

Subdivision
Control Ordinance
Article Five
Surety

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5.1 Surety

- A. At the time when the Final Plat approval request is provided to the Planning Director and before the plat is certified by the President and Secretary of the Plan Commission, the petitioner shall provide appropriate performance and/or maintenance bonds or irrevocable letters of credit as surety for the public improvements in the subdivision .
- B. For plats which have been divided into sections for the purpose of a phased development, surety shall only be required to be provided for the public improvements included in the section which is the subject of the Final Plat approval request. This provision shall not be interpreted as relieving the subdivider of surety requirements for public improvements in previously recorded or future sections, which were/ shall be required at the time of their respective Final Plat approval.
- C. The surety shall be in a format and amount consistent with the requirements of this Article, including the following requirements:
 - a. The surety shall be drawn in favor of the “Madison County Board of County Commissioners”;
 - b. The surety shall be in an amount and time period determined by the County Engineer, sufficient to adequately maintain completed improvements and to install yet incomplete improvements in compliance with this Ordinance. The petitioner’s engineer or contractor shall supply an estimate of the cost of the improvements and their installation to aid the County Engineer in the determination of the amount of the bond. The petitioner’s estimate, however, shall not be binding. All surety shall be filed in the office of the Board of County Commissioners.
 - c. The surety shall specifically list the name of the subdivision and section, if applicable, to which it applies, the date from which it is valid, the time period for which it is valid, the public improvements to which it applies, and whether it is “maintenance” or “performance” surety. The surety shall further comply with all statutory requirements and shall be satisfactory to the County Attorney as to form, sufficiency, and manner of execution as set forth in these regulations.
 - d. Maintenance surety shall be provided in an amount equal to 25% of the cost of the public improvements and their installation and shall be provided for a period of 3 years from the date the improvements are accepted by the Board of County Commissioners.
 - e. Performance surety shall be provided in an amount equal to 125% of the cost of the yet incomplete public improvements and their installation and shall be provided for a time period sufficient to ensure the installation for the improvements.
 1. Performance surety shall be provided for sidewalks, street trees, erosion control, and the street surface which are generally not complete at the time of Final Plat acceptance, subject to the provisions for the installation of such improvements provided by this Ordinance.
 2. Performance surety shall be also be provided for any other public improvements which are incomplete in total or in part at the time of Final Plat acceptance. The acceptance of performance surety rather than complete improvements in the case of items other than sidewalks, street trees, erosion control, and the street surface shall be considered by the Board of County Commissioners, upon the recommendation of the County Engineer and Planning Director, based on the following considerations:
 - i. Whether or not the failure to complete the public improvements was the result of a situation specific to the physical conditions or unique design requirements of the subdivision or a natural event beyond the control of the subdivider.

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- ii. Whether or not the incomplete improvements would negatively affect public safety, health or welfare.
 - iii. Whether or not the incomplete improvements would negatively affect property values or pose a hazard to adjacent property, or structures to be completed in the development prior to the completion of the improvements.
 - iv. Whether or not the subdivider is able to complete the public improvements in a satisfactory and timely manner.
 3. In no case may the initial time period for the performance surety for these improvements exceed 2 years. The Board of County Commissioners may, upon review and advice of the Planning Director and County Engineer, extend the time period allowed for the completion of improvements and the validity of the performance surety.
 - f. Either maintenance or performance surety shall be provided for all public improvements, including but not limited to, street compaction, subsurface, base, and surface; sanitary sewers; curbs; gutters; sidewalks; surface swales; subsurface and storm drainage systems; seeding/erosion control; landscaping; and any other public improvements required by the Plan Commission or other appropriate public agency through the Preliminary Plat and Construction Plan review and approval process.
 - g. A developer may request permission of the Board of County Commissioners to delay the installation of the 1 inch surface layer of asphalt until the binder layer of asphalt has had a sufficient time period to prove its durability under the stress of heavy construction traffic. The developer shall be required to submit a separate performance bond to cover the cost of the installation of the 1 inch surface layer of asphalt.

5.2 Release of Performance Surety

- A. Upon completion of the public improvements for which performance surety has been provided, the subdivider shall make a written request to the Board of County Commissioners for the release of the surety. The request shall include the following:
 - a. a description of the public improvements which have been completed;
 - b. a report from the subdivider's engineer certifying that the improvements were completed consistent with all applicable requirements and standards; and
 - c. maintenance surety for the public improvements consistent with the requirements of this Article.
- B. The Planning Director and County Engineer shall provide appropriate inspections of the public improvements and the matter shall be placed on the agenda for the appropriate meeting of the Board of County Commissioners.
- C. Before any performance surety covering a street installation is released, the Planning Director, Board of County Commissioners, or County Engineer may request that core borings of the street be done at the subdivider's expense. Cores shall be reviewed by an independent testing laboratory or registered engineer for analysis.
- D. If the Planning Director and County Engineer report that the public improvements were completed consistent with all applicable standards and appropriate maintenance surety is provided, the Board of County Commissioners shall release the performance surety and accept the public improvements.
- E. If the Planning Director and/or County Engineer report that the public improvements have not been completed in a satisfactory manner then the Board of County Commissioners may deny the request for the release of the performance surety, providing a written statement of denial to the subdivider which includes a detailed list of required corrections. The petitioner shall make the required corrections and reapply for the release of the surety.

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- F. In reviewing requests for the release of performance surety, the Planning Director, County Engineer, and Board of County Commissioners shall consider the following:
- a. Whether or not the improvements were completed in a manner consistent with the approved Preliminary Plat, approved Construction Plans, and all applicable standards and requirements;
 - b. Whether or not the report provided by the subdivider's engineer is complete and satisfactory; and
 - c. Whether or not the public improvements are in good condition and appropriate for use by the public.
 1. All streets and sidewalks shall be clear of all dirt, debris, standing water, and construction equipment and/or supplies.
 2. All drainage structures shall be clear of sedimentation, debris, or other obstructions and be adequately secured to prevent access by the public.
 3. All erosion control measures shall be consistent with applicable standards for the limiting of erosion and sedimentation.
 4. The areas adjacent to all sidewalks shall be graded and seeded.
 5. All street trees shall be healthy and the planting area shall be graded.
- G. In any case where the required public improvements have not been completed 2 months prior to the date the performance surety will expire and the Board of County Commissioners and the subdivider are unable to reach agreement on an extension of the time frame for the surety and the completion of the public improvements, the Board may declare the surety to be in default. The required public improvements may then be installed by the County, using the funds from the surety.

5.3 Release of Maintenance Surety

- A. The subdivider shall be required to ensure that the public improvements covered by the maintenance surety remain free of construction related defects for the term of the surety.
- a. The public improvements shall be subject to periodic inspection by the County. Written notice shall be provided to the subdivider of any defects that are detected and any corrections that are required. The subdivider shall make the necessary corrections consistent with all applicable construction requirements.
 - b. The Board of County Commissioners may require, upon review and advice of the Planning Director and/or County Engineer, that additional maintenance surety be provided for the portion of the public improvement which was subject to repair for a time period of 3 years from the date the repair was completed.
- B. Two months prior to the expiration of the surety, the subdivider shall make a written request to the Board of County Commissioners for the release of the surety on the expiration date. The request shall include the following:
- a. a description of the public improvements to which the surety applies; and
 - b. a report from the subdivider's engineer certifying that the improvements remain free of construction related defects.
- C. The Planning Director and County Engineer shall provide appropriate inspections of the public improvements and the matter shall be placed on the agenda for the appropriate meeting of the Board of County Commissioners.
- D. If the Planning Director and County Engineer report that the public improvements are in satisfactory condition and free of construction related defects, the Board of County Commissioners shall release the maintenance surety and assume complete responsibility for the upkeep of the improvements.

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- E. If the Planning Director and/or County Engineer report that the public improvements are not in satisfactory condition and do contain unresolved construction related defects then the Board of County Commissioners may deny the request for the release of the maintenance surety, providing a written statement of denial to the subdivider which includes a detailed list of required corrections. The petitioner shall make the required corrections and reapply for the release of the surety.
- a. Subject to the approval of the Board, the subdivider may provide a performance surety for any portion of the public improvements to be corrected in lieu of the completion of the correction in order to obtain the release of the maintenance surety.
 - b. Generally, the use of performance surety in this manner shall be limited to instances when weather conditions or other features unique to the subdivision or nature of the public improvements prevent the timely completion of the required corrections. In no case may the time period provided for the completion of the corrections and the performance surety be more than 1 year from the date of the Board meeting at which notice of the required corrections is provided to the subdivider.
- F. In reviewing requests for the release of maintenance surety, the Planning Director, County Engineer, and Board of County Commissioners shall consider the following:
- a. Whether or not the improvements are free of construction related defects;
 - b. Whether or not the report provided by the subdivider's engineer is complete and satisfactory;
 - c. Whether or not the public improvements are in good condition and appropriate for use by the public.
 1. All streets and sidewalks shall be clear of all dirt, debris, standing water, and construction equipment and/or supplies.
 2. All drainage structures shall be clear of sedimentation, debris, or other obstructions and be adequately secured to prevent access by the public.
 3. All erosion control measures shall be effective consistent with applicable standards for the limiting of erosion and sedimentation.
 4. The areas adjacent to all sidewalks shall be graded and seeded.
 5. All street trees shall be healthy and exhibiting a normal growth pattern.
- G. In any case where the public improvements are not deemed to be free of construction defects and otherwise in satisfactory condition 2 months prior to the date the maintenance surety will expire, and the Board of County Commissioners and the subdivider are unable to reach agreement on an extension of the time frame for the surety and the correction of the public improvements, the Board may declare the surety to be in default. The required corrections to the public improvements may then be made by the County, using the funds from the surety.

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