



CITY of NOVI CITY COUNCIL

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Agenda Item E
April 2, 2007

SUBJECT: Consideration of Ordinance No. 07-173.02, an amendment to the Novi Code of Ordinances Chapter 26.5, to streamline the existing utility acceptance process. **Second Reading**

SUBMITTING DEPARTMENT: Community Development Department

CITY MANAGER APPROVAL: 

EXPENDITURE REQUIRED	N/A
AMOUNT BUDGETED	N/A
APPROPRIATION REQUIRED	N/A
LINE ITEM NUMBER	N/A

BACKGROUND INFORMATION:

Attached for City Council consideration is the proposed ordinance amending Chapter 26.5 of the City of Novi Code to streamline the process of acceptance of public utilities. Section 26.5-33 of the Code currently requires City Council acceptance of public utilities prior to the issuance of a temporary certificate of occupancy (TCO). This requirement may impose delays for owners wishing to obtain occupancy but are forced to wait until the next available City Council agenda prior to obtaining a TCO. The proposed changes would remove the requirement of City Council approval and make this process fully administrative. The language in the proposed ordinance recommends placing formal authorization with both the city engineer and city attorney to approve and accept title to and jurisdiction over public water main and sanitary sewer improvements.

It should be noted that no changes are proposed to the current requirements for public street acceptance. City Council acceptance of public streets would **continue** to be required at substantial completion of a project.

RECOMMENDED ACTION: Consideration of Ordinance No. 07-173.02, an amendment to the Novi Code of Ordinances Chapter 26.5, to streamline the existing utility acceptance process. **Second Reading**

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

	1	2	Y	N
Council Member Mutch				
Council Member Nagy				
Council Member Paul				

February 9, 2007

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

**RE: Performance Guarantees Ordinance Amendment to
Streamline Utility Acceptance Process (First Reading)
Our File No. 55142 NOV**

Dear Mayor and Council:

Attached is a proposed ordinance amending the Performance Guarantees Ordinance, Chapter 26.5 of the City of Novi Code, following discussions at City Council's July 24, 2006 meeting regarding possibility of the street/utility acceptance process becoming administrative. The purpose of the proposed amendment is to streamline the utility acceptance process for both residential and commercial developments within the City. It provides for a fully administrative process for acceptance of water main and sanitary sewer improvements, and the additional right-of-way required for some projects. The administrative procedure will require approval only by the City's Engineering Department and the City Attorney's Office, without the necessity of taking each project to City Council prior to the issuance of a TCO. Street acceptance, however, is proposed to remain with City Council given that some projects require City Council's attention regarding construction damage and other discretionary issues prior to acceptance.

The primary changes are set forth in Section 26.5-33 of the Code:

- Section 26.5-33 (1) b.6. pertains to single family residential developments. It adds text that provides that no temporary certificate of occupancy will be issued until both the city attorney approves the documents listed in Section 26.5 (1) (d) with respect to format and title, and the city engineer signs an "acknowledgement" of the City's acceptance of title and jurisdiction confirming the utilities are "ready for use" and the exhibits attached to the acceptance documents have engineering

approval. The requirement for city council acceptance has been deleted.

- Section 26.5-33 (1) c. includes that same changes as (1) b.6., above, but pertains to non-single family residential and non-residential developments.
- Section 26.5-33 (1) d. has been amended to remove language from the current Maintenance and Guarantee Bond pertaining to city council acceptance.
- Section 26.5-33 (1) e. has been added to provide for Storm Drainage Facility Maintenance Easement Agreements to continue the same acceptance procedure with city council because of the need for the Mayor's signature of the Agreement.
- Section 26.5-33(1)d.(12) has been amended to clarify that projects with adjacent right-of-way that are required to be dedicated by ordinance and are not considered "street acceptance" subject to the acceptance procedure set forth in Section 26.5-33 (2) will instead be accepted administratively pursuant to the amended procedure.
- Section 26.5-33 (2)f. has been amended to indicate that formal acceptance of utilities will be evidenced in accordance with the procedure set forth within subsections (1)b. and (1)c. of this Section.

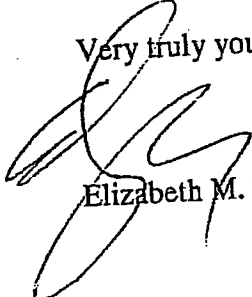
A minor revision related to the change in utility acceptance procedure was required with respect to 26.5-10 to address the change in Maintenance and Guarantee Bond language deleting reference to city council acceptance.

City Council will recall that we previously indicated that it is possible for the utility acceptance process be administrative. There are many communities that do not have a formal process that requires either the City Council or the Township Board approval for acceptance. Some communities have simply never bothered to put an acceptance system into place; others have formally established procedures that accomplish acceptance of different documents or property interests at other levels. Whether streets or utilities are formally accepted by the legislative body in each instance is a policy decision. The intent of the change in this case is to eliminate delays associated non-substantive administrative issues with respect to issuance of TCO's.

Mayor Landry and City Council
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If you have any questions regarding the above, please do not hesitate to contact me.

Very truly yours,



Elizabeth M. Kudla

EMK

Enclosures

cc: Maryanne Cornelius, City Clerk (w/Enclosures)
Clay J. Pearson, City Manager (w/Enclosures)
Marina Neumaier, Assistant Finance Director (w/Enclosures)
Don Saven, Building Official (w/Enclosures)
John Hines, Deputy Building Official (w/Enclosures)
Rob Hayes, City Engineer (w/Enclosures)
Aaron Staup, Construction Engineering Coordinator (w/Enclosures)
Thomas R. Schultz, Esquire (w/Enclosures)

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STATE OF MICHIGAN
COUNTY OF OAKLAND
CITY OF NOVI
ORDINANCE NO. 07-_____

AN ORDINANCE TO AMEND ARTICLE I, SECTION 26.5-10 AND, ARTICLE II, SECTION 26.5-33 OF CHAPTER 26.5 OF THE NOVI CODE OF ORDINANCES TO PROVIDE FOR FORMAL ACCEPTANCE OF UTILITIES FOR ALL DEVELOPMENTS WITH PUBLIC UTILITIES BY THE CITY ENGINEER

THE CITY OF NOVI ORDAINS:

PART I.

That Article II, Section 26.5-33, "Requirements for completion of improvements in developments with public streets and utilities" of the City of Novi Code of Ordinances is hereby amended to read in its entirety as follows:

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 re-inspections.
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 city council has accepted 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 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 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."

~~the city council has accepted all of the documents listed in subsection d. below.~~

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~~ancee by city council~~ the utilities and corresponding easements.

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.

13. Warranty deed or other appropriate conveyance (~~e.g., master deed~~) 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 ~~city council consideration 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.

(2) Acceptance of streets upon substantial completion.

- a. 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, 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 director 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.
- d. 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 building permits 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 ~~and utilities have~~ 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.

PART II.

That Article I, Section 26.5-10, "Maintenance and defect guarantees authorized" of the City of Novi Code of Ordinances is hereby amended to read in its entirety as follows:

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 council in accordance with the procedures set forth in Article II of this Chapter. With regard to plantings required under chapter 37 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 guarantee with respect to such repair or replacement, as defined and determined by the department, shall 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.

PART III

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 IV.

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 V.

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 _____, 2007.

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 _____, 2007.

MARYANNE CORNELIUS, CITY CLERK

Adopted:
Published:
Effective:

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