

## CHAPTER 3

### SURETIES

#### 3-101 Performance Surety

3-101.1 General – In its discretion, the Planning Commission, for any subdivision requiring public improvements totaling more than \$20,000, may waive the requirement that the applicant complete and dedicate all public improvements prior to the signing of the Final Plat and may provide that, as an alternative, the applicant shall post a surety in an amount estimated by the City Engineer and approved by the Planning Commission as sufficient to secure to the City the satisfactory construction, installation, and dedication of the uncompleted portion of required improvements. The surety shall be posted by 10 a.m. on the day of the recordation of the Final Plat in the Register's Office for Sumner County, Tennessee.

If permitted, a Performance Surety, and any extension thereof as provided below, shall cover the costs of all public improvements and infrastructure, and shall be retained by the Planning Commission on behalf of the City of Gallatin. The estimate of any surety shall be established by the Engineering Division based upon the latest revised edition of the RSMMeans Site Work & Landscape Cost Data and other reliable indices of construction cost as determined in the sole discretion of the City Engineer. If an extension of the surety is permitted, a new estimate to reflect an updated cost of completion shall be performed by the Engineering Division and established as the estimate for such extension. The amount of the surety initially, and for any extension, shall be set in the amount of one hundred ten percent (110%) of the estimate by the Engineering Division. Such performance surety shall comply with all statutory requirements as set forth in these Regulations and shall be satisfactory to the City Attorney as to form, sufficiency of surety, and manner of execution. It shall also include provisions that the principal of the surety shall comply with all the terms of the resolution of Final Plat approval, as determined by the Planning Commission, including, but without limitation, the performance of all required subdivision and off-site improvements, and that all improvements and land included in the Irrevocable Offer of Dedication shall be dedicated to the City or County free and clear of all liens and encumbrances on the premises. The Performance Surety shall be submitted by 10 a.m. to the Codes/Planning Department on the same day as the Final Plat with the recording fee. The Codes/Planning Department shall cause the Final Plat to be recorded on that day.

The expiration date of the Performance Surety initially, and for any extension, shall be set as one (1) year from the date of Final Plat recordation.

The Performance Surety shall be in the form of cash, a certified check, or an Irrevocable Letter of Credit.

All Irrevocable Letters of Credit must contain automatic renewal provisions, in language satisfactory to the City Attorney, that provide for automatic renewal of the Irrevocable Letter of Credit unless the City is provided at least sixty (60) days' notice of non-renewal by the issuer of said Irrevocable Letter of Credit.

All Irrevocable Letters of Credit submitted to the City must either be payable at a local bank within a fifty (50) mile radius of the corporate limits of the City of Gallatin or specifically state that the letter of credit can be drawn upon by certified mail. The period within which required improvements must be completed shall be specified by the Planning Commission in the resolution approving the Final Plat, shall be incorporated in the language of the Irrevocable Letters of Credit, shall not, in any event, exceed one (1) year from date of Final Plat recordation unless a longer period is specifically authorized by the Planning Commission or its designee, as provided below.

The Planning Commission's designee may, upon proof of difficulty, extend the completion date set forth in such surety for a period of one (1) additional year. The Planning Commission may, upon proof of difficulty, grant additional one (1) year extensions.

The Planning Commission may accept, at any time during the period of a Performance Surety, a substitution of principal or sureties on the Surety, so long as the substitution is satisfactory to the City Attorney or contains the same terms as originally issued.

- 3-101.2 Forms of Performance Surety – The form of the Performance Surety shall be as one of those reproduced in Appendix A of these Regulations and approved by the City Attorney.
- 3-101.3 Reduction of Performance Surety – A Performance Surety may be reduced by the City Engineer upon actual completion and inspection of public improvements and then only to the ratio that the public improvement completed bears to the total public improvements for the plat. In no event shall a Performance Surety be reduced below fifteen percent (15%) of the principal amount prior to final acceptance of all items covered under the Surety. A Performance Surety reduction shall be approved a maximum of twice a year and not more than once in any three (3) month period.

3-102 Maintenance Surety

3-102.1 General – The applicant shall be required to maintain all improvements, including all lot improvements, until acceptance of the public improvements by the appropriate governmental body.

A Maintenance Surety in the amount of ten percent (10%) of the calculated roadway and drainage costs, as estimated by the Engineering Division, shall be required on all subdivisions and shall be retained by the Planning Commission in a form satisfactory to the City Attorney, in order to assure the satisfactory condition of the required improvements, including all lot improvements.

The Maintenance Surety shall be in the form of cash, cashier's check, or Irrevocable Letter of Credit. The Maintenance Surety shall remain in effect for a period of one (1) year after the date of the acceptance of the public improvements by the governing body.

The maximum length of time to retain said Maintenance Surety shall be two (2) years after acceptance of the public improvements.

3-102.2 Reduction or Release of Maintenance Surety – A Maintenance Surety may not be reduced. At the end of the Maintenance Surety phase of development, all inspection report items shall be fully completed to the satisfaction of the Chief Enforcing Officer.

3-103 Builder's Permit Surety – The scope of repairs or maintenance required under the provisions of the Builder's Permit Surety shall include driveway tile size and installation, headwalls, ditches, curb and driveway ramps, sidewalks, damage, disturbance, or relocation of utilities, damage to adjacent properties, and any other damage incurred during the construction of the building for which a permit was issued. Builder's Permit Sureties shall be a minimum of \$500.00 for each lot and shall be posted with the Engineering Division prior to the issuance of a Building Permit, unless waived by the City Engineer. Such Surety shall remain in effect until the building is 100 percent (100%) complete, including final grading of the lot, and is to be released only after written authorization from the Engineering Division. Annual Builder's Permit Surety may be issued in lieu of multiple separate Builder's Sureties in an amount to be determined by the City Engineer.

Posting of the General Contractor's Surety, as required by Ordinance No. O0604-037, shall satisfy the requirements of a Builder's Permit Surety under this Section.

- 3-104 Contract in Lieu of Surety – In subdivisions for which no Performance Surety has been posted, if the improvements are not completed within the period specified by the Planning Commission in the resolution approving the plat, the Final Plat approval shall be deemed to have expired.

In those cases in which a Performance Surety has been posted and required improvements have not been installed within the terms of such Performance Surety, the City thereupon may declare the Surety to be in default and require that all the improvements be installed regardless of the extent of the building development at the time the Surety is declared to be in default. If a developer requests an extension of a Performance Surety, at which time the Performance Surety cannot be extended any further as in accordance with Section 3-101.1 of these Regulations, the City can hold all building permits and call the Surety to cover the costs of all necessary improvements.

- 3-105 Acceptance of Required Public Rights-of-way, Easements and Infrastructure Improvements

3-105.1 Timeline for Acceptance – The acceptance of public parks, transportation, utility, and drainage infrastructure, rights-of-way and easements will not be considered until four (4) years after the Final Plat has been recorded, or until 80 percent (80%) of the lots are fully developed, whichever is the shorter period of time.

3-105.2 Temporary Improvements – The applicant shall build and pay for all costs of temporary improvements required by the Planning Commission and shall maintain them to the reasonable satisfaction of the Chief Enforcing Officer for the period specified by the Planning Commission. Prior to construction of any temporary facility or improvement, the applicant shall file with the appropriate government entity a separate suitable Surety for temporary facilities, which shall insure that the temporary facilities will be properly constructed, maintained, and removed. The improvements may otherwise be included in an approved Performance Surety.

3-105.3 Cost of Improvements – All required improvements shall be made by the applicant at his expense. Any provisions for reimbursement by the City, County, or any utility district, as agreed to in writing by that entity, shall be stipulated clearly in the provisions of the Surety.

3-105.4 Failure to Complete Improvements – For subdivisions for which no performance surety has been posted, if the improvements are not completed within the period specified by the Planning Commission in the resolution approving the plat, the approval shall be deemed to have expired.

In those cases in which a performance surety has been posted and required improvements have not been installed within the terms of such performance surety, the City thereupon may declare the Surety to be in default and require that all the improvements be installed regardless of the extent of the building development at the time the Surety is declared to be in default. If a developer requests an extension of a performance surety, at which time the performance surety cannot be extended any further as in accordance with Section 3-101.1 of these Regulations, the City can hold all building permits and call the Surety to cover the costs of all necessary improvements.

- 3-105.5 Acceptance of Dedication Offers – Acceptance of formal Offers of Dedication of public parks, transportation, utility, and drainage infrastructure, rights-of-way and easements shall be by formal action of the City Council or Sumner County Highway Commission, as appropriate. Such action shall be in the form of a resolution recommended by the Planning Commission to the Sumner County Highway Commission or to the City Council. Final action shall be by the Sumner County Highway Commission or City Council, as appropriate. The approval by the Planning Commission of a subdivision plat shall not be deemed to constitute or imply the acceptance by the City or County of any public parks, transportation, utility, and drainage infrastructure, rights-of-way and easements shown on the plat. The Planning Commission may require the plat to be endorsed with appropriate notes to this effect. Additionally, the developer of such subdivision is bound to the City for all improvements, regardless of Surety status, until formal acceptance has been granted by either the City Council or Sumner County Commission. See Section 2-105 of these Regulations for Final Plat acceptance conditions.
- 3-105.6 Inspection of Improvements – The Planning Commission may provide for inspection of required improvements during construction and insure their satisfactory completion. If the Chief Enforcing Officer finds, upon inspection, that any of the required improvements have not been constructed in accordance with the applicable City of Gallatin construction standards and specifications, the applicant shall be responsible for completing the improvements to the required standards. Whenever a Performance Surety covers the cost of improvements, the applicant and the surety company shall be liable, separately and jointly, for completing said improvements according to specifications.

3-105.7 Certificate of Satisfactory Completion – The City Council or the Sumner County Highway Commission will not accept the dedication of required improvements nor release Performance Sureties until the City or County Department responsible for the required improvements, as appropriate, states that all required improvements have been satisfactorily completed and until the applicant's engineer or surveyor has certified to the Planning Commission, through submittal of a detailed "as built" survey plat of the subdivision indicating location, dimensions, construction materials, and the other information required by the Planning Commission, and layout of the line and grade of all public improvements are in accordance with the approved Construction Plans for the subdivision. Upon such approval and recommendation, the governing body thereafter may accept the dedicated improvements in accordance with the procedure set forth in Section 1-113.107 and Section 3-105 of these Regulations. Easements shall also be obtained in accordance with Section 2-106.8 of these Regulations.

3-105.8 Dereliction of Improvements – Corrective maintenance required under provisions of the Maintenance Surety shall conform to the following procedure:

All necessary repairs required by the City or County Department responsible for the improvements during the period of time in which the Surety is in effect shall be at the expense of the Developer and shall be requested in writing by the City or County Department responsible for the required improvements. Should such requested repairs not be completed by the Developer within a reasonable specified time, such work shall be subcontracted or performed by the City or County Department responsible for the required improvements, with the cost of same being charged against the outstanding Maintenance Surety.

3-105.9 Deferral or Waiver of Required Improvements – The Planning Commission may defer or waive, at the time of Final Plat approval, subject to appropriate conditions, the provision of any or all such improvements as, in its judgment, are not requisite in the interest of the public health, safety, and general welfare or which are inappropriate because of inadequacy or lack of connecting facilities. Whenever it is deemed necessary by the Planning Commission to defer the construction of any improvement required herein because of incompatible grades, future planning, or for other reasons, the developer shall either pay his share of the costs of the future improvements to the City or County, as appropriate, prior to signing of the Final Plat by the Planning Commission officials or post a Surety insuring completion of said improvements upon demand of the City or County.