

ORDINANCE NO. 2967 -2023

AN ORDINANCE AMENDING THE SUBDIVISION REGULATIONS OF THE CITY OF GARDEN CITY, KANSAS IN RELATION TO DEVELOPMENT AGREEMENTS AND GUARANTEES FOR THE COMPLETION AND QUALITY OF PUBLIC IMPROVEMENTS; AMENDING SECTION 70-2:7.120, SECTION 70-2:7.140, AND THE TABLE OF CONTENTS OF THE SUBDIVISION REGULATIONS; ADDING NEW SECTIONS 70-2:7.150, 70-2:7.160, AND 70-2:7.170 TO THE SUBDIVISION REGULATIONS; REPEALING CURRENT SECTION 70-2:7.120, CURRENT SECTION 70-2:7.140, AND THE CURRENT TABLE OF CONTENTS OF THE SUBDIVISION REGULATIONS; ALL TO THE CODE OF ORDINANCES OF THE CITY OF GARDEN CITY, KANSAS.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF GARDEN CITY, KANSAS:

SECTION 1. Section 70-2:7.120 of the Subdivision Regulations for the City of Garden City, Kansas, is hereby amended to read as follows:

Section 70-2:7.120 FINAL PLAT WITH A DEVELOPMENT AGREEMENT

- A. *Scope.*** The provisions of this Section shall apply when a development agreement is required by the City for the development of a subdivision. Nothing in this Section shall limit, prohibit, or restrict the City from including any supplemental or additional provisions in a development agreement.
- B. *Recordation of Plat.*** A final plat that has been approved by the official action of the Planning Commission and the Governing Body shall not be recorded until:
1. The landowner has complied with the provisions of Section 70-2:7.100, including, but not limited to, entering into a development agreement with the City that complies with this section; and
 2. The landowner has satisfied all terms and conditions required by the Planning Commission and the Governing Body in relation to the final plat.
- C. *Development Agreement.*** Any development agreement entered into pursuant to this section shall be subject to and shall include each of the following terms and conditions and any other terms and conditions agreed to by the landowner and the City:
1. ***Bonding Requirements.*** A provision requiring the landowner to provide the City with a performance bond and maintenance bond pursuant to Sections 70-2:7.150 and 70-2:7.160, respectively, or a bond alternative pursuant to Section 70-2:7.170, that is in compliance with all applicable provisions of these Subdivision Regulations.
 2. ***Other Guarantees for the Completion and Quality of Public Improvements.*** A provision requiring the landowner to comply with each provision of Section 70-2:7.140.
 3. ***Covenants to Run with the Land.*** A provision stating that the development agreement shall run with the land and shall bind all successors and assigns of the landowner.

SECTION 2. Section 70-2:7.140 of the Subdivision Regulations for the City of Garden City, Kansas, is

hereby amended to read as follows:

Section 70-2:7.140 GUARANTEES FOR THE COMPLETION AND QUALITY OF PUBLIC IMPROVEMENTS

- A. Scope.** The provisions of this Section shall apply when public improvements are to be constructed within or in relation to a subdivision by or on behalf of a landowner and are intended to be dedicated or otherwise transferred to the City upon completion. The provisions of this section shall apply regardless of whether a development agreement is required; provided, however, that nothing in this Section shall limit, prohibit, or restrict the City from including any supplemental or additional provisions in a development agreement. Nothing in this Section shall apply to any infrastructure improvements that are intended to remain privately owned.
- B. Commencement of Construction of Public Improvements – General Rule.** No construction of any public improvement shall commence until:
1. The infrastructure plans have been stamped for approval by the City;
 2. The final plat has been approved by the official action of the Planning Commission and the Governing Body;
 3. A development agreement that complies with Section 70-2:7.120 has been entered into and effective between the landowner and the City, but only in the event that the City requires a development agreement; and
 4. The landowner has provided and the City has accepted a performance bond pursuant to Section 70-2:7.150 or a performance bond alternative pursuant to Section 70-2:7.170.
- C. Commencement of Construction of Public Improvements – Exception.** Notwithstanding the provisions of Section 7-2:7.140.B, the City Engineer and the Director of the Neighborhood & Development Services department may authorize the commencement of land grading prior to the happening of any or all of the conditions set forth in Subsection B of Section 7-2:7.140.
- D. Building Permits.** A building permit may be issued for any building, dwelling unit, or other structure prior to completion of the public improvements, but only upon the conditions that:
1. The infrastructure plans have been stamped for approval by the City;
 2. The final plat has been approved by the official action of the Planning Commission and the Governing Body;
 3. A development agreement that complies with Section 70-2:7.120 has been entered into and effective between the landowner and the City, but only in the event that the City requires a development agreement; and
 4. The curb and gutter portion of the public improvements have been fully completed across the frontage of the lot for which a building permit is requested or, as an alternative thereto, the landowner has provided documentation relating to the minimum grade elevation that is in compliance with Section 18-10(a) of the Code and that is signed by a professional surveyor, as such term is defined by K.S.A. 74-7003(s), and amendments thereto.
- D. Acceptance.** No public improvements shall be accepted for purposes of title and maintenance by the City Engineer and the Director of the Neighborhood & Development Services

department until:

1. All public improvements have been constructed to full completion and in accordance with the final and approved specifications;
2. All public improvements have passed all inspections required by the City; and
3. The landowner has provided and the City has accepted a maintenance bond pursuant to Section 70-2:7.160 or a maintenance bond alternative pursuant to Section 70-2:7.170.

E. *Certificates of Occupancy.* No Certificate of Occupancy shall be issued for any building, dwelling unit, or other structure until:

1. All public improvements have been constructed to full completion and in accordance with the final and approved specifications;
2. All public improvements have passed all inspections required by the City;
3. The landowner has provided and the City has accepted a maintenance bond pursuant to Section 70-2:7.160 or a maintenance bond alternative pursuant to Section 70-2:7.170; and
4. The City Engineer and the Director of the Neighborhood & Development Services department have accepted all public improvements for purposes of title and maintenance.

SECTION 3. That new Section 70-2:7.150 of the Subdivision Regulations for the City of Garden City, Kansas, is hereby added as follows:

Section 70-2:7.150 PERFORMANCE BOND

A. *Performance Bond.* The landowner shall, at its own cost, guarantee the completion of the public improvements according to the final and approved specifications by providing a corporate surety performance bond or bond alternative pursuant to Section 70-2:7.170 that:

1. Names the City of Garden City, Kansas as the sole obligee;
2. Names the landowner as the principal;
3. Does not name any contractor or subcontractor as the principal;
4. Is issued by a firm, which is authorized to do business in Kansas and is listed as a certified company on the annual Circular 570 of the United States Department of Treasury;
5. Covers the period of time until all public improvements have been constructed to full completion and in accordance with the final and approved specifications; and
6. Has a face value in an amount determined by and approved by the City Engineer in accordance with Subsection B of this Section 70-2:7.150.

B. *Face Value.* The face value of any performance bond or bond alternative shall be in an amount sufficient to allow the City to complete the construction of the public improvements according to the final and approved specifications, whether any such construction is performed by City, by a completion contractor, or any combination thereof. To assist in determining such amount, the landowner shall submit documents to the City that evidence public improvement costs,

including, but not limited to, engineer estimates, construction contracts, subcontractor contracts, and self-performed work estimates. Any such documents submitted to the City shall be reviewed by the City Engineer for accuracy.

- C. Controlling Terms and Conditions.** Each and every term and condition of any performance bond or bond alternative that is proposed or provided to satisfy the requirements of this Section shall be subject to the approval of the City Engineer, the Director of the Neighborhood & Development Services department or any designee thereof, and the City Attorney's Office, in their sole discretion. In addition thereto, the City Engineer, with the consent of the Director of the Neighborhood & Development Services department or any designee thereof, and the City Attorney's Office, may require any additional terms and conditions that it deems necessary to protect the City's interests and may require the removal of any terms or conditions that it deems against the City's interests. Without limiting the foregoing, no performance bond or bond alternative shall be accepted by the City if any of the following terms and conditions are included in the bond or bond alternative: (1) a binding arbitration or mediation provision; (2) a contractual statute of limitations less than the applicable statute of limitations of the State of Kansas; (3) a choice of law provision for any jurisdiction other than the State of Kansas; or (4) a choice of venue provision for any jurisdiction other than the District Court of Finney County, Kansas or, at the election of the City, the United States District Court for the District of Kansas.
- D. Use of Bond Forms.** The landowner shall submit any such performance bond or bond alternative on any standard form document that may be required by the City Engineer and the Director of the Neighborhood & Development Services department, or any designee thereof.

SECTION 4. That new Section 70-2:7.160 of the Subdivision Regulations for the City of Garden City, Kansas, is hereby added as follows:

Section 70-2:7.160 MAINTENANCE BOND

- A. Maintenance Bond.** The landowner shall, at its own cost, guarantee the quality of the public improvements by providing a corporate surety maintenance bond or bond alternative pursuant to Section 70-2:7.170 that:
1. Names the City of Garden City, Kansas as the sole obligee;
 2. Names the landowner as the principal;
 3. Does not name any contractor or subcontractor as the principal;
 4. Is issued by a firm, which is authorized to do business in Kansas and is listed as a certified company on the annual Circular 570 of the United States Department of Treasury;
 5. Provides for the repair, replacement, or both the repair and replacement of all defects in the public improvements due to faulty materials and workmanship that appear within a maintenance period of at least one year from the date that the City Engineer and the Director of the Neighborhood & Development Services department have accepted all public improvements for purposes of title and maintenance; and
 6. Has a face value in an amount determined by and approved by the City Engineer in accordance with Subsection B of this Section 70-2:7.160.
- B. Face Value.** The face value of any maintenance bond or bond alternative shall be in an amount not less than one hundred percent (100%) of the total estimated cost of the fully constructed public improvements. The City Engineer shall base any such estimated cost on the costs of similar public infrastructure work available prior to the time the Notice to Proceed

is issued. To assist in determining such amount, the landowner shall submit documents to the City that evidence public improvement costs, including, but not limited to, engineer estimates, construction contracts, subcontractor contracts, and self-performed work estimates. Any such documents submitted to the City shall be reviewed by the City Engineer for accuracy.

- C. *Controlling Terms and Conditions.*** Each and every term and condition of any maintenance bond or bond alternative that is proposed or provided to satisfy the requirements of this Section shall be subject to the approval of the City Engineer, the Director of the Neighborhood & Development Services department or any designee thereof, and the City Attorney's Office, in their sole discretion. In addition thereto, the City Engineer, with the consent of the Director of the Neighborhood & Development Services department or any designee thereof, and the City Attorney's Office, may require any additional terms and conditions that it deems necessary to protect the City's interests and may require the removal of any terms or conditions that it deems against the City's interests. Without limiting the foregoing, no maintenance bond or bond alternative shall be accepted by the City if any of the following terms and conditions are included in the bond or bond alternative: (1) a binding arbitration or mediation provision; (2) a contractual statute of limitations less than the applicable statute of limitations of the State of Kansas; (3) a choice of law provision for any jurisdiction other than the State of Kansas; (4) a choice of venue provision for any jurisdiction other than the District Court of Finney County, Kansas or, at the election of the City, the United States District Court for the District of Kansas; or (5) any provision that terminates the obligation of the surety or the landowner to, at any time beyond the maintenance period, repair, replace, or repair and replace any defect that was reported by the City at a time within the maintenance period.
- D. *Use of Bond Forms.*** The landowner shall submit any such maintenance bond or bond alternative on any standard form document that may be required by the City Engineer and the Director of the Neighborhood & Development Services department, or any designee thereof.
- E. *Dual Bond; Duty to Update Bond.*** At the time that the landowner submits a performance bond, the landowner may submit a dual bond that acts as both a performance bond and maintenance bond, as an alternative to providing a separate performance bond and maintenance bond, but only upon the condition that the dual bond includes or complies with any and all provisions of these Subdivisions Regulations that apply to each type of bond. In the event that the City accepts a maintenance bond from the landowner and the actual costs of the public improvements exceed the amount guaranteed by such bond, the landowner shall update such bond as necessary to guarantee any such costs in excess of the original bond amount. The landowner shall provide copies of any updated bond to the City after the public improvements have been completed and prior to acceptance of the public improvements by the City Engineer and the Director of the Neighborhood & Development Services department have accepted all public improvements for purposes of title and maintenance.

SECTION 5. That new Section 70-2:7.160 of the Subdivision Regulations for the City of Garden City, Kansas, is hereby added as follows:

Section 70-2:7.170 BOND ALTERNATIVES

- A. *Bond Alternatives.*** As an alternative to providing a performance bond pursuant to Section 70-2:7.150 or a maintenance bond pursuant to Section 70-2:1.160, the landowner may, at its own cost, provide a cashier's check, escrow account, or an irrevocable letter of credit issued or maintained by a financial institution.
- B. *Approval.*** No such bond alternative shall be accepted by the City unless it is approved by the City Engineer, the Director of the Neighborhood & Development Services department or any designee thereof, and the City Attorney's Office.
- C. *Reciprocal Provisions.*** Any such bond alternative shall include or comply with any and all

provisions of these Subdivision Regulations that apply to the type of bond it is replacing.

SECTION 6. The Table of Contents of the Subdivision Regulations for the City of Garden City, Kansas, is hereby amended to read as follows, except that designated pages shall be administratively adjusted as needed upon codification:

ARTICLE I: GENERAL

70-2:1.010 TITLE
70-2:1.020 JURISDICTION
70-2:1.030 PURPOSE
70-2:1.040 INTERPRETATION
70-2:1.050 APPLICABILITY
70-2:1.060 SUBDIVISION APPROVAL
70-2:1.070 ENACTMENT
70-2:1.080 VIOLATIONS & PENALTIES
70-2:1.090 SEVERABILITY.....

ARTICLE II: ADMINISTRATION

70-2:2.010 DUTIES OF THE PLANNING DIRECTOR
70-2:2.010 DUTIES OF THE PLANNING COMMISSION.....
70-2:2.010 DUTIES OF THE GOVERNING BODY

ARTICLE III: DEFINITIONS

70-2:3.010 INTERPRETATION OF THESE SUBDIVISION REGULATIONS

ARTICLE IV: SUBDIVIDING LAND

70-2:4.010 PRE-APPLICATION.....

ARTICLE V: LOT SPLITS

70-2:5.010 LOT SPLIT
70-2:5.020 SUBMISSION OF LOT SPLIT
70-2:5.030 CONSIDERATION OF A LOT SPLIT
70-2:5.040 LOT SPLIT ACTION.....

ARTICLE VI: PRELIMINARY PLATS

70-2:6.010 PRELIMINARY PLATS.....
70-2:6.020 SUBMITTING A PRELIMINARY PLAT APPLICATION.....
70-2:6.030 SUBMITTING THE PRELIMINARY PLAT DRAWING
70-2:6.040 SUBMITTING A PRELIMINARY PLAT FILING FEE.....
70-2:6.050 CONTENTS OF THE PRELIMINARY PLAT DRAWING.....
70-2:6.060 DISTRIBUTION AND REVIEW OF THE PRELIMINARY PLAT
70-2:6.070 PLANNING COMMISSION ACTION ON THE PRELIMINARY PLAT
70-2:6.080 PRELIMINARY PLAT RECOMMENDATION

ARTICLE VII: FINAL PLATS

70-2:7.101 FINAL PLAT
70-2:7.020 SUBMITTING A FINAL PLAT APPLICATION.....
70-2:7.030 SUBMITTING A FINAL PLAT
70-2:7.040 SUBMITTING A FINAL PLAT FILING FEE.....

70-2:7.050	SUBMITTING A STAGED OR PHASED FINAL PLAT.....
70-2:7.060	CONTENTS OF THE FINAL PLAT.....
70-2:7.070	DISTRIBUTION AND REVIEW OF THE FINAL PLAT.....
70-2:7.080	ACTION BY THE PLANNING COMMISSION ON THE FINAL PLAT
70-2:7.090	ACTION BY THE GOVERNING BODY ON THE FINAL PLAT
70-2:7.100	SIGNING AND RECORDING THE FINAL PLAT
70-2:7.110	FINAL PLAT WITHOUT A DEVELOPMENT AGREEMENT
70-2:7.120	FINAL PLAT WITH A DEVELOPMENT AGREEMENT.....
70-2:7.130	GENERAL STEPS OF SUBDIVISION IMPROVEMENTS
70-2:7.140	GUARANTEES FOR THE COMPLETION AND QUALITY OF PUBLIC IMPROVEMENTS
70-2:7.150	PERFORMANCE BOND
70-2:7.160	MAINTENANCE BOND.....
70-2:7.170	BOND ALTERNATIVES

ARTICLE VIII: DESIGN STANDARDS & PUBLIC IMPROVEMENTS

70-2:8.010	APPLICABILITY
70-2:8.020	CONFORMANCE TO APPLICABLE RULES AND REGULATIONS.....
70-2:8.030	MINIMUM REQUIRED IMPROVEMENTS.....
70-2:8.040	REQUIRED IMPROVEMENTS
70-2:8.050	RECOMMENDED IMPROVEMENTS.....

ARTICLE IX: GENERAL SUBDIVISION DESIGN

70-2:9.010	ADEQUATE PUBLIC FACILITIES AND UTILITIES.....
70-2:9.020	EASEMENTS
70-2:9.030	OFFICE, COMMERCIAL, AND INDUSTRIAL SUBDIVISIONS
70-2:9.040	LOTS
70-2:9.050	BLOCKS
70-2:9.060	ALLEYS
70-2:9.070	SIDEWALKS
70-2:9.080	STREETS & ROADS
70-2:9.090	STREET & ROAD DESIGN STANDARDS
70-2:9.100	WATER FACILITIES
70-2:9.110	WASTE WATER FACILITIES
70-2:9.120	STORMWATER MANAGEMENT
70-2:9.130	PARKS, OPEN SPACES, AND RECREATION AREAS

ARTICLE X: VARIANCES, EXCEPTIONS, AND WAIVERS

70-2:10.010	GENERAL.....
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ARTICLE XI: SUBDIVISION FINANCING

70-2:11.010	GENERAL.....
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SECTION 7. The Subdivision Regulations for the City of Garden City, Kansas, specifically and separately, the Table of Contents and Sections 70-2:7.120 and 70-2:7.140, as previously existing, are hereby repealed, to be replaced as specified in this ordinance. All Subdivision Regulations sections not specifically amended or deleted herein shall remain in full force and effect.

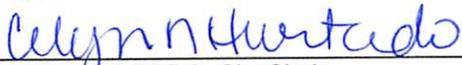
SECTION 8. If any section, clause, sentence, or phrase of this ordinance is found to be unconstitutional or is otherwise held invalid by any court of competent jurisdiction, it shall not affect the validity of any remaining parts of this ordinance.

SECTION 9. This ordinance shall be in full force and effect from and after its publication in the Garden City Telegram, the official publication of record.

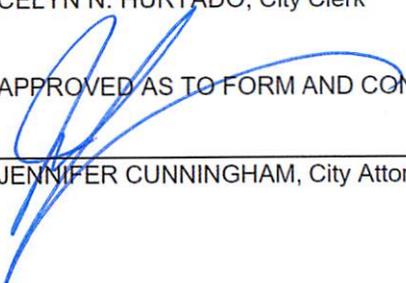
APPROVED AND PASSED by the Governing Body of the City of Garden City, Kansas, this 17th day of October, 2023.


DEBORAH OYLER, Mayor

ATTEST:


CELYN N. HURTADO, City Clerk

APPROVED AS TO FORM AND CONTENT:


JENNIFER CUNNINGHAM, City Attorney

