level of protection desired. (Refer to attachment).
5. *Quality Control Inspections (Special Inspection) Requirements.* The Building Safety division, along with the quad-city building departments and the Yavapai County Contractors Association (YCCA), has held training classes on quality control/special inspection requirements. While quality control and special inspection requirements have been in the City's code for over 30 years, this is not a new concept. To date, no formal complaints have been made to the City. Quality control/special inspections are a requirement of manufacturers to insure that the product is being installed correctly; and, the inspections may be made at the request of the designer, owner or registrant that feel an extra level of care is being looked at by someone with the required expertise.
6. *Code Review Items.* As an on-going effort to ensure that the Building Safety division is responsive to the requirements of the construction community, a review, +of any code-related issues and/or items is being looked at in conjunction with YCCA. The meeting occurs on a monthly basis and is open to any person who wishes to attend.

(Financial Institution's Letterhead)

Current Date

ASSURANCE OF CONSTRUCTION OF SUBDIVISION IMPROVEMENTS

Assurance of Construction of Subdivision Improvements in
_____ Subdivision

TO: City Engineer, City of Prescott
Finance Director, City of Prescott

For the purpose of providing the assurance of construction through loan commitment, (herein referred to as Developer) and _____ (herein referred to as Financial Institution) represent as follows:

1. That funds in the amount of _____ Dollars (\$_____), determined by the City Engineer to be sufficient to cover the cost of installing Subdivision Improvements in the above-named subdivision, have been committed by the Financial Institution, all in accordance with a construction loan agreement and any attached and referenced supplement agreements (all of which are collectively hereafter referred to as the "Construction Loan Agreement") between the Developer and the Financial Institution, and is available to the Developer.
2. Developer agrees that the funds mentioned in paragraph one (1) above will be used only for the purpose of installing off-site and on-site subdivision improvements (hereinafter "Subdivision Improvements") in the above-named subdivision.
3. All disbursements from said funds by Financial Institution to pay for said Subdivision Improvements shall be made in accordance with a Construction Loan Agreement entered into between Developer and Financial Institution to Developer or to a contractor or material man upon direction of Developer, upon receipt from the City Engineer of notice that the construction of said Subdivision Improvements for the period covered by the disbursement has been accepted by the City Engineer.
4. If Developer abandons construction of the Subdivision Improvements or if Developer fails to complete construction of the Subdivision Improvements covered by said funds within one (1) year of the final plat, it is agreed that the City of Prescott, by giving written notice to Financial Institution of its intent to complete the Subdivision Improvements in accordance herewith may draw on the undisbursed balance of the funds mentioned in paragraph one (1) above in accordance with the Construction Loan Agreement in order to complete construction of the Subdivision Improvements in the above-referenced subdivision.