

cityofnovi.org

# CITY of NOVI CITY COUNCIL

**Agenda Item G**  
**March 17, 2008**

**SUBJECT:** Approval of Ordinance No. 08-173.03, an amendment to the Novi Code of Ordinances Chapter 26.5, to allow an applicant who has posted performance guarantees and suspends work on a project or development to request a waiver of the requirements of Section 26.5-5. **Second Reading**

**SUBMITTING DEPARTMENT:** Community Development

**CITY MANAGER APPROVAL:** 

**BACKGROUND INFORMATION:**

Attached are the proposed amendments to the existing performance guarantee ordinance, the most significant of which would allow an applicant who has posted performance guarantees required under Chapter 26.5 and who subsequently suspends work to request a waiver from City Council of the requirements in this subsection upon showing that few or limited physical improvements have occurred on site. The ordinance would further require that such a waiver would expire after two years or upon expiration of the approved final site plan. As a condition of granting of the waiver, the applicant shall agree that if the required performance guarantees are not posted and the project is not re-commenced at the expiration of the agreement, the site plan and all project permit approvals shall be considered to be expired and/or null and void. Additional changes have been proposed and are red-lined to further clarify requirements under this Chapter.

**RECOMMENDED ACTION:** Approval of Ordinance No. 08-173.03, an amendment to the Novi Code of Ordinances Chapter 26.5, to allow an applicant who has posted performance guarantees and suspends work on a project or development to request a waiver of the requirements of Section 26.5-5. **Second Reading**

	1	2	Y	N
Mayor Landry				
Mayor Pro Tem Capello				
Council Member Crawford				
Council Member Gatt				

	1	2	Y	N
Council Member Margolis				
Council Member Mutch				
Council Member Staudt				

February 25, 2008

30903 Northwestern Highway  
P.O. Box 3040  
Farmington Hills, MI 48333-  
3040  
Tel: 248-851-9500  
Fax: 248-851-2158  
www.secretwardle.com

Thomas R. Schultz  
Direct: 248-539-2847  
tschultz@secretwardle.com

Mayor Landry and City Council  
City of Novi  
45175 W. Ten Mile Road  
Novi, MI 48375

Re: *Proposed Amendments to Performance Guarantees Ordinance  
(Chapter 26.5)*  
Our File No. 55142 NOV

Dear Mayor Landry and Councilmembers:

At a recent City Council meeting, a proposed "completion agreement" under Chapter 26.5 (Performance Guarantees) of the City Code was brought before Council for review and approval. The completion agreement was for a development that had received site plan approval a couple of years ago. The developer had only done minor physical improvements to the property—the trees and brush had been cleared, some grading had occurred, some work had been undertaken on detention basins, some improvements in the City's right-of-way with respect to utility placement had been completed. The developer proposed for purposes of the completion agreement that it be permitted to keep its site plan in place, but that it be granted a waiver from the requirement that it also keep its performance guarantees for all of the site improvements in place, since it did not expect to actually construct improvements anytime in the near future.

The City staff reviewed the request and drafted the completion agreement for City Council's consideration; staff did not have a strong objection to the developer's proposal. The City Council, after some discussion, referred the matter to the Ordinance Review Committee. The discussion raised the question whether the waiver or reduction of performance guarantees should be on an *ad hoc* or case-by-case basis, or should be the subject of an ordinance amendment.

The Ordinance Review Committee met to discuss the question. What is attached is the ORC's recommendation (ordinance amendment). Briefly stated, it:

1. Creates a new provision that expressly contemplates the possibility of a waiver by City Council, through the completion agreement process, and

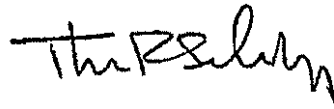
only while a current site plan is in existence of the obligation to keep performance guarantees in place once the project has been commenced, if certain criteria are met. These include:

- a. limited physical improvements to the site (e.g., only clearing and grading without roads and utility improvements); and
  - b. no lot, unit, or parcel within the development has been transferred to a third party.
2. Clarifies that, if the applicant does not meet the requirements for waiver of performance guarantees set forth above, the Council still has the ability to grant such a waiver on an *ad hoc* or case-by-case basis under its general authority in Section 26.5-12 to grant exceptions to the ordinance generally.

There are a few other minor changes to the ordinance, including new language clarifying the standards for granting extensions of time to complete projects and/or the granting of exceptions or waivers generally under Section 26.5-12. Due to the change in some of the titles of City employees (e.g., "building official" versus "building director"), some terminology changes have been made throughout the document. A couple of minor revisions relating to maintenance of trees and other landscaping details have also been proposed.

We look forward to discussing the proposed amendments at the City Council's March 3, 2008 meeting. If you have any questions regarding the above or the proposed amendment, please do not hesitate to call.

Very truly yours,



Thomas R. Schultz

TRS/jes

Enclosure

cc: Clay Pearson, City Manager  
Maryanne Cornelius, City Clerk  
Marina Neumaier, Finance  
Steve Rumble, Community Development Director  
Elizabeth M. Kudla, Esq.

**CLEAN VERSION**

**STATE OF MICHIGAN**  
**COUNTY OF OAKLAND**  
**CITY OF NOVI**  
**ORDINANCE NO. 08-\_\_\_\_\_**

**AN ORDINANCE TO AMEND CHAPTER 26.5, PERFORMANCE GUARANTEES, OF THE NOVI CODE OF ORDINANCES TO PROVIDE CHANGES CERTAIN TERMS THROUGHOUT, TO CLARIFY STANDARDS REGARDING THE TIMING FOR COMPLETION OF IMPROVEMENTS, THE WAIVER OF GUARANTEE REQUIREMENTS FOR SUSPENDED PROJECTS UNDER CERTAIN CIRCUMSTANCES, AND FOR WOODLAND GUARANTEES**

**THE CITY OF NOVI ORDAINS:**

**PART I.**

That Chapter 26.5, "Performance Guarantees," of the City of Novi Code of Ordinances is hereby amended to read in its entirety as follows

**ARTICLE I. IN GENERAL**

**Sec. 26.5-1. Purpose.**

The purpose of this chapter is to establish the authority and procedures for requiring, accepting, and enforcing performance guarantees, in order to assure that development projects are completed and maintained in accordance with city standards, requirements, and approval conditions.

**Sec. 26.5-2. Administrative provisions.**

This chapter sets forth provisions general to the administration of performance guarantees, including applicability, default, conditions, forms and amounts, reductions, release of guarantees, and scheduling of performance, maintenance, and defect inspections.

**Sec. 26.5-3. Applicability.**

The provisions of this chapter shall apply to permits and approvals granted pursuant to the various provisions of this Code, including (without limitation) buildings and building regulations (chapter 7); design and construction standards (chapter 11); drainage and flood damage prevention (chapter 12); planning (chapter 27); signs (chapter 28); soil erosion (chapter 29); streets, sidewalks and other public places (chapter 31); subdivision of land (chapter 32); utilities (chapter 34); woodlands (chapter 37); zoning ordinance (appendix A); and subdivision ordinance (appendix C).

#### **Sec. 26.5-4. Definitions.**

[The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning.]

*Applicant* means the person or entity that has a legal or equitable right to effect the development or improvement of the subject real property. Only the applicant may post a performance guarantee. If the subject real property is transferred, conveyed, or sold (other than as an individual, single-family lot or unit), the successor (with legal proof of ownership) shall replace any outstanding performance guarantees at the time of purchase. Cash bonds may be assigned upon proof of transfer, conveyance, or sale. If the successor does not replace all performance guarantees, then the applicant shall continue to be responsible under such guarantees for completing the project in accordance with their terms. This provision shall not prohibit joint performance guarantees, provided that the applicant is one of the joint guarantors and if deemed acceptable by the building official.

*Default* means the failure to:

- (1) Comply with performance guarantee requirements and conditions;
- (2) Complete, in the specified time, any required improvements in accordance with this Code and with an approved site or plot plan or plat and any conditions thereto;
- (3) Maintain, for the specified period of time, any required improvements in accordance with this Code and with an approved site or plot plan or plat and any conditions thereto; and
- (4) Pay current fee balances due.

*Department* means the City of Novi Building Division of the Community Development Department, unless a different department or individual is specified in or by reference to a particular provision or section hereof.

*Building Official* means the City of Novi Building Official or his or her designee.

*City Engineer* means the City Engineer or his or her designee.

*Parks/Forestry Operations Manager* means Parks/Forestry Operations Manager or his or her designee.

*Forfeiture:* Performance guarantees cannot be terminated, canceled, reduced, rebated, or released without written authorization from the building official. All guarantees shall remain in full force and effect until such time as the building official has authorized otherwise. On determination of the building official that any conditions of the performance guarantee have not been complied with, the building official shall have recourse to the rights created under the guarantee and as set forth in this chapter.

Refunds of cash bonds approved by the building official will be made payable solely to the applicant, or to an assignee of the applicant in the event of a transfer. Refunds will be mailed to the address specified on the bond receipt if not retrieved by the applicant or assignee from the department within a reasonable time after notice that the refund is available. If the refund is returned undeliverable, it shall be held by the city and returned to the applicant upon demand; however, if such demand is not made within one (1) year after the date of refund, the bond shall be deemed forfeited and shall be deposited in the general fund of the city.

*Guarantor* means the applicant (or assignee) and, if applicable, either a corporate surety acceptable to the city and licensed to provide guarantees to third parties or a financial institution incorporated and located within the United States and insured by the Federal Deposit Insurance Corporation (FDIC).

*Improvements* means any physical construction, alteration, undertaking, or activity for which a permit is required under this Code, including (without limitation) buildings and building regulations (chapter 7); design and construction standards (chapter 11); drainage and flood damage prevention (chapter 12); planning (chapter 27); signs (chapter 28); soil erosion (chapter 29); streets, sidewalks and other public places (chapter 31); subdivision of land (chapter 32); utilities (chapter 34); woodlands (chapter 37); zoning ordinance (appendix A); and subdivision ordinance (appendix C), for which the posting of a performance guarantee is required or authorized.

*Site improvements* shall be a specific reference to all of the following unless otherwise noted in this chapter or in any approved site or plot plan or plat or any conditions thereon: streets, sanitary sewers, storm sewers, water mains, mass grading; sidewalks, safety paths, bicycle paths and public walkways; street signs; street island improvements; woodland replacements; landscaping and screen planting of non-access greenbelt easements and retention basins; maintenance of retention basins on private property; street trees, including an estimate for the removal of any dead trees within street rights-of-way for a period of two (2) full growing seasons after the date of acceptance of streets and utilities; and the placement or replacement, after construction of improvements, of all lot stakes and monuments.

*Initial permit* means a permit for mass grading, building foundations, or utilities, whichever occurs first.

*Issuance* of an initial permit means delivery by the city of the permit to the applicant and acceptance of such permit by the applicant as required under the code (e.g., signature or acknowledgment of same).

*Performance guarantee* means a form of financial security posted to ensure timely, proper, and workmanlike completion of improvements; to ensure compliance with this Code; and/or to warranty materials, workmanship of improvements, or design. Performance guarantees may be in the form of cash, certified check, irrevocable bank letter of credit, and/or performance/payment bonds. For the purposes of this chapter, the terms "financial guarantee," "maintenance guarantee," and "defect guarantee" are considered kinds of performance guarantees.

*Property* means the real property described in and made subject to an approved site plan or plot plan or plat. For development projects that are approved with separate and discrete phases, the requirements of this chapter shall be applied separately to each phase (i.e., on a phase-by-phase basis).

#### **Sec. 26.5-5. Authorization.**

(a) Subject to the provisions of article IV of this chapter, and as set forth in the various provisions of this Code, the department is authorized to require all applicants constructing improvements under any permits and approvals granted pursuant to this Code to post a performance guarantee with the building official to guarantee completion of all required improvements in accordance with this chapter.

(b) Notwithstanding any provision of any other chapter of this Code with regard to issuance of permits for specific improvements, performance guarantees shall require actual construction and installation of all required improvements within two (2) years after the issuance of the initial permit, together with the posting of necessary bonds therefor, for any improvements listed in subsection (a)

above, or within six (6) months after a temporary occupancy permit has been issued for any structure on the property, whichever is shorter or occurs first. The time limit may be extended for six (6) months at the building official's discretion, upon determination that work is proceeding toward completion and that the delay is not dilatory or unreasonable under all the circumstances. In reaching this determination, the building official may take into consideration any appropriate factors established by the applicant, including but not limited to weather conditions, delays in securing required approvals/permits from other regulatory agencies, and unforeseen economic events or conditions. The request for extension shall be in writing, accompanied by a schedule for completion of all remaining work. At the time an extension is requested, a site inspection will be conducted, with the cost of such inspection being the direct responsibility of the applicant, to confirm work remaining on the site.

If an extension is requested for longer than six (6) months, approval of the city council shall be required, together with a written completion agreement pursuant to section 26.5-12. In determining whether to grant the extension, the city council shall determine that the delay is not dilatory or unreasonable under all the circumstances may take into consideration any appropriate factors established by the applicant. If an extension is granted, a revised performance guarantee shall be posted in an amount no less than two hundred (200) percent of the cost of the work to be completed, unless otherwise provided by city council. In all events, however, the work must be completed at the time ninety (90) percent of the building permits have been issued or within four (4) years after the issuance of the initial permit.

(c) An applicant who has posted the performance guarantees required under this Chapter who suspends work on a project or development may request a waiver of the requirements in this subsection to continue the guarantees in place upon a showing of the following:

- (1) Few or limited physical improvements have occurred on site, such as minimal clearing and grading, no site improvements such as roads or utilities have been installed or constructed, and no footing or foundations for any buildings have been commenced, or alternatively that any such improvements will be removed and the site restored as required by the City, including the stabilization of soils pursuant to state and local soil erosion and stabilization regulations;
- (2) No lot, unit, or parcel within the development or project has been created by the recording of an approved subdivision plat or condominium subdivision plan or transferred to a third party;

Upon a showing of the same cause for extension described herein, the city council may grant the requested waiver as to any improvements not actually commenced, upon entry by the applicant into a completion agreement that shall include the posting of required guarantees for any work actually commenced, including clearing and grading, and for required soil erosion controlled measures, in an amount to be determined by city council. The waiver shall expire after two years or upon expiration of the approved final site plan, and as a condition of the waiver the applicant shall agree that, if the required performance guarantees are not posted and the project re-commenced at the expiration of the agreement, the site plan and all project permit approvals shall be considered to be expired and/or null and void.

(d) If the applicant does not meet the criteria for waiver set forth in subsection (c) above, the applicant may seek relief pursuant to Section 26.5-12.



**Sec. 26.5-6. Conditions.**

(a) Every performance guarantee shall obligate the applicant to comply with all of the provisions of this Code and to complete all conditions required by the permit or approved site or plot plan or plat within the time limit specified.

(b) The city may collect or execute against and/or use a performance guarantee when work is not completed in a timely manner in accordance with terms and provisions of this chapter and of a permit or approved site or plot plan or plat, including any conditions thereto. The building official shall notify the applicant in writing of any such determination.

(c) All performance or payment bonds or letters of credit shall contain language, acceptable to the city, that is substantially similar to the following: If at any time the city determines that the funds remaining in the performance guarantee are not, or may not be, sufficient to pay in full one hundred fifty (150) percent of the remaining unpaid cost of all improvements and unpaid fees [or that the funds remaining in the maintenance guarantee are not, or may not be sufficient to pay all unpaid costs of correcting any defects and deficiencies in the improvements], then, within ten (10) days after demand by the city, the applicant shall increase the amount of the performance guarantee to be sufficient to pay the unpaid costs and fees. Failure to so increase the amount of the performance guarantee shall be grounds for the city to retain any remaining balance of the cash deposit and to draw down the entire remaining balance of the letter of credit. All unpaid fees will be deducted from this balance.

**Sec. 26.5-7. Form and amount.**

At the time of issuance of the initial permit for improvement under subsection 26.5-5(a) above, and before conducting any pre-construction meetings, the building official shall require the applicant to deposit a performance guarantee in the amount of one hundred fifty (150) percent of the estimated cost of the improvements for which the guarantee is required. The guarantee shall be a single guarantee posted by and in the name of the applicant encompassing all required improvements and shall be in the form of cash, certified check, or irrevocable bank letter of credit for all amounts up to two hundred fifty thousand dollars (\$250,000.00). To the extent that amounts required to be deposited are at any time in excess of two hundred fifty thousand dollars (\$250,000.00), such excess amounts may be posted by and in the name of the applicant as a separate guarantee, in any form allowed under the definition of "performance guarantee" in section 26.5-4, relating to all required improvements. In unusual or unique circumstances affecting the applicant's ability to post the guarantee, the building official may accept a separate guarantee for a particular improvement if the guarantee is posted as a joint guarantee with a person or entity other than the applicant who has a contractual obligation to the applicant to post such guarantee. Maintenance guarantees posted pursuant to section 26.5-10 (including those described in sections 26.5-33, 26.5-37, 26.5-39, and 26.5-40) may be posted by a third party who performed the work guaranteed.

**Sec. 26.5-8. Release or rebate of performance guarantees.**

The building official shall not release a performance guarantee until (1) all fees that are due have been paid; (2) a maintenance guarantee has been posted, if applicable; (3) inspection of the development site has been performed when required; and (4) the building official has determined that the conditions and requirements of the permit/approval otherwise specified in the performance guarantee have been met and final approval of same has been granted.

The building official may, after performing a site inspection at the written request of an applicant, rebate or reduce portions of a performance guarantee upon determination by the building official, in his sole discretion, that the improvements and/or actions for which that performance guarantee was posted have been satisfactorily completed in accordance with the approved plans, any temporary certificate of occupancy, and all other applicable laws, regulations, and ordinances. No such rebate or reduction shall occur until fifty (50) percent of the value of all of the site improvements, based on an estimate of the value of labor and materials, for the property are complete, and at no point shall the amount of the performance guarantees held by the city be less than one hundred fifty (150) percent of the cost to complete the remaining required improvements on the property. The applicant is responsible for the actual cost of inspections requested pursuant to this section.

**Sec. 26.5-9. Scheduling of performance, maintenance, and defect inspections.**

All improvements must be inspected by the city after the completion of construction of the improvements, as well as during the construction process as set forth in this chapter. The applicant must submit a written request for such inspection, provided that the improvements substantially comply with the requirements of the approved plans and all city standards, and city inspections will occur as soon as reasonably practicable thereafter, and should generally occur within thirty (30) days. Periodic inspections may also be made at the discretion of the building official.

**Sec. 26.5-10. Maintenance and defect guarantees authorized.**

(a) The department shall require all applicants to post a maintenance guarantee and/or defect guarantee warranting the successful operation and maintenance of improvements, and guaranteeing the workmanship, materials, and design used in construction of site improvements required by the conditions of any permits or approvals issued pursuant to this Code, as defined above.

(b) Unless otherwise specifically indicated in this Code, all maintenance guarantees and defect guarantees shall guarantee successful operation, workmanship, materials, and design of required facilities for a period of two (2) years following final inspection and final acceptance by the city in accordance with the procedures set forth in Article II of this Chapter. With regard to plantings required under chapter 37 (Woodland Protection Ordinance) or the zoning ordinance, the maintenance and guarantee period of two (2) full growing seasons is required. If any defect or deficiency occurs or becomes evident during the two-year period, then the owner shall after ten (10) days' written notice from the city, correct it or cause it to be corrected. In the event any improvement is repaired or replaced pursuant to the demand of the city, the building official may require the guarantee with respect to such repair or replacement, as defined and determined by the department, to be extended for two (2) full years from the date of the repair or replacement.

(c) The applicant shall notify the city and schedule inspections of facilities required pursuant to this Code, as defined above, at least sixty (60) days before the end of the two-year maintenance and/or defect period, and the city shall conduct such inspection as soon thereafter as is practicable and should generally occur within thirty (30) days.

**Sec. 26.5-11. Default.**

(a) If the applicant fails to timely complete all improvements and/or timely take the required action for which the performance guarantee was required, the applicant shall be deemed to be in default.

Unless a shorter period has been specified in a permit or approval issued, or elsewhere in this Code, "timely" completion of improvements shall mean not longer than two (2) years from the date of issuance of the initial permit for improvements and the necessary performance guarantees therefor, unless such time is extended by the building official as permitted in subsection 26.5-5(c) or is specified in an agreement entered into as provided in section 26.5-12.

(b) In the event of a default, the city shall, following notice to the applicant and opportunity for the applicant to cure such default, as specified in the notice, have the right (but not the obligation) to use the performance guarantee deposited to complete the improvements or take the appropriate actions to achieve completion, and the application for site or plot plan or plat approval, building permit, temporary certificate of occupancy, or similar approvals shall be deemed to have authorized the right of the city to enter upon the property to bring about such completion. A notice to the applicant given under this section may be provided by one (1) or more of the following methods: regular first class mail to the address on the application for permit; delivery of the notice to the applicant at such address; hand-delivery to the applicant; or posting the property.

(c) In the event the performance guarantee posted is insufficient in amount to allow the city to complete the improvements and/or actions, the applicant shall be required to pay to the city such additional costs as are needed for the completion of such improvements and/or actions. Should the city use the performance guarantee, or a portion thereof, to achieve such completion, any amounts remaining shall first be applied to the city's administrative costs, which shall be equal to twenty (20) percent of the cost of such completion, and to payment of actual attorney's fees, consultant fees, and like fees expended in connection with securing the guarantee and completing the improvements and/or actions; the balance remaining thereafter (if any) shall be refunded to the applicant.

(d) In the event of default, the city may contract with a third party to complete work required pursuant to this chapter.

(e) Subject to section 26.5-8, the applicant shall be responsible for ensuring that the required performance guarantees remain in place until all site improvements are complete and the guarantees have been released by the building official. Bonds and irrevocable letters of credit shall not be permitted to lapse or expire without renewal or replacement. The building official may call or collect upon any such guarantee prior to its expiration if it reasonably appears to the building official that the guarantee will be permitted to lapse or expire.

**Sec. 26.5-12. Exceptions; written completion agreement required.**

The city council may authorize exceptions to the requirements and conditions as set forth in this chapter, including, but not limited to, the form, timing, waiver, or reduction of performance guarantee amounts.

The city council may also authorize the issuance of permits, approvals, or temporary certificates of occupancy before all requirements for issuance under this chapter have been met, where the applicant has demonstrated that unusual or unique circumstances exist, that work is proceeding toward completion, and that any delay in completion is not unreasonable or dilatory. In reaching this determination, the standards of Section 1-12 of the City Code shall apply. In addition, the council shall consider such factors as the size and nature of the development project and the existence of matters beyond the control of the applicant (such as weather conditions, delay in securing permits/approvals

from other regulatory agencies, or unforeseen economic events or conditions). If any such exceptions are granted, a written completion agreement may be required, in a form to be established by the city.

**Sec. 26.5-13. Violations.**

A violation of any provision or requirement of this chapter shall be a civil infraction, subject to enforcement and the fines and penalties for civil infraction violations as set forth in this Code.

**Secs. 26.5-14--26.5-30. Reserved.**

**ARTICLE II. SPECIFIC REQUIREMENTS\***

**Sec. 26.5-31. Generally.**

The following provisions set forth special performance guarantee requirements for certain specific improvements.

**Sec. 26.5-32. Site improvements--Generally.**

(a) Before the issuance of an initial permit for site improvements as defined herein, and before any preconstruction meetings, a performance guarantee in the form and amount required under sections 26.5-5 and 26.5-7 shall be deposited with the city.

(b) All unfinished site improvements that are included on an approved site or plot plan or plat, or that are otherwise required by this Code, shall be constructed, installed, or placed on the property, and be approved by the city engineer, upon substantial completion of all phases of the development process. Upon substantial completion, the city engineer may issue a master punchlist letter listing all items to be completed by the applicant within sixty (60) calendar days or such other time period as stated within the punchlist letter.

(c) All site work shall be in accordance with appendix A, zoning ordinance; chapter 11, design and construction standards, and all other applicable statutes and ordinances.

**Sec. 26.5-33. Requirements for completion of improvements in developments with public streets and utilities.**

The following requirements shall apply where the streets and utilities within a development are contemplated or required to be dedicated to the public and accepted by the city.

*(1) Completion of utilities and acceptance for maintenance.*

- a. No building permit shall be issued unless authorized by an approved site or plot plan or plat. No building permit shall be issued until the city has been notified of the recording of any required subdivision or plat or site condominium master deed, following appropriate approval.

- b. Approval of plot plans for any single-family residential building sites, including platted subdivisions and site condominiums, shall be the responsibility of the city engineer. No such plot plan shall be approved until completion of all utility construction and testing as well as road base construction in accordance with city-approved design standards and in accordance with the approved site plan or plat. In addition, no plot plan shall be approved until the city has been notified of the recording of the subdivision plat or site condominium master deed, following appropriate approval.
1. After completion of utility construction and testing, as well as road construction, including asphalt base or concrete section, the applicant's engineer shall furnish the city engineer a certified affidavit, in a form acceptable to the city, indicating satisfactory completion of required improvements.
  2. After acceptance of the affidavit by the city, the applicant shall contact the department to schedule a final site inspection. This site inspection will be performed by the city engineer (or designee) and the applicant's engineer and contractor. If it is determined by the city engineer that the development is not ready for inspection, the inspection shall not occur until a determination is made that the inspection is proper. The city will conduct any required inspection as soon as reasonably practicable.
  3. If after site inspection it is determined that the public utilities were not completed in accordance with design standards and the approved site plan or plat, the city engineer will prepare a "utility and grading punchlist". Approval of plot plans and/or building permits shall not be issued until these punchlist items have been addressed to the satisfaction of the city.
  4. The applicant will have ten (10) working days to complete all items on the "utility and grading punchlist". If these items still have not been adequately addressed, additional fees shall be assessed for any reinspections.
  5. After completion of the "utility and grading punchlist" items, the city engineer may issue a "ready for use" letter. The department may then issue building permits for model homes (no more than four (4), or twenty (20) percent of the number of total homes in the development, whichever is fewer). Building permits other than for model homes may not be issued for any single-family residential building site, including platted subdivisions and site condominiums, unless authorized by an approved plot plan and until after confirmation that all fees and performance guarantees have been collected and that the documents in subsection d. below have been received by the city in an acceptable form.
  6. No temporary certificate of occupancy shall be issued for any single-family residential building until the following occur:
    - i. The city attorney has provided a letter to the city engineer confirming that the documents required under subsection d. below are in a legally acceptable form and have been properly executed by all parties in interest

determined by the city attorney as necessary to convey sufficient title to the utilities and corresponding easements to the city; and

- ii. The city engineer has provided the applicant a signed “acknowledgment” that the city engineer has issued the “ready for use” letter required by subsection (1) b 5. of this Section, has reviewed and approved the content of the exhibits to the documents required under subsection (1) d. below, and acknowledges the city’s acceptance of the title to and jurisdiction over such utilities identified in the documents, from and after the effective date of the “acknowledgment.”
- c. No temporary certificate of occupancy shall be issued for any non-single family residential or non-residential developments until a "ready for use" letter has been issued. A "ready for use" letter shall not be issued until all of the requirements of subsections b.1--4. immediately above have been satisfied, including completion of any "utility and grading punchlist" items and until all fees have been collected and all performance guarantees are in place and the following occur:
- i. The city attorney has provided a letter to the city engineer confirming that the documents required under subsection d. below are in a legally acceptable form and have been properly executed by all parties in interest determined by the city attorney as necessary to convey sufficient title to the utilities and corresponding easements to the city; and,
  - ii. The city engineer has provided the applicant a signed “acknowledgment” that the city engineer has reviewed and approved the content of the exhibits to the documents required under subsection (1) d. below, and acknowledges the city’s acceptance of the title to and jurisdiction over such utilities identified in the documents, from and after the effective date of the “acknowledgment.”
- d. The following acceptance documents (executed by or on behalf of the applicant unless otherwise specified herein) must be submitted to the city engineer for review and approval prior to approval of plot plan for single-family residential building sites, including platted subdivisions and site condominiums and prior to issuance of any temporary certificate of occupancy for all other developments:
- 1. Stormwater maintenance agreement as outlined in section 12-244 of the stormwater management ordinance.
  - 2. Private ingress/egress easement (if applicable).
  - 3. Private drainage easement(s) (if applicable).
  - 4. Easements for storm sewer and storm water drainage in proposed rights-of-way, where surface drainage or storm sewer drainage crosses property boundaries, including an easement surrounding the sedimentation basin and the detention basin (one-hundred-year storm elevation) and a maintenance access easement for the sedimentation basin, if applicable.
  - 5. Water main easement providing a twenty-foot easement for water mains to be made public.

6. Sanitary sewer easement providing a twenty-foot easement for the sanitary sewers to be made public.
  7. Bill of sale for utility improvements.
  8. Letter of Map Revision (LOMR)/Letter of Map Amendment (LOMA) from the Federal Emergency Management Agency (FEMA) (if applicable).
  9. Storm water facilities guarantee to be held for one (1) year after the date of completion of construction and final inspection of the storm water facilities.
  10. Waivers of lien from any parties involved with the installation of each utility to be made public.
  11. Contractor's sworn statement listing those parties and stating that all labor and material expenses incurred in connection with the subject construction improvements have been paid.
  12. Maintenance and guarantee bond equal to twenty-five (25) percent of the cost of the construction of the utilities to be accepted. This bond must be in effect for a period of two (2) years from the date of the "acknowledgement" signed by the city engineer indicating the city has accepted the utilities and corresponding easements.
  13. Warranty deed or other appropriate conveyance for any additional right-of-way intended for acceptance by the city, excluding streets subject to subsection (2) below.
  14. As-built drawings of the construction plans (exclusive of landscape and utility detail sheets).
  15. Title policy (dated within ninety (90) days of acceptance) for the purpose of verifying that the parties signing the easement and bill of sale documents have the legal authority to do so. All parties of interest shown on the title policy (including mortgage holders) shall either sign the easement documents themselves or a subordination agreement.
- e. With respect to all projects requiring a stormwater maintenance agreement as indicated in subsection (1) d. 1 above, no final certificate of occupancy shall be issued until the stormwater maintenance agreement has been approved by city council subsequent to approval by the city engineer and city attorney in accordance with subsections (1) b. and (1) c of this Section.

(2) *Acceptance of streets upon substantial completion.*

- a. At the time ninety (90) percent of the certificates of occupancy (including temporary certificates) have been issued, or within four (4) years after the issuance of the initial permit, whichever occurs first, the final lift of asphalt (where applicable) and all required "street trees" must be completed including all required soil erosion/sedimentation control measures.

No final certificate of occupancy shall be issued until all site improvements required by an approved site or plot plan or plat (except the final lift of asphalt, where applicable) are constructed, installed, or placed on the property and final approval of same has been obtained from the department and any other approving body, unless a completion agreement as described in section 26.5-12, together with any required performance guarantees is in place.

b. The applicant shall submit an affidavit towards acceptance of streets to the city engineer before a final site inspection will be conducted. If a final site inspection is not requested by the applicant at least sixty (60) days before the expiration of the required date of completion, the building official may schedule an inspection to determine if the applicant is in default under this chapter.

c. The following signed acceptance documents must be submitted to the city engineer no later than the time ninety (90) percent of the certificates of occupancy (including temporary certificates) have been issued, or four (4) years after the initial paving has been installed, whichever occurs first:

1. Bill of sale for each street conveying the improvements to the city.
2. Contractor's sworn statement listing those parties and stating that all labor and material expenses incurred in connection with the subject construction improvements have been paid.
3. A maintenance bond equal to twenty-five (25) percent of the cost of the construction of the streets to be accepted, in a form acceptable to the city attorney's office. The maintenance bond must be in effect for a period of two (2) years from the date of formal acceptance by city council.

Acceptance of the streets that are to be public shall be accomplished by resolution of city council as and when determined by the city, in its sole discretion, to be appropriate pursuant to the requirements and provisions of this chapter and other applicable provisions or sections of this Code, but not before ninety (90) percent of the certificates of occupancy (including temporary certificates) have been issued, or four (4) years after the initial paving has been installed, whichever occurs first; provided, however, that in unusual circumstances presenting a substantial hardship to the applicant (such as commencement of a development before the effective date of this provision), council may accept the streets before either such event has occurred, but in such case shall require a site restoration guarantee for the purposes set forth in section 26.5-34, and to guarantee the physical integrity of the roads to be accepted in light of continuing construction activity. The amount of the guarantee shall be established by the city engineer in an amount to be determined on the basis of the number of buildings remaining to be constructed, an estimate of time for completion and expected acceptance of the remaining site improvements, and other factors specific to the development at issue.

Where a development has been approved in phases, and the applicant seeks acceptance of streets in one or more phases before substantial completion of all remaining phases, the city council shall also require such site restoration guarantee for the purposes set forth in section 26.5-34, and to guarantee the physical integrity of the roads to be accepted in light of continuing construction activity, upon determination, in its sole discretion, to accept such streets in phases.

e. Except with the prior express consent of the city, and as further set forth in section 26.5-34 below, no construction traffic shall be permitted to use any street dedicated to the city after installation of the final surface course of that street. If the applicant uses the street for construction traffic, the applicant shall post the site restoration guarantee as set forth in the immediately preceding paragraph d, and keep the street free and clear of mud, debris, obstructions, and hazards and shall after the use is no longer necessary, restore and repair that street to city standards.

f. Upon issuance by the city of any permit authorizing the construction of any public road improvements within a platted subdivision or a site condominium, public trust title to such public roads shall be deemed to pass to the city, unless otherwise specifically indicated in the permit, and the



dedication of such right-of-way by the applicant may not thereafter be withdrawn except with the consent of the city. However, no public road improvements within such underlying right-of-way (i.e., physical improvements such as utilities, curb and gutter, asphalt, or concrete) shall be deemed to have been accepted by the city and the city shall have no obligation or liability in respect of maintenance or repair of the street, until the street has been constructed, approved, and accepted by city council and the utilities have been accepted by the city pursuant to the "acknowledgement" issued by the city engineer in accordance with subsections (1) b. or (1) c. of this Section. The city shall not be obligated to keep any street cleared, plowed, or otherwise maintained before the street has been completed, approved, and accepted by city council. The city may (but is not obligated to) undertake emergency maintenance, including without limitation snow plowing, flood prevention/repair, and the like as set forth in the city's emergency operations plan, and may upon exercise of such authority recover the cost of such action from the applicant pursuant to the terms of the appropriate performance guarantee(s). The exercise of such authority shall not be construed in any way to constitute an "acceptance" of the street or utility improvements before all requirements of this chapter are met.

**Sec. 26.5-34. Site restoration bond.**

(a) The performance guarantee required under sections 26.5-5 and 26.5-7 shall include a guarantee for site maintenance and restoration, in an amount to be specified by resolution of the city council, guaranteeing that the applicant shall:

- (1) Establish or reestablish ditches and culverts and properly drain the building area and reopen and reestablish any drainage ways that may have been interrupted by the building operation;
- (2) Repair, replace, and rebuild public road surfaces damaged in the course of construction so that the same shall be in comparable status as prior to commencement of construction;
- (3) Repair, replace, and rebuild any sidewalk damaged during the course of construction;
- (4) Repair all public utility structures if damaged during the course of construction and restore and adjust all manholes, catch basins, gate wells, hydrants, and shut-off boxes to the condition that they were prior to construction;
- (5) Maintain streets, highways, pathways, and alleys free of mud, dirt, debris, and other material from the construction site, as required by chapter 16, article IV of this Code; and
- (6) Maintain construction sites, as required by section 16-84.

(b) In the event that the applicant fails to perform under the provisions of subsections 26.5-34(a) (1)-(5), above, either during the life of the building permit or any extension thereof, or within thirty (30) days after written notice is given to the applicant to correct or fulfill unperformed provisions, the site restoration bond shall be forfeited and deposited in the general fund of the city. If the applicant fails to perform the provision of subsection 26.5-34(a)(6) above, the performance guarantee may be used for the payment of site cleanup performed by the city. The cost of cleanup shall be used and collected in the same manner provided in section 16-87. In addition, the site restoration bond may be utilized for payment of the costs of street clean-up performed by the city pursuant to chapter 16, article IV. Whenever funds are expended for such purposes the permit holder shall be required to replace such amount to bring the performance guarantee to that amount set by resolution of city council.

(c) The site restoration guarantee amount shall be returned to the applicant or assignee after final inspection and determination by the building official that the provisions of subsection 26.5-34(a) have been performed.

(d) In addition to any other performance guarantees permitted in this section or elsewhere in the city code, as a condition of issuance of any building permit for construction on property abutting a public street or road, the city engineer shall require a site restoration guarantee as provided and for the purposes set forth in this section in the amount of five thousand dollars (\$5,000.00), to be posted in the form of cash or letter of credit unless otherwise permitted by the city engineer for reasons of financial hardship. In the event there is damage or other prohibited condition to the public street or road, or other public improvement, directly adjacent to the property for which the site restoration guarantee has been posted, there shall be a rebuttable presumption that the damage or condition has been caused by or in connection with the activity occurring under the building permit, and the city may use the guarantee for the purposes stated in subsections 26.5-34(a) (1)-(5). The building permit holder may rebut the presumption by establishing that the damage or condition was caused by another or by other activity. If the amount of the guarantee is insufficient to repair or remedy the damage or condition, the city may require the posting of an additional guarantee. The permit holder shall be all times remain responsible for repair of any damage or condition actually caused by the permit holder.

#### **Sec. 26.5-35. Private streets.**

(a) A certificate of occupancy shall not be issued for any residential dwelling unit permitted to front on a private street unless private roads have been constructed in accordance with city standards for such road, and a certified affidavit is received from the applicant's engineer indicating satisfactory completion of all private streets within the development, in accordance with such standards and the approved site or plot plan or plat.

(b) The city will not maintain streets, signs, or drainage improvements on private streets. A private maintenance covenant approved by the city engineer shall be required for any private street. The covenant shall set out the terms and conditions of responsibility for maintenance, maintenance methods, standards, distribution of expenses, remedies for noncompliance with the terms of the agreement, right of use easements, and other considerations.

(c) A statement is required on the face of any plan, plat, or master deed containing a private street with the following language: "City of Novi has no responsibility to improve or maintain the private streets contained within or private streets providing access to the property described in this [plan/plat]".

#### **Sec. 26.5-36. Soil erosion and sedimentation control.**

The performance guarantee required under sections 26.5-5 and 26.5-7 shall include guarantee amounts in accordance with the provisions of chapter 29, article II.

#### **Sec. 26.5-37. Woodlands and fence maintenance guarantees.**

(a) The performance guarantee required under sections 26.5-5 and 26.5-7 shall include guarantee amounts to secure the planting of required Woodland trees, at a rate of four hundred dollars (\$400.00) per tree, and a fence maintenance guarantee in an amount as determined by policy of the Building official or his or her designee.

(b) Where tree relocation or replacement is not feasible within the woodland area, or on the property where the activity is to be conducted, or on other property within the city approved by the Parks/Forestry

Operations Manager the permit grantee shall pay into the city tree fund monies for tree replacement in a per tree amount representing the current market value for the tree replacement that would otherwise be required to be determined by the Parks/Forestry Operations Manager. The city tree account shall be used for all forestry related items including but not limited to the planting of trees within the city.

(c) The applicant shall guarantee trees for two growing seasons after the applicant's installation and the city's acceptance. A two-year maintenance bond in the amount of 25% of the value of the trees, but in no case less than \$1000, shall be required to insure the continued health of the trees following acceptance.

#### **Sec. 26.5-38. Wetlands.**

Any applicant conducting any activities within a watercourse or wetland location must obtain a use permit and file with city administration a performance guarantee to guarantee continued compliance with the use permit granted. These performance guarantees shall be paid prior to issuance of a building permit.

#### **Sec. 26.5-39. Landscaping.**

The performance guarantee required under sections 26.5-5 and 26.5-7 shall include guarantee amounts to secure the completion and improvement of required landscaping in accordance with approved site plan. There will be no issuance of any temporary or final certificate of occupancy in the development until this guarantee is paid. A final certificate of occupancy will not be granted until all required landscape material has been inspected and accepted by the city unless a completion agreement as described in section 26.5-12, together with any required guarantees, is in place. The applicant shall guarantee planting materials for two (2) growing seasons after applicant installation and acceptance by the city. A two-year maintenance bond in the amount of 10% of the value of the landscaping, but in no case less than \$1000, shall be required to insure the continued health of the landscaping following acceptance. The applicant shall replace all unhealthy and dead plant material without delay and within three (3) months following notice, or the next appropriate planting period, whichever comes first. The applicant shall guarantee all replacement material for an additional two (2) years after, if required by the building official.

#### **Sec. 26.5-40. Street trees.**

The performance guarantee required under sections 26.5-5 and 26.5-7 shall include guarantee amounts to secure the planting of required street trees, at a rate of four hundred dollars (\$400.00) per tree. There will be no issuance of any temporary certificate of occupancy in the development until this guarantee is in place. A final certificate of occupancy will not be granted until the applicant has planted all required street trees and they have been inspected and accepted by the city unless a completion agreement as described in section 26.5-12, together with any required guarantees, is in place. The applicant shall guarantee trees for two (2) growing seasons after applicant installation and acceptance by the city. A two-year maintenance bond in the amount of 25% of the value of the street trees, but in no case less than \$1000, shall be required to insure the continued health of the street trees following acceptance. The applicant shall replace all unhealthy and dead plant material within three (3) months following notice or the next appropriate planting period, whichever comes first. The applicant shall guarantee all replacement trees for an additional two (2) years after, if required by the building official.

**Sec. 26.5-41. Right-of-way.**

For any work proposed within the right-of-way of the arterial system of the city, a performance guarantee shall be posted in accordance with chapter 31 of this Code.

**Sec. 26.5-42. Application of chapter to existing developments.**

Unless the building official determines otherwise for good cause and as a result of peculiar practical difficulties establishing an applicant's inability to comply with the requirements hereof, this chapter shall apply to all property and development within the city after the effective date hereof, including any phase of any property or development for which an initial permit has not been issued, except: (1) a property or development for which an initial permit has been issued; or (2) a property or development for which a building permit has been issued pursuant to an approved plot plan.

**PART II**

**Savings Clause.** The amendment of the Novi Code of Ordinances set forth in this Ordinance does not affect or impair any act done, offense committed, or right accruing, accrued, or acquired or liability, penalty, forfeiture or punishment, pending or incurred prior to the amendment of the Novi Code of Ordinances set forth in this Ordinance.

**PART III.**

**Severability.** Should any section, subdivision, clause, or phrase of this Ordinance be declared by the courts to be invalid, the validity of the Ordinance as a whole, or in part, shall not be affected other than the part invalidated.

**PART IV.**

**Effective Date: Publication.** The provisions of this Ordinance shall become effective fifteen (15) days after its adoption and shall be published within 15 days of its adoption by publication of a brief notice in a newspaper circulated in the City, stating the date of enactment and the effective date of the ordinance, a brief statement as to the subject matter of this Ordinance and such other facts as the Clerk shall deem pertinent, and that a copy of the Ordinance is available for public use and inspection at the office of the City Clerk.

MADE, PASSED, AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF NOVI,  
OAKLAND COUNTY, MICHIGAN, ON THE \_\_\_ DAY OF \_\_\_\_\_, 2008.

\_\_\_\_\_  
DAVID LANDRY, MAYOR

\_\_\_\_\_  
MARYANNE CORNELIUS, CITY CLERK

Ayes:  
Nays:  
Abstentions:  
Absent:

**CERTIFICATION OF ADOPTION**

I hereby certify that the foregoing is a true and complete copy of an Ordinance passed at a \_\_\_\_\_ meeting of the Novi City Council, held on the \_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
MARYANNE CORNELIUS, CITY CLERK

Adopted:  
Published:  
Effective:

1047778

**STRIKE-OUT VERSION**

STATE OF MICHIGAN  
COUNTY OF OAKLAND  
CITY OF NOVI  
ORDINANCE NO. 08-\_\_\_\_\_

AN ORDINANCE TO AMEND CHAPTER 26.5, PERFORMANCE GUARANTEES, OF THE NOVI CODE OF ORDINANCES TO PROVIDE CHANGES CERTAIN TERMS THROUGHOUT, TO CLARIFY STANDARDS REGARDING THE TIMING FOR COMPLETION OF IMPROVEMENTS, THE WAIVER OF GUARANTEE REQUIREMENTS FOR SUSPENDED PROJECTS UNDER CERTAIN CIRCUMSTANCES, AND FOR WOODLAND GUARANTEES

**THE CITY OF NOVI ORDAINS:**

**PART I.**

That Chapter 26.5, "Performance Guarantees," of the City of Novi Code of Ordinances is hereby amended to read in its entirety as follows

**ARTICLE I. IN GENERAL**

**Sec. 26.5-1. Purpose.**

The purpose of this chapter is to establish the authority and procedures for requiring, accepting, and enforcing performance guarantees, in order to assure that development projects are completed and maintained in accordance with city standards, requirements, and approval conditions.

**Sec. 26.5-2. Administrative provisions.**

This chapter sets forth provisions general to the administration of performance guarantees, including applicability, default, conditions, forms and amounts, reductions, release of guarantees, and scheduling of performance, maintenance, and defect inspections.

**Sec. 26.5-3. Applicability.**

The provisions of this chapter shall apply to permits and approvals granted pursuant to the various provisions of this Code, including (without limitation) buildings and building regulations (chapter 7); design and construction standards (chapter 11); drainage and flood damage prevention (chapter 12); planning (chapter 27); signs (chapter 28); soil erosion (chapter 29); streets, sidewalks and other public places (chapter 31); subdivision of land (chapter 32); utilities (chapter 34); woodlands (chapter 37); zoning ordinance (appendix A); and subdivision ordinance (appendix C).

#### Sec. 26.5-4. Definitions.

[The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning.]

*Applicant* means the person or entity that has a legal or equitable right to effect the development or improvement of the subject real property. Only the applicant may post a performance guarantee. If the subject real property is transferred, conveyed, or sold (other than as an individual, single-family lot or unit), the successor (with legal proof of ownership) shall replace any outstanding performance guarantees at the time of purchase. Cash bonds may be assigned upon proof of transfer, conveyance, or sale. If the successor does not replace all performance guarantees, then the applicant shall continue to be responsible under such guarantees for completing the project in accordance with their terms. This provision shall not prohibit joint performance guarantees, provided that the applicant is one of the joint guarantors and if deemed acceptable by the ~~director~~building official.

*Default* means the failure to:

- (1) Comply with performance guarantee requirements and conditions;
- (2) Complete, in the specified time, any required improvements in accordance with this Code and with an approved site or plot plan or plat and any conditions thereto;
- (3) Maintain, for the specified period of time, any required improvements in accordance with this Code and with an approved site or plot plan or plat and any conditions thereto; and
- (4) Pay current fee balances due.

*Department* means the City of Novi Building ~~Department~~Division of the Community Development Department, unless a different department or individual is specified in or by reference to a particular provision or section hereof.

~~*Director Building Official*~~ means the City of Novi Building Official or his or her designee.

*City Engineer* means the City Engineer or his or her designee.

*Parks/Forestry Operations Manager* means Parks/Forestry Operations Manager or his or her designee.

*Forfeiture:* Performance guarantees cannot be terminated, canceled, reduced, rebated, or released without written authorization from the ~~director~~building official. All guarantees shall remain in full force and effect until such time as the ~~director~~building official has authorized otherwise. On determination of the ~~director~~building official that any conditions of the performance guarantee have not been complied with, the ~~director~~building official shall have recourse to the rights created under the guarantee and as set forth in this chapter.

Refunds of cash bonds approved by the ~~director~~building official will be made payable solely to the applicant, or to an assignee of the applicant in the event of a transfer. Refunds will be mailed to the address specified on the bond receipt if not retrieved by the applicant or assignee from the department within a reasonable time after notice that the refund is available. If the refund is returned undeliverable, it shall be held by the city and returned to the applicant upon demand; however, if such demand is not made within one (1) year after the date of refund, the bond shall be deemed forfeited and shall be deposited in the general fund of the city.



*Guarantor* means the applicant (or assignee) and, if applicable, either a corporate surety acceptable to the city and licensed to provide guarantees to third parties or a financial institution incorporated and located within the United States and insured by the Federal Deposit Insurance Corporation (FDIC).

*Improvements* means any physical construction, alteration, undertaking, or activity for which a permit is required under this Code, including (without limitation) buildings and building regulations (chapter 7); design and construction standards (chapter 11); drainage and flood damage prevention (chapter 12); planning (chapter 27); signs (chapter 28); soil erosion (chapter 29); streets, sidewalks and other public places (chapter 31); subdivision of land (chapter 32); utilities (chapter 34); woodlands (chapter 37); zoning ordinance (appendix A); and subdivision ordinance (appendix C), for which the posting of a performance guarantee is required or authorized.

~~Whenever used in this chapter, "Site improvements"~~ shall be a specific reference to all of the following unless otherwise noted in this chapter or in any approved site or plot plan or plat or any conditions thereon: streets, sanitary sewers, storm sewers, water mains, mass grading; sidewalks, safety paths, bicycle paths and public walkways; street signs; street island improvements; **woodland replacements**; landscaping and screen planting of non-access greenbelt easements and retention basins; maintenance of retention basins on private property; street trees, including an estimate for the removal of any dead trees within street rights-of-way for a period of two (2) full growing seasons after the date of acceptance of streets and utilities; and the placement or replacement, after construction of improvements, of all lot stakes and monuments.

*Initial permit* means a permit for mass grading, building foundations, or utilities, whichever occurs first.

*"Issuance"* of an initial permit means delivery by the city of the permit to the applicant and acceptance of such permit by the applicant as required under the code (e.g., signature or acknowledgment of same).

*Performance guarantee* means a form of financial security posted to ensure timely, proper, and workmanlike completion of improvements; to ensure compliance with this Code; and/or to warranty materials, workmanship of improvements, or design. Performance guarantees may be in the form of cash, certified check, irrevocable bank letter of credit, and/or performance/payment bonds. For the purposes of this chapter, the terms "financial guarantee," "maintenance guarantee," and "defect guarantee" are considered kinds of performance guarantees.

*Property* means the real property described in and made subject to an approved site plan or plot plan or plat. For development projects that are approved with separate and discrete phases, the requirements of this chapter shall be applied separately to each phase (i.e., on a phase-by-phase basis).

#### **Sec. 26.5-5. Authorization.**

(a) Subject to the provisions of article IV of this chapter, and as set forth in the various provisions of this Code, the department is authorized to require all applicants constructing improvements under any permits and approvals granted pursuant to this Code to post a performance guarantee with the **director/building official** to guarantee completion of all required improvements in accordance with this chapter.

(b) Notwithstanding any provision of any other chapter of this Code with regard to issuance of permits for specific improvements, performance guarantees shall require actual construction and installation of all required improvements within two (2) years after the issuance of the initial permit, together with the posting of necessary bonds therefor, for any improvements listed in subsection (a) above, or within six (6) months after a temporary occupancy permit has been issued for any structure on the property, whichever is shorter or occurs first. The time limit may be extended for six (6) months at the ~~director~~building official's discretion, upon determination that work is proceeding toward completion and that the delay is not dilatory or unreasonable under all the circumstances. In reaching this determination, the ~~director~~building official ~~shall only~~may take into consideration any appropriate factors established by the applicant, including but not limited to weather conditions, ~~or~~ delays in securing required approvals/permits from other regulatory agencies, and unforeseen economic events or conditions. The request for extension shall be in writing, accompanied by a schedule for completion of all remaining work. At the time an extension is requested, a site inspection will be conducted, with the cost of such inspection being the direct responsibility of the applicant, to confirm work remaining on the site.

If an extension is requested ~~for longer than six (6) months for reasons other than weather conditions or delays in securing required approvals/permits from outside regulatory agencies or a further extension is requested,~~ approval of the city council shall be required, together with a written completion agreement pursuant to section 26.5-12. In determining whether to grant the extension, the city council shall determine that the delay is not dilatory or unreasonable under all the circumstances may take into consideration any appropriate factors established by the applicant. If an extension is granted, a revised performance guarantee shall be posted in an amount no less than two hundred (200) percent of the cost of the work to be completed, unless otherwise provided by city council. In all events, however, the work must be completed at the time ninety (90) percent of the building permits have been issued or within four (4) years after the issuance of the initial permit.

(c) An applicant who has posted the performance guarantees required under this Chapter who suspends work on a project or development may request a waiver of the requirements in this subsection to continue the guarantees in place upon a showing of the following:

- (1) Few or limited physical improvements have occurred on site, such as minimal clearing and grading, no site improvements such as roads or utilities have been installed or constructed, and no footing or foundations for any buildings have been commenced, or alternatively that any such improvements will be removed and the site restored as required by the City. INCLUDING THE STABILIZATION OF SOILS PURSUANT TO STATE AND LOCAL SOIL EROSION AND STABILIZATION REGULATIONS;
- (2) No lot, unit, or parcel within the development or project has been CREATED BY THE RECORDING OF AN APPROVED SUBDIVISION PLAT OR CONDOMINIUM SUBDIVISION PLAN OR transferred to a third party;

Upon a showing of the same cause for extension described herein, the city council may grant the requested waiver as to any improvements not actually commenced, upon entry by the applicant into a completion agreement that shall include the posting of required guarantees for any work actually commenced, including clearing and grading, and for required soil erosion controlled measures, in an amount to be determined by city council. The waiver shall expire after two years or upon expiration of the approved final site plan, ~~["whichever is sooner"]~~ and as a condition of the waiver the applicant shall agree that, if the required performance guarantees are not posted and the project re-commenced at the

expiration of the agreement, the site plan and all project permit approvals shall be considered to be expired and/or null and void.

(d) If the applicant does not meet the criteria for waiver set forth in subsection (c) above, the applicant may seek relief pursuant to Section 26.5-12.

#### **Sec. 26.5-6. Conditions.**

(a) Every performance guarantee shall obligate the applicant to comply with all of the provisions of this Code and to complete all conditions required by the permit or approved site or plot plan or plat within the time limit specified.

(b) The city may collect or execute against and/or use a performance guarantee when work is not completed in a timely manner in accordance with terms and provisions of this chapter and of a permit or approved site or plot plan or plat, including any conditions thereto. The ~~director~~building official shall notify the applicant in writing of any such determination.

(c) All performance or payment bonds or letters of credit shall contain language, acceptable to the city, that is substantially similar to the following: If at any time the city determines that the funds remaining in the performance guarantee are not, or may not be, sufficient to pay in full one hundred fifty (150) percent of the remaining unpaid cost of all improvements and unpaid fees [or that the funds remaining in the maintenance guarantee are not, or may not be sufficient to pay all unpaid costs of correcting any defects and deficiencies in the improvements], then, within ten (10) days after demand by the city, the applicant shall increase the amount of the performance guarantee to be sufficient to pay the unpaid costs and fees. Failure to so increase the amount of the performance guarantee shall be grounds for the city to retain any remaining balance of the cash deposit and to draw down the entire remaining balance of the letter of credit. All unpaid fees will be deducted from this balance.

#### **Sec. 26.5-7. Form and amount.**

At the time of issuance of the initial permit for improvement under subsection 26.5-5(a) above, and before conducting any pre-construction meetings, the ~~director~~building official shall require the applicant to deposit a performance guarantee in the amount of one hundred fifty (150) percent of the estimated cost of the improvements for which the guarantee is required. The guarantee shall be a single guarantee posted by and in the name of the applicant encompassing all required improvements and shall be in the form of cash, certified check, or irrevocable bank letter of credit for all amounts up to two hundred fifty thousand dollars (\$250,000.00). To the extent that amounts required to be deposited are at any time in excess of two hundred fifty thousand dollars (\$250,000.00), such excess amounts may be posted by and in the name of the applicant as a separate guarantee, in any form allowed under the definition of "performance guarantee" in section 26.5-4, relating to all required improvements. In unusual or unique circumstances affecting the applicant's ability to post the guarantee, the ~~director~~building official may accept a separate guarantee for a particular improvement if the guarantee is posted as a joint guarantee with a person or entity other than the applicant who has a contractual obligation to the applicant to post such guarantee. Maintenance guarantees posted pursuant to section 26.5-10 (including those described in sections 26.5-33, 26.5-37, 26.5-39, and 26.5-40) may be posted by a third party who performed the work guaranteed.

#### **Sec. 26.5-8. Release or rebate of performance guarantees.**

The ~~director~~building official shall not release a performance guarantee until (1) all fees that are due have been paid; (2) a maintenance guarantee has been posted, if applicable; (3) inspection of the development site has been performed when required; and (4) the ~~director~~building official has determined that the conditions and requirements of the permit/approval otherwise specified in the performance guarantee have been met and final approval of same has been granted.

The ~~director~~building official may, after performing a site inspection at the written request of an applicant, rebate or reduce portions of a performance guarantee upon determination by the ~~director~~building official, in his sole discretion, that the improvements and/or actions for which that performance guarantee was posted have been satisfactorily completed in accordance with the approved plans, any temporary certificate of occupancy, and all other applicable laws, regulations, and ordinances. No such rebate or reduction shall occur until fifty (50) percent of the value of all of the site improvements, based on an estimate of the value of labor and materials, for the property are complete, and at no point shall the amount of the performance guarantees held by the city be less than one hundred fifty (150) percent of the cost to complete the remaining required improvements on the property. The applicant is responsible for the actual cost of inspections requested pursuant to this section.

#### **Sec. 26.5-9. Scheduling of performance, maintenance, and defect inspections.**

All improvements must be inspected by the city after the completion of construction of the improvements, as well as during the construction process as set forth in this chapter. The applicant must submit a written request for such inspection, provided that the improvements substantially comply with the requirements of the approved plans and all city standards, and city inspections will occur as soon as reasonably practicable thereafter, and should generally occur within thirty (30) days. Periodic inspections may also be made at the discretion of the ~~director~~building official.

#### **Sec. 26.5-10. Maintenance and defect guarantees authorized.**

(a) The department shall require all applicants to post a maintenance guarantee and/or defect guarantee warranting the successful operation and maintenance of improvements, and guaranteeing the workmanship, materials, and design used in construction of site improvements required by the conditions of any permits or approvals issued pursuant to this Code, as defined above.

(b) Unless otherwise specifically indicated in this Code, all maintenance guarantees and defect guarantees shall guarantee successful operation, workmanship, materials, and design of required facilities for a period of two (2) years following final inspection and final acceptance by the city in accordance with the procedures set forth in Article II of this Chapter. With regard to plantings required under chapter 37 (Woodland Protection Ordinance) or the zoning ordinance, the maintenance and guarantee period of two (2) full growing seasons is required. If any defect or deficiency occurs or becomes evident during the two-year period, then the owner shall ~~correct the deficiency on his own, or,~~ after ten (10) days' written notice from the city, correct it or cause it to be corrected. In the event any improvement is repaired or replaced pursuant to the demand of the city, the building official may require the guarantee with respect to such repair or replacement, as defined and determined by the department, ~~shall to~~ be extended for two (2) full years from the date of the repair or replacement.

(c) The applicant shall notify the city and schedule inspections of facilities required pursuant to this Code, as defined above, at least sixty (60) days before the end of the two-year maintenance and/or defect

period, and the city shall conduct such inspection as soon thereafter as is practicable and should generally occur within thirty (30) days.

#### **Sec. 26.5-11. Default.**

(a) If the applicant fails to timely complete all improvements and/or timely take the required action for which the performance guarantee was required, the applicant shall be deemed to be in default. Unless a shorter period has been specified in a permit or approval issued, or elsewhere in this Code, "timely" completion of improvements shall mean not longer than two (2) years from the date of issuance of the initial permit for improvements and the necessary performance guarantees therefor, unless such time is extended by the ~~director~~**building official** as permitted in subsection 26.5-5(c) or is specified in an agreement entered into as provided in section 26.5-12.

(b) In the event of a default, the city shall, following notice to the applicant and opportunity for the applicant to cure such default, as specified in the notice, have the right (but not the obligation) to use the performance guarantee deposited to complete the improvements or take the appropriate actions to achieve completion, and the application for site or plot plan or plat approval, building permit, temporary certificate of occupancy, or similar approvals shall be deemed to have authorized the right of the city to enter upon the property to bring about such completion. A notice to the applicant given under this section may be provided by one (1) or more of the following methods: regular first class mail to the address on the application for permit; delivery of the notice to the applicant at such address; hand-delivery to the applicant; or posting the property.

(c) In the event the performance guarantee posted is insufficient in amount to allow the city to complete the improvements and/or actions, the applicant shall be required to pay to the city such additional costs as are needed for the completion of such improvements and/or actions. Should the city use the performance guarantee, or a portion thereof, to achieve such completion, any amounts remaining shall first be applied to the city's administrative costs, which shall be equal to twenty (20) percent of the cost of such completion, ~~and to which includes but is not limited to the and to~~ payment of actual attorney's fees, consultant fees, and like fees expended in connection with securing the guarantee and completing the improvements and/or actions; the balance remaining thereafter (if any) shall be refunded to the applicant.

(d) In the event of default, the city may contract with a third party to complete work required pursuant to this chapter.

(e) Subject to section 26.5-8, the applicant shall be responsible for ensuring that the required performance guarantees remain in place until all site improvements are complete and the guarantees have been released by the ~~director~~**building official**. Bonds and irrevocable letters of credit shall not be permitted to lapse or expire without renewal or replacement. The ~~director~~**building official** may call or collect upon any such guarantee prior to its expiration if it reasonably appears to the ~~director~~**building official** that the guarantee will be permitted to lapse or expire.

#### **Sec. 26.5-12. Exceptions; written completion agreement required.**

The city council may authorize exceptions to the requirements and conditions as set forth in this chapter, including, but not limited to, the form, timing, waiver, or reduction of performance guarantee amounts.

~~Determinations to vary from the should be guided by the general standards of Section 1-12 of the City Code:~~

~~A literal application of the substantive requirement would result in exceptional, practical difficulty to the applicant;~~

~~The alternative proposed by the applicant will be adequate for the intended use and shall not substantially deviate from the performance that would be obtained by strict enforcement of the standards; and~~

~~The granting of the variance will not be detrimental to the public health, safety or welfare, nor injurious to adjoining or neighboring property, nor contrary to the overall purpose and goals of the chapter or article containing the regulation in question.~~

The city council may also authorize the issuance of permits, approvals, or temporary certificates of occupancy before all requirements for issuance under this chapter have been met, where the applicant has demonstrated that unusual or unique circumstances exist, that work is proceeding toward completion, and that any delay in completion is not unreasonable or dilatory. In reaching this determination, the standards of Section 1-12 of the City Code shall apply. In addition, the council shall consider such factors as the size and nature of the development project and the existence of matters beyond the control of the applicant (such as weather conditions, delay in securing permits/approvals from other regulatory agencies, or unforeseen economic events or conditions). If any such exceptions are granted, a written completion agreement may be required, in a form to be established by the city.

#### **Sec. 26.5-13. Violations.**

A violation of any provision or requirement of this chapter shall be a civil infraction, subject to enforcement and the fines and penalties for civil infraction violations as set forth in this Code.

#### **Secs. 26.5-14--26.5-30. Reserved.**

### **ARTICLE II. SPECIFIC REQUIREMENTS\***

#### **Sec. 26.5-31. Generally.**

The following provisions set forth special performance guarantee requirements for certain specific improvements.

#### **Sec. 26.5-32. Site improvements--Generally.**

(a) Before the issuance of an initial permit for site improvements as defined herein, and before any preconstruction meetings, a performance guarantee in the form and amount required under sections 26.5-5 and 26.5-7 shall be deposited with the city.

(b) All unfinished site improvements that are included on an approved site or plot plan or plat, or that are otherwise required by this Code, shall be constructed, installed, or placed on the property, and be approved by the city engineer, upon substantial completion of all phases of the development process. Upon substantial completion, the city engineer may issue a master punchlist letter listing all items to be

completed by the applicant within sixty (60) calendar days or such other time period as stated within the punchlist letter.

(c) All site work shall be in accordance with appendix A, zoning ordinance; chapter 11, design and construction standards, and all other applicable statutes and ordinances.

**Sec. 26.5-33. Requirements for completion of improvements in developments with public streets and utilities.**

The following requirements shall apply where the streets and utilities within a development are contemplated or required to be dedicated to the public and accepted by the city.

*(1) Completion of utilities and acceptance for maintenance.*

- a. No building permit shall be issued unless authorized by an approved site or plot plan or plat. No building permit shall be issued until the city has been notified of the recording of any required subdivision or plat or site condominium master deed, following appropriate approval.
- b. Approval of plot plans for any single-family residential building sites, including platted subdivisions and site condominiums, shall be the responsibility of the city engineer. No such plot plan shall be approved until completion of all utility construction and testing as well as road base construction in accordance with city-approved design standards and in accordance with the approved site plan or plat. In addition, no plot plan shall be approved until the city has been notified of the recording of the subdivision plat or site condominium master deed, following appropriate approval.
  1. After completion of utility construction and testing, as well as road construction, including asphalt base or concrete section, the applicant's engineer shall furnish the city engineer a certified affidavit, in a form acceptable to the city, indicating satisfactory completion of required improvements.
  2. After acceptance of the affidavit by the city, the applicant shall contact the department to schedule a final site inspection. This site inspection will be performed by the city's engineer (or designee) and the applicant's engineer and contractor. If it is determined by the city engineer that the development is not ready for inspection, the inspection shall not occur until a determination is made that the inspection is proper. The city will conduct any required inspection as soon as reasonably practicable.
  3. If after site inspection it is determined that the public utilities were not completed in accordance with design standards and the approved site plan or plat, the city engineer will prepare a "utility and grading punchlist". Approval of plot plans and/or building permits shall not be issued until these punchlist items have been addressed to the satisfaction of the city.

4. The applicant will have ten (10) working days to complete all items on the "utility and grading punchlist". If these items still have not been adequately addressed, additional fees shall be assessed for any reinspections.
5. After completion of the "utility and grading punchlist" items, the city engineer may issue a "ready for use" letter. The department may then issue building permits for model homes (no more than four (4), or twenty (20) percent of the number of total homes in the development, whichever is fewer). Building permits other than for model homes may not be issued for any single-family residential building site, including platted subdivisions and site condominiums, unless authorized by an approved plot plan and until after confirmation that all fees and performance guarantees have been collected and that the documents in subsection d. below have been received by the city in an acceptable form.
6. No temporary certificate of occupancy shall be issued for any single-family residential building until the following occur:
  - i. The city attorney has provided a letter to the city engineer confirming that the documents required under subsection d. below are in a legally acceptable form and have been properly executed by all parties in interest determined by the city attorney as necessary to convey sufficient title to the utilities and corresponding easements to the city; and
  - ii. The city engineer has provided the applicant a signed "acknowledgment" that the city engineer has issued the "ready for use" letter required by subsection (1) b 5. of this Section, has reviewed and approved the content of the exhibits to the documents required under subsection (1) d. below, and acknowledges the city's acceptance of the title to and jurisdiction over such utilities identified in the documents, from and after the effective date of the "acknowledgment."
- c. No temporary certificate of occupancy shall be issued for any non-single family residential or non-residential developments until a "ready for use" letter has been issued. A "ready for use" letter shall not be issued until all of the requirements of subsections b.1--4. immediately above have been satisfied, including completion of any "utility and grading punchlist" items and until all fees have been collected and all performance guarantees are in place and the following occur:
  - i. The city attorney has provided a letter to the city engineer confirming that the documents required under subsection d. below are in a legally acceptable form and have been properly executed by all parties in interest determined by the city attorney as necessary to convey sufficient title to the utilities and corresponding easements to the city; and,
  - ii. The city engineer has provided the applicant a signed "acknowledgment" that the city engineer has reviewed and approved the content of the exhibits to the documents required under subsection (1) d. below, and acknowledges the city's



acceptance of the title to and jurisdiction over such utilities identified in the documents, from and after the effective date of the “acknowledgment.”

- d. The following acceptance documents (executed by or on behalf of the applicant unless otherwise specified herein) must be submitted to the city engineer for review and approval prior to approval of plot plan for single-family residential building sites, including platted subdivisions and site condominiums and prior to issuance of any temporary certificate of occupancy for all other developments:
1. Stormwater maintenance agreement as outlined in section 12-244 of the stormwater management ordinance.
  2. Private ingress/egress easement (if applicable).
  3. Private drainage easement(s) (if applicable).
  4. Easements for storm sewer and storm water drainage in proposed rights-of-way, where surface drainage or storm sewer drainage crosses property boundaries, including an easement surrounding the sedimentation basin and the detention basin (one-hundred-year storm elevation) and a maintenance access easement for the sedimentation basin, if applicable.
  5. Water main easement providing a twenty-foot easement for water mains to be made public.
  6. Sanitary sewer easement providing a twenty-foot easement for the sanitary sewers to be made public.
  7. Bill of sale for utility improvements.
  8. Letter of Map Revision (LOMR)/Letter of Map Amendment (LOMA) from the Federal Emergency Management Agency (FEMA) (if applicable).
  9. Storm water facilities guarantee to be held for one (1) year after the date of completion of construction and final inspection of the storm water facilities.
  10. Waivers of lien from any parties involved with the installation of each utility to be made public.
  11. Contractor's sworn statement listing those parties and stating that all labor and material expenses incurred in connection with the subject construction improvements have been paid.
  12. Maintenance and guarantee bond equal to twenty-five (25) percent of the cost of the construction of the utilities to be accepted. This bond must be in effect for a period of two (2) years from the date of the “acknowledgment” signed by the city engineer indicating the city has accepted the utilities and corresponding easements.
  13. Warranty deed or other appropriate conveyance for any additional right-of-way intended for acceptance by the city, excluding streets subject to subsection (2) below.
  14. As-built drawings of the construction plans (exclusive of landscape and utility detail sheets).
  15. Title policy (dated within ninety (90) days of acceptance) for the purpose of verifying that the parties signing the easement and bill of sale documents have the legal authority to do so. All parties of interest shown on the title policy (including mortgage holders) shall either sign the easement documents themselves or a subordination agreement.

- e. With respect to all projects requiring a stormwater maintenance agreement as indicated in subsection (1) d. 1 above, no final certificate of occupancy shall be issued until the stormwater maintenance agreement has been approved by city council subsequent to approval by the city engineer and city attorney in accordance with subsections (1) b. and (1) c of this Section.

(2) *Acceptance of streets upon substantial completion.*

- a. At the time ninety (90) percent of the certificates of occupancy (including temporary certificates) have been issued, or within four (4) years after the issuance of the initial permit, whichever occurs first, the final lift of asphalt (where applicable) and all required "street<sup>u</sup> trees<sup>u</sup>" must be completed including all required soil erosion/sedimentation control measures.

No final certificate of occupancy shall be issued until all site improvements required by an approved site or plot plan or plat (except the final lift of asphalt, where applicable) are constructed, installed, or placed on the property and final approval of same has been obtained from the department and any other approving body, unless a completion agreement as described in section 26.5-12, together with any required performance guarantees is in place.

- b. The applicant shall submit an affidavit towards acceptance of streets to the city engineer before a final site inspection will be conducted. If a final site inspection is not requested by the applicant at least sixty (60) days before the expiration of the required date of completion, the ~~director~~building official may schedule an inspection to determine if the applicant is in default under this chapter.

- c. The following signed acceptance documents must be submitted to the city engineer no later than the time ninety (90) percent of the certificates of occupancy (including temporary certificates) have been issued, or four (4) years after the initial paving has been installed, whichever occurs first:

1. Bill of sale for each street conveying the improvements to the city.
2. Contractor's sworn statement listing those parties and stating that all labor and material expenses incurred in connection with the subject construction improvements have been paid.
3. A maintenance bond equal to twenty-five (25) percent of the cost of the construction of the streets to be accepted, in a form acceptable to the city attorney's office. The maintenance bond must be in effect for a period of two (2) years from the date of formal acceptance by city council.

Acceptance of the streets that are to be public shall be accomplished by resolution of city council as and when determined by the city, in its sole discretion, to be appropriate pursuant to the requirements and provisions of this chapter and other applicable provisions or sections of this Code, but not before ninety (90) percent of the certificates of occupancy (including temporary certificates) have been issued, or four (4) years after the initial paving has been installed, whichever occurs first; provided, however, that in unusual circumstances presenting a substantial hardship to the applicant (such as commencement of a development before the effective date of this provision), council may accept the streets before either such event has occurred, but in such case shall require a site restoration guarantee for the purposes set forth in section 26.5-34, and to guarantee the physical integrity of the roads to be accepted in light of continuing construction activity. The amount of the guarantee shall be established by the city engineer in an amount to be determined on the basis of the number of buildings remaining to be constructed, an

estimate of time for completion and expected acceptance of the remaining site improvements, and other factors specific to the development at issue.

Where a development has been approved in phases, and the applicant seeks acceptance of streets in one or more phases before substantial completion of all remaining phases, the city council shall also require such site restoration guarantee for the purposes set forth in section 26.5-34, and to guarantee the physical integrity of the roads to be accepted in light of continuing construction activity, upon determination, in its sole discretion, to accept such streets in phases.

e. Except with the prior express consent of the city, and as further set forth in section 26.5-34 below, no construction traffic shall be permitted to use any street dedicated to the city after installation of the final surface course of that street. If the applicant uses the street for construction traffic, the applicant shall post the site restoration guarantee as set forth in the immediately preceding paragraph d, and keep the street free and clear of mud, debris, obstructions, and hazards and shall after the use is no longer necessary, restore and repair that street to city standards.

f. Upon issuance by the city of any permit authorizing the construction of any public road improvements within a platted subdivision or a site condominium, public trust title to such public roads shall be deemed to pass to the city, unless otherwise specifically indicated in the permit, and the dedication of such right-of-way by the applicant may not thereafter be withdrawn except with the consent of the city. However, no public road improvements within such underlying right-of-way (i.e., physical improvements such as utilities, curb and gutter, asphalt, or concrete) shall be deemed to have been accepted by the city and the city shall have no obligation or liability in respect of maintenance or repair of the street, until the street has been constructed, approved, and accepted by city council and the utilities have been accepted by the city pursuant to the "acknowledgement" issued by the city engineer in accordance with subsections (1) b. or (1) c. of this Section. The city shall not be obligated to keep any street cleared, plowed, or otherwise maintained before the street has been completed, approved, and accepted by city council. The city may (but is not obligated to) undertake emergency maintenance, including without limitation snow plowing, flood prevention/repair, and the like as set forth in the city's emergency operations plan, and may upon exercise of such authority recover the cost of such action from the applicant pursuant to the terms of the appropriate performance guarantee(s). The exercise of such authority shall not be construed in any way to constitute an "acceptance" of the street or utility improvements before all requirements of this chapter are met.

#### **Sec. 26.5-34. Site restoration bond.**

(a) The performance guarantee required under sections 26.5-5 and 26.5-7 shall include a guarantee for site maintenance and restoration, in an amount to be specified by resolution of the city council, guaranteeing that the applicant shall:

- (1) Establish or reestablish ditches and culverts and properly drain the building area and reopen and reestablish any drainage ways that may have been interrupted by the building operation;
- (2) Repair, replace, and rebuild public road surfaces damaged in the course of construction so that the same shall be in comparable status as prior to commencement of construction;
- (3) Repair, replace, and rebuild any sidewalk damaged during the course of construction;

- (4) Repair all public utility structures if damaged during the course of construction and restore and adjust all manholes, catch basins, gate wells, hydrants, and shut-off boxes to the condition that they were prior to construction;
- (5) Maintain streets, highways, pathways, and alleys free of mud, dirt, debris, and other material from the construction site, as required by chapter 16, article IV of this Code; and
- (6) Maintain construction sites, as required by section 16-84.

(b) In the event that the applicant fails to perform under the provisions of subsections 26.5-34(a) (1)-(5), above, either during the life of the building permit or any extension thereof, or within thirty (30) days after written notice is given to the applicant to correct or fulfill unperformed provisions, the site restoration bond shall be forfeited and deposited in the general fund of the city. If the applicant fails to perform the provision of subsection 26.5-34(a)(6) above, the performance guarantee may be used for the payment of site cleanup performed by the city. The cost of cleanup shall be used and collected in the same manner provided in section 16-87. In addition, the site restoration bond may be utilized for payment of the costs of street clean-up performed by the city pursuant to chapter 16, article IV. Whenever funds are expended for such purposes the permit holder shall be required to replace such amount to bring the performance guarantee to that amount set by resolution of city council.

(c) The site restoration guarantee amount shall be returned to the applicant or assignee after final inspection and determination by the ~~director~~building official that the provisions of subsection 26.5-34(a) have been performed.

(d) In addition to any other performance guarantees permitted in this section or elsewhere in the city code, as a condition of issuance of any building permit for construction on property abutting a public street or road, the city engineer shall require a site restoration guarantee as provided and for the purposes set forth in this section in the amount of five thousand dollars (\$5,000.00), to be posted in the form of cash or letter of credit unless otherwise permitted by the city engineer for reasons of financial hardship. In the event there is damage or other prohibited condition to the public street or road, or other public improvement, directly adjacent to the property for which the site restoration guarantee has been posted, there shall be a rebuttable presumption that the damage or condition has been caused by or in connection with the activity occurring under the building permit, and the city may use the guarantee for the purposes stated in subsections 26.5-34(a) (1)-(5). The building permit holder may rebut the presumption by establishing that the damage or condition was caused by another or by other activity. If the amount of the guarantee is insufficient to repair or remedy the damage or condition, the city may require the posting of an additional guarantee. The permit holder shall be all times remain responsible for repair of any damage or condition actually caused by the permit holder.

### **Sec. 26.5-35. Private streets.**

(a) A certificate of occupancy shall not be issued for any residential dwelling unit permitted to front on a private street unless private roads have been constructed in accordance with city standards for such road, and a certified affidavit is received from the applicant's engineer indicating satisfactory completion of all private streets within the development, in accordance with such standards and the approved site or plot plan or plat.

(b) The city will not maintain streets, signs, or drainage improvements on private streets. A private maintenance covenant approved by the ~~director~~city engineer shall be required for any private street. The covenant shall set out the terms and conditions of responsibility for maintenance, maintenance

methods, standards, distribution of expenses, remedies for noncompliance with the terms of the agreement, right of use easements, and other considerations.

(c) A statement is required on the face of any plan, plat, or master deed containing a private street with the following language: "City of Novi has no responsibility to improve or maintain the private streets contained within or private streets providing access to the property described in this [plan/plat]".

#### **Sec. 26.5-36. Soil erosion and sedimentation control.**

The performance guarantee required under sections 26.5-5 and 26.5-7 shall include guarantee amounts in accordance with the provisions of chapter 29, article II.

#### **Sec. 26.5-37. Woodlands and fence maintenance guarantees.**

(a) The performance guarantee required under sections 26.5-5 and 26.5-7 shall include guarantee amounts to secure the planting of required Woodland trees, at a rate of four hundred dollars (\$400.00) per tree, and a fence maintenance guarantee in an amount as determined by policy of the Building official or his or her designee.

(b) Where tree relocation or replacement is not feasible within the woodland area, or on the property where the activity is to be conducted, or on other property within the city approved by the ~~city forester~~ Parks/Forestry Operations Manager the permit grantee shall pay into the city tree fund monies for tree replacement in a per tree amount representing the current market value for the tree replacement that would otherwise be required to be determined by the Parks/Forestry Operations Manager. The city tree account shall be used for all forestry related items including but not limited to the planting of trees within the city.

(c) The applicant shall guarantee trees for two growing seasons after the applicant's installation and the city's acceptance. A two-year maintenance bond in the amount of 25% of the value of the trees, but in no case less than \$1000, shall be required to insure the continued health of the trees following acceptance.

#### **Sec. 26.5-38. Wetlands.**

Any applicant conducting any activities within a watercourse or wetland location must obtain a use permit and file with city administration a performance guarantee to guarantee continued compliance with the use permit granted. These performance guarantees shall be paid prior to issuance of a building permit.

#### **Sec. 26.5-39. Landscaping.**

The performance guarantee required under sections 26.5-5 and 26.5-7 shall include guarantee amounts to secure the completion and improvement of required landscaping in accordance with approved site plan. There will be no issuance of any temporary or final certificate of occupancy in the development until this guarantee is paid. A final certificate of occupancy will not be granted until all required landscape material has been inspected and accepted by the city unless a completion agreement as described in section 26.5-12, together with any required guarantees, is in place. The applicant shall guarantee planting materials for two (2) growing seasons after applicant installation and acceptance by

the city. A two-year maintenance bond in the amount of 10% of the value of the landscaping, but in no case less than \$1000, shall be required to insure the continued health of the landscaping following acceptance. The applicant shall replace all unhealthy and dead plant material without delay and within three (3) months following notice, or the next appropriate planting period, whichever comes first. The applicant shall guarantee all replacement material for an additional two (2) years after, if required by the building official.

#### **Sec. 26.5-40. Street trees.**

The performance guarantee required under sections 26.5-5 and 26.5-7 shall include guarantee amounts to secure the planting of required street trees, at a rate of four hundred dollars (\$400.00) per tree. There will be no issuance of any temporary certificate of occupancy in the development until this guarantee is in place. A final certificate of occupancy will not be granted until the applicant has planted all required street trees and they have been inspected and accepted by the city unless a completion agreement as described in section 26.5-12, together with any required guarantees, is in place. The applicant shall guarantee trees for two (2) growing seasons after applicant installation and acceptance by the city. A two-year maintenance bond in the amount of 25% of the value of the street trees, but in no case less than \$1000, shall be required to insure the continued health of the street trees following acceptance. The applicant shall replace all unhealthy and dead plant material within three (3) months following notice or the next appropriate planting period, whichever comes first. The applicant shall guarantee all replacement trees for an additional two (2) years after, if required by the building official.

#### **Sec. 26.5-41. Right-of-way.**

For any work proposed within the right-of-way of the arterial system of the city, a performance guarantee shall be posted in accordance with chapter 31 of this Code.

#### **Sec. 26.5-42. Application of chapter to existing developments.**

Unless the ~~director~~building official determines otherwise for good cause and as a result of peculiar practical difficulties establishing an applicant's inability to comply with the requirements hereof, this chapter shall apply to all property and development within the city after the effective date hereof, including any phase of any property or development for which an initial permit has not been issued, except: (1) a property or development for which an initial permit has been issued; or (2) a property or development for which a building permit has been issued pursuant to an approved plot plan.

### **PART II**

**Savings Clause.** The amendment of the Novi Code of Ordinances set forth in this Ordinance does not affect or impair any act done, offense committed, or right accruing, accrued, or acquired or liability, penalty, forfeiture or punishment, pending or incurred prior to the amendment of the Novi Code of Ordinances set forth in this Ordinance.

### **PART III.**

**Severability.** Should any section, subdivision, clause, or phrase of this Ordinance be declared by the courts to be invalid, the validity of the Ordinance as a whole, or in part, shall not be affected other than the part invalidated.

**PART IV.**

**Effective Date: Publication.** The provisions of this Ordinance shall become effective fifteen (15) days after its adoption and shall be published within 15 days of its adoption by publication of a brief notice in a newspaper circulated in the City, stating the date of enactment and the effective date of the ordinance, a brief statement as to the subject matter of this Ordinance and such other facts as the Clerk shall deem pertinent, and that a copy of the Ordinance is available for public use and inspection at the office of the City Clerk.

MADE, PASSED, AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF NOVI,  
OAKLAND COUNTY, MICHIGAN, ON THE \_\_\_ DAY OF \_\_\_\_\_, 2008.

\_\_\_\_\_  
DAVID LANDRY, MAYOR

\_\_\_\_\_  
MARYANNE CORNELIUS, CITY CLERK

Ayes:  
Nays:  
Abstentions:  
Absent:

**CERTIFICATION OF ADOPTION**

I hereby certify that the foregoing is a true and complete copy of an Ordinance passed at a \_\_\_\_\_ meeting of the Novi City Council, held on the \_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
MARYANNE CORNELIUS, CITY CLERK

Adopted:  
Published:  
Effective:

1033740

**Place, Melissa**

**From:** Neumaier, Marina  
**Sent:** Wednesday, February 27, 2008 10:47 AM  
**To:** Matthew S. Sosin  
**Cc:** Pearson, Clay; Rumble, Steve; McBeth, Barb; Boulard, Charles; Smith-Roy, Kathy; Antil, Pam; Tom Schultz; Kudla, Beth ; Hayes, Rob; David Landry; Kim Capello; bbednas@etkinllc.com; awilcox@ronnisch.com; JChernosky@auchconstruction.com; ryan@amsondembs.net; Place, Melissa  
**Subject:** RE: City of Novi - Invitation to Comment of Proposed Changes to Chapter 26.5, Performance Guarantees

Matt –

Thank you for your response to our invitation to comment. I have noted the following information from your email:

- ✓ You have raised the comment that it is **"next to impossible to procure bonds unless you are a construction company"**. I wasn't sure if your comment addressed specifically the City's maintenance bond requirements or performance bonds? If you reference Sec. 26.5-4, the ordinance does provide the applicant must be a party to posting a performance guarantee. This provision however shall **not prohibit** joint performance guarantees, provided that the applicant is one of the joint guarantors. In situations where a joint guarantee is posted, the applicant must sign as agent of the contractor (Principal) to meet the intent of the ordinance. This language provides assurance that the guarantor of a project will always remain the person or entity that has the legal or equitable right to effect the development or improvement of the subject real property.
- ✓ You have commented that **"banks never understand why our permit costs are so far out of the market."** Are there specific permit costs you and the banks are concerned with or is it all permit costs across the board? Are you referring to the refundable financial guarantees or the inspection costs? Our objective is to make the permit and inspection requirements simultaneously lean and comprehensive in order to hold costs down. We also look to have the cost of appropriate service/regulation cover costs. As an additional factor, we have looked at many aspects of our individual fees in comparison to surrounding jurisdictions and have found them to be comparable; we are ready to review any particular aspects you can call to our attention.
- ✓ Could you further clarify your comment regarding the **"ordinance, as applied, makes our developments much more difficult (this in addition to the long lead times for permits, inconsistent application of the ordinances and reviews, the ever increasing amount of guarantees, fees, levels of review)."** Do you have specific sections of the ordinance you are concerned with and would like reviewed? We continue to support the strong environmental and building construction standards and remain open to your suggestions on how we can most efficiently achieve those end results.
- ✓ **"What happened to the idea regarding a HCCP cash bond to cover everything"** – the ordinance defines real property described in and made subject to an approved site plan or plot plan or plat. For development projects that are approved with separate and discrete phases, the requirements of Chapter 26.5 shall be applied separately to each phase (i.e., on a phase-by-phase basis). The guarantee shall be a single guarantee posted by and in the name of the applicant encompassing all required improvements specific for that project. Because the ownership interest in cash bonds has been questioned as an issue by Federal Bankruptcy Courts, we currently do not support amending the ordinance requirements as stipulated within Chapter 26.5 to provide for one cash bond to cover "everything".

Please let me know if you have any further comments or suggestions.

Marina Neumaier  
 Assistant Finance Director  
 City of Novi  
 248-347-0468  
 mneumaier@cityofnovi.org

**From:** Matthew S. Sosin [mailto:mssosin@noreq.com]

**Sent:** Monday, February 25, 2008 9:42 AM

**To:** Neumaier, Marina

**Cc:** Pearson, Clay; Rumble, Steve; McBeth, Barb; Boulard, Charles; Smith-Roy, Kathy; Antil, Pam; Tom Schultz; Kudla, Beth ; Hayes, Rob; David Landry; Kim Capello; bbednas@etkinllc.com; awilcox@ronnisch.com; JChernosky@auchconstruction.com;

2/28/2008



ryan@amsondembs.net

**Subject:** RE: City of Novi - Invitation to Comment of Proposed Changes to Chapter 26.5, Performance Guarantees

The changes help, but it does not address the biggest problem which is the fact that it is next to impossible to procure bonds unless you are a construction company (even then, there are limits). Furthermore, the additional funds required for guarantees are required to be provided by equity, which is very expensive. So the bank provides the funds to actually construct the items in question, it does not provide the 125% additional monies to guarantee the work. In addition, the banks never understand why our permit cost are so far out of market. It is one more question in a financing world that is skittish as it is. This ordinance, as applied, makes our developments much more difficult (this in addition to the long lead times for permits, inconsistent application of the ordinances and reviews, the ever increasing amount of guarantees, fees, levels of review). I know we all think Novi is a special place, immune from the economic turmoil going on around us...that is simply not true. Every dollar of cost added to our buildings (which this ordinance does), makes it more difficult to finance and rent. It should be noted that while my costs have increased by almost \$40 to \$50 per square foot in the last 7 or 8 years, our rents have stayed the same or even gone down (while some of those costs are due to inflation in the commodity world, many of them are directly due to City enacted ordinances, see esp. Landscape, Stormwater, permit process). As the mayor stressed in his State of the City address, the developers and the City need to work together to get us through these tough times. We have made suggestions regarding this ordinance before, about its very necessity in our case, and very little of those suggestions made it into the draft.

What happened to the idea regarding a HCCP cash bond to cover everything. It should be noted that we have over \$1,000,000 just sitting with the City in bonds, letters of credit and cash. That is money that could be used for economic development but is instead doing nothing.

Matthew S. Sosin  
 President  
 Northern Equities Group  
 39000 Country Club Drive  
 Farmington Hills, MI 48331  
 P - (248) 848-6400  
 F - (248) 848-6700  
 E - mssosin@noreq.com  
 W - www.noreq.com

**From:** Neumaier, Marina [mailto:mneumaier@cityofnovi.org]**Sent:** Friday, February 22, 2008 11:13 AM

**To:** gjonna@whitehallrealestate.net; Richard.Abbott@providence-stjohnhealth.org; awilcox@ronnisch.com; aprilt@newbabcockhomes.com; jbenett@Itctransco.com; bsharkey@roncelli-inc.com; bzawacki@WheelerBldg.com; jbednas@etkinllc.com; cdimaggio@burton-katzman.com; DavidD@gendev.com; dhandrow@fhmartin.com; Edward.Balfe@erickson.com; frankguastella@yahoo.com; Harold.Radin@erickson.com; jackie@amsondembs.net; kangas@cambridgehomesmi.com; jmckolay@mccarthysmith.com; jclear@cgpmm.com; Milton.Jennings@bartonmalow.com; IChernosky@auchconstruction.com; Milton.Jennings@bartonmalow.com; JPoe@tollbrothersinc.com; kpowers@mjaweb.com; keith@oakpointe.org; lliscio@JBDonaldsonCompany.com; Lorenzo@bouldercon.com; mikehuszti@comcast.net; mjenkins@burton-katzman.com; MSTEINHILBER@tollbrothersinc.com; markmahajan@yahoo.com; mark.a.seiler@gm.com; MikeCentofanti@arbrouwer.com; pnona@triangle-newhomes.com; pgorny@JBDonaldsonCompany.com; rhill@grandsakwa.com; swalker@larsonco.com; sldtim@comcast.net; Toni@Schonsheck.com; TJMiller@WheelerBldg.com; tom moss@sbcglobal.net; lohn@newbabcockhomes.com; Mike Kahm; RAYCOUZ@aol.com; kevin.christiansen@pulte.com; Matthew S. Sosin; Jeat S. Grewal; mfg@thecambridgecompanies.com; claudio@miragedevelopment.com

**Cc:** Pearson, Clay; Rumble, Steve; McBeth, Barb; Boulard, Charles; Smith-Roy, Kathy; Antil, Pam; Schultz, Thomas; Kudla, Beth; Hayes, Rob

**Subject:** City of Novi - Invitation to Comment of Proposed Changes to Chapter 26.5, Performance Guarantees

**Invitation to Comment:** This email is being sent to you to notify you and invite you to comment on a proposed amendment to Chapter 26.5, Performance Guarantees. City Council will be asked to approve the 1<sup>st</sup> reading of the attached proposed ordinance amendment at their March 3<sup>rd</sup> City Council meeting.

02/28/2008

**Summary:** The most significant change being proposed is highlighted on page 4 and underlined. This amendment would allow an applicant who has posted performance guarantees required under Chapter 26.5 and who subsequently suspends work to request a waiver from City Council of the requirements in this subsection upon showing that few or limited physical improvements have occurred on site. The ordinance would further require that such a waiver would expire after two years or upon expiration of the approved final site plan. As a condition of granting of the waiver, the applicant shall agree that if the required performance guarantees are not posted and the project is not re-commenced at the expiration of the agreement, the site plan and all project permit approvals shall be considered to be expired and/or null and void.

Please feel free to email your comments no later than Wednesday, February 27<sup>th</sup> directly to:

Steve Rumble, Director of Community Development  
[srumple@cityofnovi.org](mailto:srumple@cityofnovi.org)

Marina Neumaier, Assistant Finance Director  
[mneumaier@cityofnovi.org](mailto:mneumaier@cityofnovi.org)

Thank you for your consideration of this matter.

Marina Neumaier  
Assistant Finance Director  
City of Novi  
45175 W. Ten Mile Rd.  
Novi, MI 48375  
248-347-0468  
[mneumaier@cityofnovi.org](mailto:mneumaier@cityofnovi.org)