



Chapter Five

Required Improvements

What This Chapter Does

This chapter provides the mechanisms to ensure that the improvements required for development are appropriately installed and maintained.

DRAFT CHAPTER XIX-V - REQUIRED IMPROVEMENTS

- A. What This Chapter Does.** The provisions of this chapter ensure that required improvements will be installed and maintained. A required improvement is any on or off-site improvement required for compliance with these regulations. Required improvements include, but are not limited to: the vegetative and structural measures needed to implement an approved runoff management plan; utilities; streets, sidewalks and trails; off-street parking and loading areas; improvements required by a community impact report; improvements that mitigate potential nuisances, including screening fences and walls; landscaped buffers; and any other improvement required for compliance with the requirements of these regulations.
- B. Installation at Developer's Expense.** The installation of required improvements shall be at the developer's expense, although the city or county may choose to participate in the costs of certain improvements, as provided in ~~XVIII~~IV.J. and N.
- C. Standards for Required Improvements.** All required improvements shall be installed in compliance with these regulations, the City of Polson Standards for Design and Construction and any design and engineering standards separately adopted by the city or other agencies responsible for providing services to the development. *(Note: This is where specifications for roads, sidewalks, trails, stormwater, water and sewer improvements could be placed.)*
- D. Construction Timing.** Upon submittal of a permit or subdivision pre-application or application, the developer or any subordinate shall not engage in construction of improvements prior to approval of the application. The administrator, board and CC/BOCC are not bound to accept or approve any on-site improvements that exist prior to submittal of a permit application. The city and county shall not be responsible if improvements have to be eradicated, moved or rebuilt due to a developer making improvements prior to and/or not in conformance with these regulations or any condition of approval. See also 76-4-121, which regulates construction activities within subdivisions.
- E. Time of Installation/Development Agreement.**
1. All required improvements ~~may~~ shall be installed before a final plat or site plan is recorded ~~or the development is offered for lease or sale, leased, sold, or occupied.~~ ; or
 2. Developers may elect to enter into a development agreement and record a final subdivision plat prior to the completion of a portion of the subdivision improvements pursuant to these and any adopted regulations; or
 3. Developers may elect to record final plats or site plans of the development in phases or to offer phases of the development for ~~lease, sale, or occupancy~~ before all required improvements are installed.
- F. Prerequisites to Entering a Development Agreement.**
1. Before entering into a development agreement:
 - a. All necessary state, federal and local permits and approvals, including an approval from the

Montana Department Of Environmental Quality for water supply, sewage disposal and stormwater plans, shall be submitted to the administrator.

- b. At least 50% of the costs of all improvements covered under the development agreement shall have been expended by the developer. The itemized costs shall be determined by a city/county accepted competitive bid or a city/county accepted itemized estimate sealed by a licensed professional engineer;
- c. A complete and sufficient final plat or final site plan application shall have been submitted to the administrator for review.

Phasing shall be permitted pursuant to a development agreement that:

- a. Incorporates the preliminary plat or site plan used as a basis for permit approval and a detailed site plan and construction drawings of the initial phase;
- b. Identifies all required improvements in the initial phase/s and establishes their estimated cost;
- c. Sets a schedule for the completion of the required improvements in the initial phase and an anticipated schedule for future phases;
- d. Guarantees completion and 365 days' maintenance of all required improvements in the initial phase/s using one of the methods listed in this chapter, and provides a process for submission of detailed plans and cost estimates, and the guarantee of improvements in future phases;
- e. Provides a process by which the city or county may, if necessary and at its sole discretion, complete required improvements using the guarantee provided;
- f. Provides a process by which either party may request re-negotiation of the development agreement,
- g. Provides a process by which the development agreement may be transferred, with city or county approval, to the developer's successors; and
- h. Provides that the development agreement and any vested rights it confers shall be void if the city or county is required to "call" a guarantee to complete required improvements, or if the anticipated schedule is not met or re-negotiated. The developer may re-negotiate the anticipated schedule without losing vested rights, provided that such negotiations are initiated within 90 days after failure to initiate or complete a phase as scheduled.

G. Effect of Development Agreement. The effect of a development agreement shall be to create vested rights in the preliminary plat or site plan, as it was approved. Such rights expire with the development agreement. Development agreements do not insulate developments from changes in state or federal regulations, or changes in the city's fire and building codes.

H. Guarantees. Completion of the improvements identified in a development agreement shall be guaranteed by one of the following methods:

1. The developer may place an amount equal to 150% of the estimated cost of the required improvements in escrow, with that amount and accumulated interest being released only after the city or a consulting licensed professional engineer has inspected and accepted the required improvements. A development agreement may provide for the phased release of a portion of the escrowed funds as work proceeds, but at least 25% of the amount in escrow shall be retained until all required improvements are installed, inspected, and accepted or approved (as applicable). If required improvements are not completed as provided in the development agreement, the city or county shall use as much as necessary of the escrow account to complete those improvements, then return any remaining balance to the developer.
2. The developer may provide an irrevocable or standing letter of credit, a joint certificate of deposit, a joint checking account or another bonding mechanism deemed acceptable to the governing body for an amount equal to 150% of the estimated cost of the required improvements. The letter of credit or other bond shall be released only after the city has inspected and accepted the required improvements or the county has accepted certification from a licensed professional engineer that the improvements meet all applicable requirements. If any required improvements are not completed as provided in the development agreement, the city or county shall use as much as necessary of the credit available to complete those improvements, then release any remaining balance to the developer.

I. Inspection and Acceptance of Improvements.

1. Fees for the inspection of required improvements shall be set by resolution of the ~~council~~ CC. Inspection fees must be paid before a certificate of compliance is issued.
2. Required improvements shall be inspected by the administrator before acceptance. Acceptance of required improvements shall be by action of the ~~council~~ CC, following submission of the developer's written request for acceptance and receipt of the administrator's report that all improvements have been inspected and are in compliance with these regulations.
3. Reproducible as-built drawings of all subdivision improvements shall be provided to the city/county, at the developer's expense, before a certificate of compliance is issued.

J. Warranty of Improvements. Required improvements shall be warranted by the developer for both materials and workmanship for one year following their acceptance. Such a warranty provision shall be included in all development agreements. Where all required improvements will be completed before a final plat is approved and the development is offered for ~~lease, sale, or occupancy~~, a separate warranty agreement shall be submitted for approval. Enforcement of the warranty shall be assured by:

1. Retention of 10% of an escrow account established to comply with ~~XIX~~.IV.F.1.;
2. A continuing letter of credit or other bonding mechanism acceptable to the city/county, as provided in ~~XIX~~.IV.F.2., but for 10% of the cost of the required improvements; or

3. Opening a new escrow account or providing a new letter of credit in an amount equal to 10% of the cost of all required improvements.

These warranty funds shall be released upon expiration of the warranty period or, if necessary, used to remedy defects that have not been remedied by the developer.

K. Continuing Maintenance Required. The continuing maintenance of any improvement required for compliance with these regulations shall be required, and failure to maintain a required improvement shall be a violation, subject to the penalties provided by ~~II.Z.~~VI.C. or III.CC, as applicable.

1. Any development subject to the continuing maintenance requirement established here that results, or may reasonably be expected to result, in multiple ownerships shall create a community association to ensure continuing maintenance. The developer shall submit the proposed declaration of covenants, articles of incorporation, and by-laws for that association with the application for a permit. These documents shall be reviewed and approved by the city or county attorney, and shall have been recorded before a certificate of compliance is issued.
2. Maintenance of landscaped areas required by this ordinance includes installation and maintenance of an irrigation system and timely irrigation, where necessary; weed and pest control; and all other activities required to maintain the function of the landscaped area.