



LAND USE SERVICES DEPARTMENT PLANNING STAFF REPORT



HEARING DATE: February 20, 2014

AGENDA ITEM NO: 5

Project Description:

Applicant: San Bernardino County Land Use Services Department
Proposal: A Development Code Amendment to amend Section 87.07.040 of the San Bernardino County Development Code relative to improvement agreements and securities.
Community: Countywide
JCS: L612
Staff: Gregory J. Bennett

BACKGROUND:

Under both the California Subdivision Map Act, Government Code Section 66410 et seq., and the County Code, Section 87.07.010 et seq., the Board of Supervisors ("Board") may approve a subdivision of land before all of the required improvements (road and drainage, water, sewer and landscape) are in place if the subdivider enters into an agreement with the County whereby the subdivider agrees to complete the improvements (in two years) and posts securities that guarantee the construction of the improvements and payment to the contractors, subcontractors, and to persons furnishing labor, materials or equipment.

Due to the recent economic recession, a number of subdividers requested an extension of time on the completion due date (hereafter referred to as "time extensions"). These time extensions are processed and approved by the Board as amendments to the underlying improvement agreements.

Currently, County Policy for Improvement Security/Bonding, approved by the Board on September 16, 1985 (Item No. 61) and later amended on June 3, 1991 (Item No. 61), authorizes time extensions if certain findings are made.

Sometimes subdividers apply for time extensions at the last minute just before the expiration of the original, or the extended, completion due date. This practice has resulted in the Land Use Services Department, Land Development Division, having to take some of these time extensions to the Board as "retroactive" contract amendments (that is, taking the time extension to the Board after the completion due date has already expired). In addition, processing time extensions through the Board is time consuming and costly to the subdivider. The reduction of the maintenance/warranty amount from 25% to 10% aligns more closely with the maintenance/warranty amounts of the various jurisdictions in proximity to the County.

ANALYSIS:

To address the above-described policy considerations, the proposed ordinance amends Section 87.07.040 of the County Code to authorize the Chief Executive Officer, pursuant to the California Subdivision Map Act, Government Code Sections 66462 and 66499.7, to:

1. Approve amendments to improvement agreements that would authorize an extension of time to complete the improvements, on forms and terms approved by the Board and where each extension shall be for a period not to exceed one year, except where the extension requires the owner of the subdivision to provide substitute or additional security, in which case, such extension may only be approved by the Board;
2. Release the security upon the satisfaction of the terms of the County Code and the agreements; and
3. Accept the completed work.

While considering these amendments, the Department also identified other necessary changes to Section 87.07.040. As a result, the attached ordinance also:

1. Eliminates language in Section 87.07.040 of the County Code that duplicates language in the California Subdivision Map Act;
2. Updates the citations in Section 87.07.040 to the California Civil Code and Government Code;
3. Establishes that the labor and materials security, that secures payment to the contractor, to the subcontractors, and to persons furnishing labor, materials, or equipment to them for the improvement or the performance of the required act, is 50 percent of the total estimated cost of the improvement or the performance of the required act;
4. Provides that any request for a release shall be made to the Land Use Services Department, Land Development Division, who may, prior to the release of any labor and materials security, require the owner of the subdivision to provide a title report or other form of evidence sufficient to show what claims of lien, if any, are of record on the subdivision;
5. Reduces the security that guarantees and warrants the improvement for 12 months following the completion and acceptance against any defective work or labor done, or defective materials furnished from 25 percent to 10 percent of the total estimated cost of improvements or performance of the required act;
6. Establishes the procedures for a partial release of the performance security;
7. Requires the Board of Supervisors to review the delegation of authority provided to the Chief Executive Officer under Section 87.07.040 at least once by June 30, 2016, and at least once every two years thereafter (as required by Government Code Section 66462(d)); and
8. Makes minor nonsubstantive revisions to the County Code.

FINDINGS FOR THE DEVELOPMENT CODE AMENDMENT: The following findings must be made by the Commission in making its recommendation to the Board to approve the proposed Development Code Amendment:

1. Properly noticed public hearings have been held before the Planning Commission and will be held before the Board of Supervisors of the County of San Bernardino, State of California, pursuant to the Planning and Zoning Law of the State of

California and the San Bernardino County Code.

2. The proposed amendments are consistent with the General Plan and any applicable community plan or specific plan. The proposed modifications continue to ensure that the necessary infrastructure improvements, including road and drainage, water, and sewer improvements, support the intensity of proposed land uses. The proposed modifications will not result in fiscal liabilities to County residents and will ensure the efficiency of development within the County by increasing the expediency of the financial security process for Time Extensions.
3. The proposed amendments would not be detrimental to the public interest, health, safety, convenience, or welfare of the County. Financial securities will continue to be verified and maintained under the proposed regulations and will continue to ensure that all infrastructure improvements, including road and drainage, water, and sewer improvements, do not result in fiscal liabilities to County residents.
4. The proposed amendments are internally consistent with other applicable provisions of the San Bernardino County Code.
5. The proposed amendments support the Board of Supervisors County goals and objectives, in that they will improve County government operations and assist in the goal of operating in a fiscally-responsible and business-like manner.
6. This ordinance is exempt from the California Environmental Quality Act (CEQA) in accordance with Title 14 of the California Code of Regulations, Section 15061(b)(3) (otherwise known as the CEQA Guidelines) as the proposed changes do not have the potential to cause a significant effect on the environment.

RECOMMENDATION: Staff recommends that the Planning Commission recommend the following actions to the Board of Supervisors:

- A. ADOPT the proposed ordinance that amends Section 87.07.040 of Title 8 of the County Code relative to improvement agreements and securities;
- B. ADOPT the findings as contained in the staff report; and
- C. FILE the Notice of Exemption.

ATTACHMENT:

Exhibit A - Proposed Development Code Amendment

EXHIBIT A

Proposed Development Code Amendment

CHAPTER 87.07 IMPROVEMENT PLANS, INSTALLATION, AND SECURITY

Sections:

- 87.07.010 Purpose
- 87.07.020 Improvement Plans
- 87.07.030 Installation of Improvements
- 87.07.040 Improvement Agreements, Lien Agreements and Securitites

87.07.010 Purpose

This Chapter provides standards for the preparation and review of improvement plans, the installation of improvements, and for security to guarantee improvement installation.

Adopted Ordinance 4011 (2007); Amended Ordinance 4116 (2010)

87.07.020 Improvement Plans

After the approval of a Tentative Map and before the construction of any improvements, the subdivider shall submit plans to the County as follows:

- (a) **Preparation and content.** Improvement plans shall be prepared by a California registered professional engineer. Improvement plan submittals shall include all of the following information:
 - (1) Any drawings, specifications, calculations, design reports, and other information required by the Director of Public Works;
 - (2) Grading, drainage, Water Quality Management Plan, erosion and sediment control, and a storm water pollution prevention plan (SWPPP) for the entire subdivision; and
 - (3) The improvement plan/specification checking and construction inspection fees required by the County Fee Ordinance.
- (b) **Submittal of plans.** Improvement plans shall be submitted to the Director of Public Works and other appropriate reviewing agencies for review and approval. Upon the approval of improvement plans in compliance with Subsection (c) (Review and approval), below, the subdivider shall also submit to the Director of Public Works a detailed cost estimate of all improvements, based on guidelines provided by the County.
 - (1) **Street and drainage plans and profiles.** Plans, profiles, and specifications of proposed street and drainage improvements shall be submitted to the County Department of Public Works, checked and approved before presentation of the

Final Map to the Board for acceptance. These plans and profiles shall show full details of the proposed improvements in compliance with County standards.

- (2) **Water systems plans.** Plans, specifications, and all necessary details of the proposed water system shall be submitted to the Chief of the Division of Environmental Health Services for review; provided that the supplier has certified that it is willing and able to supply water upon request.
- (3) **Sanitary sewer plans.** Plans, profiles, specifications, and all necessary details of the sanitary sewers to be installed shall be submitted to the Chief of the Division of Environmental Health Services for review; provided that before submitting the plans, they shall have been approved by the governmental entity that will serve the subdivision, or if a private sewage disposal company is to provide service, the plans shall have been approved by the Chief of the Division of Environmental Health Services.
- (c) **Review and approval.** Improvement plans shall be reviewed and approved by the applicable agency within the time limits provided by Map Act Section 66456.2.
- (d) **Effect of approval.** The final approval of improvement plans shall generally be required before approval of a Parcel or Final Map. The approval of improvement plans shall not bind the County to accept the improvements nor waive any defects in the improvements as installed.

Adopted Ordinance 4011 (2007); Amended Ordinance 4116 (2010)

87.07.030 Installation of Improvements

Subdivision improvements required as conditions of approval of a Tentative Map in compliance with this Chapter (see Section 87.06.050) shall be installed as provided by this Section.

- (a) **Timing of improvements.** Required improvements shall be constructed or otherwise installed only after the approval of improvement plans in compliance with Section 87.07.020, and before the approval of a Parcel or Final Map in compliance with Sections 87.03.060 (Parcel Map Approval) or 87.03.100 (Final Map Approval), except where:
 - (1) Improvements are deferred in compliance with Section 87.07.040 (Improvement Agreements and Security); or
 - (2) Improvements are required as conditions on the approval of a subdivision of four or fewer parcels, in which case construction of the improvements shall be required:
 - (A) When a Building Permit is issued for development of an affected parcel; or

- (B) At the time the construction of the improvements is required in compliance with an agreement between the subdivider and the County, as identified in Section 87.07.040 (Improvement Agreements and Security); or
 - (C) At the time identified in a condition of approval, when the review authority finds that fulfillment of the construction requirements by that time is necessary for public health and safety, or because the required construction is a necessary prerequisite to the orderly development of the surrounding area.
- (3) To avoid breaking up street paving, underground utility or service lines required to be installed as part of a subdivision and which are planned to run across or underneath a street or alley right-of-way shall be installed before the preparation of subgrade and before the surfacing of any streets or alleys. In the event that the development of the subdivision requires the utility company to perform utility construction work, the developer shall pay a deposit satisfactory to the utility company within sufficient time to allow construction work to be performed before subgrade preparation. In no event shall subgrade preparation commence before installation of all necessary utilities and laterals.
- (b) **Inspection of improvements.** The inspection of the construction and installation of required subdivision improvements shall occur as follows.
- (1) **Supervision.** Before starting any work, the contractor engaged by the subdivider shall designate in writing an authorized representative who shall have the authority to represent and act for the contractor in contacts with the County. The designated representative shall be present at the work site at all times while work is in progress. At times when work is suspended, arrangements acceptable to the Director of Public Works shall be made for any emergency work that may be required.
 - (2) **Inspection procedures.**
 - (A) **Inspections required.** The agency that has required a specific action shall make any inspections as it deems necessary to ensure that all construction complies with the approved improvement plans. Where required by the agency, the developer shall enter into an agreement with the County to pay the full cost of any contract inspection services determined to be necessary by that agency.
 - (B) **Access to site and materials.** The agency that has required a specific action shall have access to the work site at all times during construction, and shall be furnished with every reasonable facility for verifying that the materials and workmanship are in compliance with the approved improvement plans.
 - (C) **Authority for approval.** The work done and all materials furnished shall be subject to the inspection and approval of the agency that has required a

specific action. The inspection of the work or materials shall not relieve the contractor of any obligations to fulfill the work as prescribed.

- (D) **Improper work or materials.** Work or materials not meeting the requirements of the approved plans and specifications may be rejected, regardless of whether the work or materials were previously inspected by the agency that has required a specific action. In the event that the agency determines that subdivision improvements are not being constructed as required by the approved plans and specifications, it shall order the work stopped and shall inform the contractor of the reasons for stopping work and the corrective measures necessary to resume the work. Any work done after issuance of a stop work order shall be a violation of this Chapter.
- (3) **Notification.** The subdivider shall notify the Director of Public Works as part of condition compliance upon the completion of each stage of construction before recordation as outlined in this Chapter. Further construction may only be completed if all required actions included in the conditions of approval have been accomplished and signed off by the agency that has required the action(s).

Adopted Ordinance 4011 (2007)

87.07.040 Improvement Agreements, Lien Agreements and Securities

(a) **Improvement Agreements.** If all required improvements, and inspections are not satisfactorily completed before a Parcel or Final Map is approved, the owner(s) of the subdivision shall, before the approval of the Parcel or Final Map, enter as contractor into an Improvement Agreement with the Board whereby in consideration of the approval of the Parcel or Final Map and/or acceptance by the Board of ~~the any~~ streets, easements, and any other land offered for dedication, the contractor agrees to furnish the equipment, labor, and material necessary to complete the work within the time specified in the agreement. Improvement Agreements and securities shall be initially approved and accepted by the Board. Improvement Agreements shall be valid for a period specified in the Improvement Agreement, but the original term shall not exceed two years from the effective date of the Improvement Agreement. Except as provided below, extensions of time may be granted at any time by the Board or the Chief Executive Officer, but only on forms and terms approved by the Board and determined acceptable as to legal form by County Counsel. If an extension of time requires the owner of the subdivision to provide substitute or additional security, such extension of time may only be approved by the Board. Each extension shall be for a period not to exceed one year. A decision made by the Chief Executive Officer on a request to extend time may be appealed to the Board of Supervisors if an appeal is filed with the Clerk of the Board within 10 days of the Chief Executive Officer's decision. Improvement Agreements and securities shall be initially approved and accepted by the Board. Improvement Agreements shall be valid for a period specified in the Improvement Agreement, but the original term shall not exceed two years from the effective date of the Improvement Agreement. Except as provided below, extensions of time may be granted at any time by the Board or the Chief Executive

Officer, but only on forms and terms approved by the Board and determined acceptable as to legal form by County Counsel. If an extension of time requires the owner of the subdivision to provide substitute or additional security, such extension of time may only be approved by the Board. Each extension shall be for a period not to exceed one year. A decision made by the Chief Executive Officer on a request to extend time may be appealed to the Board of Supervisors if an appeal is filed with the Clerk of the Board within 10 days of the date that the Chief Executive Officer's decision was mailed.

(b) Amount of security required. To ensure that the work will be completed, improvement security shall be furnished to guarantee the performance of any act or Improvement Agreement in the following amounts and for the following purposes:

- (1) An amount determined by the Board, not less than which shall be 100 percent of the total estimated cost of the improvement or of the act to be performed, conditioned upon the faithful performance of the required act or Improvement Agreement.
- (2) An additional amount determined by the Board, which shall be amount, not less than 50 percent ~~not more than 100 percent~~ of the total estimated cost of the improvement or the performance of the required act, securing payment to the contractor, to the subcontractors, and to persons furnishing labor, materials, or equipment to them for the improvement or the performance of the required act.
- (3) Whenever an entity required to furnish security in compliance with this Section is a California nonprofit corporation, funded by the United States of America or one of its agencies, or funded by this State or one of its agencies, the entity shall not be required to comply with Subdivisions sections ~~(ba)(1) and (ba)(2), above,~~ if the ~~following conditions are met described in the California Subdivision Map Act, currently in Government Code Section 66499.3(c), are met~~ described in the California Subdivision Map Act, currently in Government Code Section 66499.3(c), are met.
 - ~~(A) The contractor installing the improvements has bonded to the nonprofit corporation and the County as co-obligee the amount of 100 percent of the contract for the faithful performance of the work, and has further bonded to the nonprofit corporation and the County as co-obligee an amount of not less than 50 percent of the contract for the payment of labor and materials, and those bonds comply with the provisions of this Section.~~
 - ~~(B) All monies payable to the contractor by the nonprofit corporation are deposited in a depository complying with the provisions of the Subdivision Map Act (Government Code Sections 66473 et seq.) and out of which progress payments are conditioned upon:~~

~~(I) The contractor's certification to the nonprofit corporation that all labor performed in the work and all materials furnished to and installed in the work, have been paid for in full to the date of the certification.~~

~~(II) The written approval of the nonprofit corporation.~~

~~(III) The review and approval of progress payment billings by County Director of Public Works. The term "progress payment" as used in this Section shall mean payment made in compliance with the schedule of partial payments agreed upon in the contract for the work. No less than ten percent of the total contract price shall be retained for the 60 days following the filing of the Notice of Completion.~~

~~(IV) Final payment to the contractor not being made until 60 days shall have expired after the filing and recording of the Notice of Completion of the work and written acceptance of the work by the County.~~

~~(C) All certifications as to progress payments shall be delivered through the U.S. mail to the nonprofit corporation.~~

- (4) An amount as determined by the ~~Board, County Director of Public Works, but not more than~~ which shall be 2510 percent of the total estimated cost of improvements or performance of the required act necessary for the guarantee and warranty of the improvement for 12 months following the completion and acceptance, against any defective work or labor done, or defective materials furnished.
- (5) As part of the obligation guaranteed by the security and in addition to the face amount of the security, there shall be included costs and reasonable expenses and fees, including reasonable attorney's fees incurred by the County in successfully enforcing the obligation secured.

(c) Type of security required.

- (1) The furnishing of security in connection with the performance of any act or Improvement Agreement shall be one of the following, at the option of and subject to the approval of the Board:
 - (A) Bond or bonds by one or more duly authorized corporate sureties as prescribed in Government Code Section 66499(a)(1);
 - (B) A deposit, either with the County, ~~responsible bank or a responsible escrow agent~~ or trust company, at the option of the County, of money or negotiable bonds of the kind approved for securing deposits of public monies as prescribed in Government Code Section 66499(a)(2); ~~and~~

(C) A letter or other instrument of credit from one or more financial institutions subject to regulation by the State or Federal government, and pledging that the funds necessary to carry out the act or Improvement Agreement are on deposit and guaranteed for payment as prescribed in Government Code Section 66499(a)(3); or-

(D) Lien Agreement as described in Subsection 87.07.040(d) below.

(2) Bonds to secure faithful performance and for the benefit of laborers and material of any agreement, shall be in substantially the forms as shown in the California Subdivision Map Act (Government Code Sections 66499.1 and 66499.266473-~~et seq.~~). The money, negotiable bond, or instrument of credit shall be a trust fund to guarantee performance and shall not be subject to enforcement of a money judgment by any creditors of the depositor until the obligation secured thereby is performed to the satisfaction of the County.

(d) Lien Agreement as Security.

(1) As authorized herein, the owner of a "subdivision" (defined for purposes of this paragraph-Subsection (d) as a residential subdivision with more than five lots up to a maximum lot size of two acres or a commercial or industrial subdivision) may, in lieu of posting the security described in Subdivisionsection (c) of this Section, enter into an agreement with the County to construct the required improvements in the future, securing such performance by granting the County a lien on the property to be subdivided. Such an agreement shall be known as a "Lien Agreement."

(2) Where the Director of the Department of Public Works finds that it could not be in the public interest to require the installation of the required improvements sooner than two years after recordation of the map, the owner of the subdivision may execute a Lien Agreement with the County at the time the owner of the subdivision enters into an Improvement Agreement with the County to construct required improvements pursuant to the Section. A Lien Agreement may also be used to substitute existing security which was furnished under Subdivisionsection (c) of this Section; provided, however, that use of a Lien Agreement as substitution for existing security shall be at the County's sole option. Notwithstanding any provisions of the foregoing to the contrary, however, the county will not accept a Lien Agreement from any owner of a subdivision, either at the time of execution of the Improvement Agreement, or as a substitute for existing security, if any lots have been sold, if construction permits (including but not limited to building or grading permits), have been issued on any of the property, or if construction of any of the required improvements has begun.

(3) Notwithstanding the above, the County may accept a Lien Agreement from any owner of a subdivision as a substitute for existing security if grading has

commenced on the land to be divided so long as the grading is in strict accordance with a valid grading permit and all the following are met:

- (A) There is no need for the County to construct the required improvements if the subdivision is abandoned or delayed for any period of time or for any other reason;
- (B) The grading has no effect on the use, operation and maintenance of existing streets or highways, public or private;
- (C) The grading has not caused the modification or closure of any public access points, existing streets or highways, public or private;
- (D) Additional drainage improvement and/or erosion controls are not necessary and/or installed in the road right-of-way due to the grading;
- (E) Delay of the construction of the required improvements for the subdivision do not affect or delay the improvements of an adjacent subdivision project who has already commenced work on his, her or its required improvements.

(4) Lien Agreements shall:

- (A) Be used only when in the absence of this Sub~~division~~section, the owner of the subdivision would be required to construct or agree to construct the improvements required by the Director of the Department of Public Works.
- (B) Be used to secure future improvements in easements, rights-of way, rejected offers of dedication or irrevocable offers of dedication
- (C) Be in an approved form acceptable to County Counsel.
- (D) Contain an itemization of the required improvements and an estimate of costs approved by the Director of the Department of Public Works, and shall specify that the obligation of the owner of the subdivision or any subsequent owner extends to the actual cost of construction if such costs exceed the estimate.
- (E) Be recorded with the County Recorder and have the priority of a judgment lien as prescribed by Government Code Section 66499(b). The recorded Lien Agreement shall be indexed in the Grantor Index to the names of all record owners of the real property as specified on the map and in the Grantee Index to the County records. From the time of the recordation of the Lien Agreement, a lien shall attach to the property in an amount

necessary to complete the required improvements. Under no circumstance shall the County agree to subordinate the lien.

- (F) Be approved concurrently with the approval of the map with a note of the Lien Agreement's existence placed on the map, except where the Lien Agreement is being substituted after map approval for other security already deposited, in which case the Lien Agreement shall be signed and acknowledged by all parties having any record title interest in the real property, as prescribed by Government Code Section 66436, consenting to the subordination of their interests to the Lien Agreement.
 - (G) Be allowed only where the owner of the subdivision provides a title insurance policy and current title report from a title company approved by the County that documents that the owner of the subdivision is the record owner of the real property to be divided and the real property to be divided is not subject to any mortgages, deeds of trust, or judgment liens. The title insurance policy and title report shall be issued within the 90 days and ten days prior to the execution of the Lien Agreement.
- (5) The Lien Agreement shall provide that the owner of the subdivision shall substitute acceptable security for the Lien Agreement and commence to construct the required improvements ~~(i)~~ within two years following recordation of the map, or ~~(ii)~~ in the case of a Lien Agreement which has been substituted for existing security, within two years following recordation of the Lien Agreement.
 - (6) For Lien Agreements executed at the time of recordation of the map, the time for substitution of acceptable security and commencement of construction of the required improvements may be extended up to two times, each extension for a period not to exceed one year, by the Director of the Department of Public Works. The Director of the Department of Public Works may not grant such extensions if the owner of the subdivision has substituted a Lien Agreement for security originally furnished. The Board of Supervisors, however, on its own motion or at the request of the owner of the subdivision, may grant additional time extensions, on a case-by-case basis, as it deems appropriate, for substitution of acceptable security and commencement of construction of the required improvements pursuant to agreements secured either by ~~(i)~~ Lien Agreements executed at the time of recordation of the map, or ~~(ii)~~ Lien Agreements substituted for existing security.
 - (7) During the term of the Lien Agreement, legal ownership of the property to be subdivided shall be transferred to a title company approved by the Director of the Department of Public Works. No individual lots may be sold while the Lien Agreement is in force. Fee title to the entire property encumbered by the Lien Agreement, however, or to all lots designated on any individual final map which is encumbered by the Lien Agreement, may be sold in the aggregate to a single purchaser, provided that the proposed purchaser of the property must, prior to

assuming title to the property, either ~~(i)~~ execute a new Lien Agreement in a form acceptable to the County which will encumber the property to be conveyed, specifying the respective obligations of the owners of property subject to the original and such new Lien Agreement, or ~~(ii)~~ provide acceptable alternative security for the improvements the County requires be constructed as a condition to development of the property conveyed. Any new Lien Agreement must require that acceptable security be substituted therefore, and the improvements secured thereby commenced by the same date provided in the Lien Agreement with the original owner, unless such date shall be extended as provided above.

- (8) At the time of the approval of a Lien Agreement by the Board of Supervisors, the owner of the subdivision shall provide a cash deposit in the amount of \$15,000 to the Department of Public Works for the purpose of reverting the property to acreage if the owner of the subdivision breaches the terms of the Lien Agreement. In addition, at such time as title to any property subject to a Lien Agreement shall be conveyed, the transferee thereof, if such transferee executes a new Lien Agreement to secure construction of the improvements imposed upon such property as described above, shall also provide a cash deposit in the amount of \$15,000 to the Department of Public Works for the purpose of reverting the property to acreage if the owner of the subdivision breaches the terms of the Lien Agreement. The effect of these requirements shall be that each owner of property which is encumbered by a Lien Agreement shall at all times have \$15,000 per Lien Agreement encumbering such owner's property on deposit with the County for the purpose described herein. Any unused portion of any such deposit shall be refunded to the owner of the subdivision following completion of such reversion. If the costs of reverting the property to acreage exceeds \$15,000, the owner of the subdivision shall pay such additional costs to County prior to recordation of the reversion to acreage map.
- (9) When a Lien Agreement is utilized as security upon approval of the map, offers of dedication for street purposes will not be accepted until the Lien Agreement is released following substitution of acceptable alternative security and the required improvements are completed to the satisfaction of the Director of the Department of Public Works.
- (10) The Lien Agreement shall be released upon ~~(i)~~ substitution by the owner of the subdivision of acceptable security for the Lien Agreement in order to begin construction of the required improvements, or ~~(ii)~~ recordation of a reversion to acreage map.
- (11) The property **to be subdivided** must have sufficient equity to cover the estimated delayed infrastructure cost at the time the Lien Agreement is processed. The total estimate of costs shall not exceed fifty percent (50%) of the appraised value. The owner of subdivision shall provide documents that will allow for the determination of the property's value, equity, and conditions of title. Appraisals will be performed by a state certified general real estate appraiser.

(12) Prior to the approval of any time extension of the Lien Agreement, the Director of the Department Works, in his or her sole discretion, may require the owner of the subdivision to obtain a property appraisal. If the lien amount exceeds fifty percent (50%) of the appraised value, the County may elect the reversion to acreage map utilizing the cash deposit.

(13) In no instance shall the Lien Agreement compel the County to construct the required improvements.

(14) No Lien Agreement or extension of any Lien Agreement will be valid under this ~~e~~Chapter unless entered into on or before December 31, 2015.

(~~ee~~) **Forfeiture on failure to complete.** Upon the failure of the owner of the subdivision to complete any improvements and work within two years from the date the Improvement Agreement is executed, the Board may, upon notice in writing served by registered mail addressed to the last known address of the person, firm, or corporation signing the contract, determine that the improvement work or any part of the work is uncompleted and may cause to be forfeited to the County or Flood Control District, the sum of money or bonds given for the faithful performance of the work as may be necessary to complete the work.

(~~df~~) **Exoneration of improvement security.** With the exception of flood control or drainage works inspected by the Flood Control Engineer, it shall be the duty of the ~~County~~ Director of the Department of Public Works to inspect or receive certificates of completion of all improvements installed as to their compliance with this Chapter and County standards. The security furnished by the owner of the subdivision may be released by the Board or by the Chief Executive Officer as follows:

(1) Security given for faithful performance of any act or Improvement Agreement shall be released upon the performance of the act or final completion and acceptance of the required work. The Board delegates to the Chief Executive Officer the authority to accept the completed work.

(2) Security guaranteeing the payment to the contractor, subcontractors, and to persons furnishing labor, materials, or equipment shall, after passage of the time within which claims of lien are required to be recorded in compliance with Civil Code Article 3 (commencing with Section ~~31148410~~) of Chapter ~~24~~ of Title ~~452~~ of Part ~~46~~ of Division ~~34~~ and other acceptance of the work, be reduced to an amount equal to the total claimed by all claimants for whom claims of lien have been recorded and notice thereof given in writing to the Board, and if no claims have been recorded, the security shall be released in full. Requests for a release shall be made to the Land Use Services Department, Land Development Division, who may, prior to the release of any security under this subsection, require the owner of the subdivision to provide a title report or other form of evidence sufficient to show what claims of lien, if any, are of record on the subdivision.

- (3) The release shall not apply to any required guarantee and warranty period, nor to the amount of the security deemed necessary by the County for the guarantee and warranty period, nor to cost and reasonable expenses and fees, including reasonable attorney's fees.
- (4) Maintenance security necessary for guarantee and warranty of the work for a period of 12 months following completion and acceptance thereof against any defective work or labor completed, or defective materials furnished shall be released if no claims of defective work have been filed with the Board. In the event of the defective work, the security shall be held until all work is considered satisfactory and acceptable by the County.

(g) Partial Release of Performance Security. A partial release of performance security may be requested by filing an application prepared by and with the Land Use Services Department in accordance with the California Subdivision Map Act, Government Code Section 66499.7. A portion of the performance security may be released upon the approval of the Board. The following conditions shall be applied to applications submitted requesting partial release of the performance security.

- (1) As provided in Government Code Section 66499.7, the process allowing for a partial release of performance security shall occur when the cost estimate of the remaining work does not exceed 20 percent of the total original performance security.
- (2) The substitute security (or the remaining security) shall be 100 percent of the revised total cost estimate of the remaining work.
- (3) The Board shall determine the amount of substitute security required in accordance with Subsection 87.07.040(g)(2) herein.
- (4) The original performance security may be released only upon receiving the proper substitute security, which has been determined acceptable as to legal form by County Counsel and as to substance by the Board.

(h) Review. The Board shall review the delegation of authority provided to the Chief Executive Officer under this Section at least once by June 30, 2016, and at least once every two years thereafter.

Adopted Ordinance 4011 (2007); Amended Ordinance 4116 (2010); Amended Ordinance 42xx (2014)

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