

ORDINANCE NO. \_\_\_\_\_ - 2017

AN ORDINANCE AMENDING ARTICLES 4-7 AND 4-8 OF THE LAND SUBDIVISION REGULATIONS TO ALTER THE ALLOWABLE SURETIES ACCEPTABLE BY THE URBAN COUNTY GOVERNMENT. (PLANNING COMMISSION).

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WHEREAS, the Lexington-Fayette Urban County Planning Commission has considered a text amendment to Articles 4-7 and 4-8 of the Land Subdivision Regulations to alter the allowable sureties acceptable by the Urban County Government; and

WHEREAS, the Planning Commission did recommend APPROVAL of the text by a vote of 8-0; and

WHEREAS, the Planning Commission did hold a public hearing on this proposed text amendment on December 8, 2016 and January 12, 2017; and

WHEREAS, this Council agrees with the recommendation of the Planning Commission; and

WHEREAS, the recommendation form of the Planning Commission is attached hereto and incorporated by reference herein.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT:

Section 1 – That Articles 4-7 and 4-8 of the Land Subdivision Regulations of the Lexington-Fayette Urban County Government are hereby amended as follows:

**ARTICLE 4. MAJOR SUBDIVISION PLAN PROCEDURE**

4-7(d)(9) PERFORMANCE / WARRANTY SURETY - The developer shall post a combination performance and warranty surety, which shall be both to ensure the completion of public improvements, as indicated by the punch list, and for the repair of infrastructure that is found to be defective due to improper workmanship or defective materials.

4-7(d)(9)(a) ACCEPTABLE SURETIES – Acceptable sureties shall generally be an irrevocable letter of credit or insurance bond in favor of the Urban County Government from a bank with offices in Lexington-Fayette County. For sureties less than \$5,000, cash, certified check, or money order are acceptable. For sureties greater than \$5,000, cash, certified check, money order, or other surety are acceptable.

4-7(d)(9)(b) DETERMINATION OF THE AMOUNT OF THE SURETY - The total amount of the combination surety shall be ten percent (10%) of the total cost of the installed infrastructure, including roads, sanitary sewer system and storm water facilities, plus one hundred percent (100%) of the cost of the items included on the punch list of incomplete work. Where the sanitary sewer pumping station has been constructed, and all pumping equipment installed, but electrical service has not been provided to the facility, the entire cost of the pumping

station shall be included in the surety. The cost of roads, sanitary sewers, storm water facilities and the punch list items shall be based upon the unit cost of each construction item which is a part of the plan. The unit costs for public improvement construction items shall be determined by the Division of Engineering. The surety shall also include an additional twenty percent (20%) of the amounts listed above to provide for inflation and administrative costs, should the surety be called; and the Urban County Government must cause the work to be constructed or repaired, as appropriate.

4-7(d)(9)(c) SURETY FOR PRIVATE STREETS - All private street improvements (excepting only the final course of asphalt and possibly the sidewalks) shall be constructed in compliance with the approved improvement plan before the final subdivision plan is recorded. For the final course of asphalt only, the developer shall be permitted to post a surety in favor of the final maintenance association responsible for the private street, and shall note such requirement on the final plat of the property. For any sidewalks not yet constructed, the developer shall be permitted, at the time of recordation of the final plat, to post a surety in favor of the final maintenance association responsible for the private street, as long as it is also in favor of the Urban County Government. This shall not be construed to hold the Urban County Government responsible for the construction of such sidewalks other than to the extent of the funds provided by the surety; and neither this, nor any action by the Urban County Government relative to the enforcement of the required construction of such sidewalks and/or the surety, therefore, shall be construed as acceptance of responsibility by the Urban County Government for the construction, maintenance or dedication of such sidewalks as public infrastructure. The amount of the surety for the private street shall be 10% of the cost of the installed private street plus 100% of the cost of the final course of asphalt. The surety shall also include an additional 20% of the amounts above to provide for inflation and administrative cost, should the surety be called; and the final maintenance association must cause the work to be constructed or repaired, as appropriate. When private streets are permitted, the surety that is submitted in favor of the Urban County Government for the infrastructure shall not include an amount equal to the surety for private streets. The amount of the surety for the sidewalks shall be 100% of the cost of the construction of the sidewalks. The surety shall also include an additional 20% of the amounts above to provide for inflation and administrative cost, should the surety be called; and the final maintenance association must cause the work to be constructed or repaired, as appropriate.

4-7(e) CERTIFICATION OF PLANNING COMMISSION APPROVAL AND RECORDING - Within one (1) year of the Commission's approval, or conditional approval, unless a time extension has been granted prior to the expiration date, the following steps shall be completed, or else the Commission's approval, or conditional approval, becomes null and void: (1) The developer shall fully comply with any conditions of approval placed on the plan by the Commission and shall submit the completed original plan drawing to the Division of Planning; (2) The plan shall be certified by the Commission's Secretary if it is in conformance with all requirements; (3) The plan shall be recorded in the plat records of the Fayette County Clerk by the Division of Planning at the developer's expense; and (4) Required copies shall be made of the recorded plan by the Division of Planning at the developer's expense.

4-7(f) RECORDING OF A PORTION OF A FINAL PLAN - The Division of Planning shall be authorized to permit a developer to record a final plan that has been approved or conditionally approved by the Commission in smaller land increments than depicted on the final plan. For any such developer's request, the Division of Planning shall review the proposal with the Division of Engineering to ensure that no problems in provision of streets, storm drainage, or sanitary sewers would result. In any disputed cases, the request will be forwarded to the Planning Commission for final judgment.

4-7(g) NO OCCUPANCY PERMIT - No person shall allow occupancy of any building until the Division of Building Inspection has verified that the private utilities (water, electricity, telephone, and, where applicable, sanitary sewers, access to a public street or private street or access easement, stormwater infrastructure, and natural gas), or public sanitary sewer pumping station, are completed in such a fashion that such utilities are available for use on the property in question.

4-8 COMPLETION OF PUBLIC IMPROVEMENTS - Public improvements that were not completed prior to certification of the final plan by the Urban County Engineer shall be completed in conformance with the approved improvement plan and with the submitted schedule for completion. In the event the public improvements are not completed as provided in the schedule for completion, or repaired as required, the Urban County Engineer shall, in writing, advise the Planning Commission, which shall have the authority to call the surety posted in favor of the Urban County Government and cause the work to be constructed or repaired, as appropriate.

4-8(a) PRE-FINAL INSPECTION AND FIRST REDUCTION IN THE SURETY - Within thirty (30) days of the certification of the final plan by the Urban County Engineer, the Division of Engineering shall inspect the public improvements. If the Division of Engineering finds that portions of the work on the public improvements that were included in the punch list have now been completed, a first reduction in the surety shall be permitted, when so requested by the developer. The reduction in the surety shall equal the cost of those punch list items that are found to be complete.

4-8(b) ADDITIONAL REDUCTIONS OF SURETY - Additional reductions in the amount of the surety will be permitted. The surety may be reduced only at times provided below. In all cases, the Division of Engineering shall retain the amount of the surety for inflation and administration until the release of the surety. No reduction will be permitted after the completion date has passed, and no reduction will alter the original completion or termination date of the surety.

(1) SECOND REDUCTION - When requested by the developer, a second reduction shall be allowed one year from the Urban County Engineer's certification of the final plan. Within thirty (30) days of the request by the developer, the Division of Engineering shall inspect the improvements. The surety may be reduced by an amount equal to ten percent (10%) of the total amount of the cost of the stormwater facilities, plus the value of all punch list items that are found to have been completed during the first year.

(2) THIRD REDUCTION - At the end of the second year from the date of the certification of the plan by the Urban County Engineer, and within thirty (30) days of the request by the developer, the Division of Engineering shall inspect the improvements. The surety may be reduced by an amount equal to the value of the items that are found to have been completed in the second year. If the final course of asphalt has been applied for at least one year, the amount of the surety may be reduced by an amount equal to ten percent (10%) of the total cost of the final course of asphalt.

(3) FOURTH REDUCTION - At the end of the third year from the date of the certification of the plan by the Urban County Engineer, and within thirty (30) days of the request by the developer, the Division of Engineering shall inspect the improvements. The surety may be reduced by an amount equal to ten percent (10%) of the total cost of the sanitary sewer and pump station facilities plus the value of any items that are found to have been completed in the third year. If the final course of asphalt has been applied for at least one year, and if a previous reduction for the final course of asphalt has not been taken, the amount of the surety may be reduced by an amount equal to ten percent (10%) of the total cost of the

final course of asphalt.

4-8(c) COMPLETION OF UTILITIES AND FINAL COURSE OF ASPHALT – Completion of utilities and final course of asphalt shall be in conformance with the current edition of the Procedures Manual. Upon installation of the final surface, the amount of the surety may be reduced by an amount equal to 10% of the cost of the base courses; but in no case shall the reduction be more than 10% of the cost of the final surface.

4-8(d) RENEWAL OF THE SURETY - When requested by the developer, the Urban County Engineer shall renew the surety for uncompleted items for one additional year, beyond the three years otherwise provided. As a condition of renewals for sureties older than 4 years, the Division of Engineering will require recalculation of the amount of the surety based on the current unit prices.

4-8(e) FINAL REDUCTION / RELEASE OF SURETY - When the developer has completed all required improvements, and the final course of asphalt has been applied for at least one year, the developer may request a final release of the surety. When so requested, the Division of Engineering will conduct a final inspection within thirty (30) days. Upon determination by the Division of Engineering that all improvements have been properly constructed in conformance with the requirements of these Subdivision Regulations, the Zoning Ordinance, the Division of Engineering Manuals and the Division of Engineering Standard Drawings, the Urban County Engineer shall, in writing, notify the Planning Commission, which shall release the surety.

4-8(f) SURETY FORFEITURES – If a surety is forfeited or called by the Urban County Government, the Corporation, Corporation Principal(s) or developer will be prohibited from submitting a surety to the Urban County Government for a period of three years from the date of forfeiture.

Section 2 - That this Ordinance shall become effective on the date of its passage.

PASSED URBAN COUNTY COUNCIL:

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MAYOR

ATTEST:

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Clerk of Urban County Council

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