

BY JM CODIFIED  
Date 7/8/08

**ORDINANCE NO. 1949**

(An ordinance amending section 16.12.070—Performance Guarantee, of the Hood River  
Municipal Code

WHEREAS, Title 16 of the Hood River Municipal Code contains the City of Hood River's ordinances governing the division of land;

WHEREAS, Section 16.12.070 requires construction of all public improvements prior to final plat approval finalizing a division of land unless a performance guarantee is provided;

WHEREAS, Section 16.12.070 requires a performance guarantee to be in the form of an irrevocable letter of credit, surety bond, or cash;

WHEREAS, on occasion, the developer is a governmental entity and it would be advantageous to the City to be able to enter into an intergovernmental agreement with the governmental entity regarding completion of the improvements and allocation of responsibility and costs for doing so;

WHEREAS, an amendment to Section 16.12.070 is necessary to allow the City to enter into an intergovernmental agreement with a governmental entity in lieu of or in addition to obtaining a letter of credit, surety bond or cash.

NOW, THEREFORE, THE CITY OF HOOD RIVER ORDAINS AS FOLLOWS:

Section 16.12.070 of the Hood River Municipal Code is amended to read as follows [additions shown in underline and deletions shown in ~~strikeout~~]:

16.12.070 Performance Guarantee. All approvals in which the developer is required to install public improvements shall contain a condition of approval requiring a performance guarantee if the public improvements are not installed, inspected, and approved before final plat approval.

A. **Form of Performance Guarantee Required.** When a performance guarantee is required, the ~~subdivider~~ developer shall file an assurance of performance with the City supported by one of the following (“performance guarantee”):

1. An irrevocable letter of credit executed by a financial institution authorized to transact business in the state of Oregon;
2. A surety bond executed by a surety company authorized to transact business in the state of Oregon which remains in force until the surety company is notified by the City in writing that it may be terminated; ~~or~~
3. Cash; or
4. If the developer is a governmental entity, an intergovernmental agreement approved by the City Council and governing body of the developer pursuant to which the developer and/or the City agree to construct the public improvements. The City Council may condition approval of the intergovernmental agreement on the provision of an irrevocable letter of credit, surety bond, or cash, or other form of fund commitment for some or all of the costs of constructing the public improvements.

B. **Determination of Sum.** The performance guarantee shall be for a sum determined by the City Engineer as required to cover 110 percent of the estimated cost of the work, including improvement fees and deposits, and related engineering and incidental expenses. An intergovernmental agreement does not need to cover more than 100 percent of the estimated cost of the work.

C. **Itemized Improvement Estimate.** The developer shall furnish to the City Engineer an itemized improvement estimate, certified by a registered civil engineer, to assist the City Engineer in calculating the amount of the performance guarantee.

D. **Agreement.** If the public improvements are not constructed or installed and inspected and approved prior to final plat approval, the developer shall sign an agreement with the City that specifies as follows. The agreement shall be on a form provided by the City and included with the final plat. In the case of a performance guarantee in the form of an intergovernmental agreement, the intergovernmental agreement shall contain the following provisions.

1. The period within which all required improvements and repairs shall be completed;
2. A provision that if work is not completed within the period specified, the City may call on the performance guarantee (bond, cash deposit, ~~or~~ letter of credit, or intergovernmental agreement) to complete the work; and
3. Stipulates the improvement fees and deposits that are required.
4. (Optional) Provides for the construction of the improvements in stages and for the extension of time under specific conditions therein stated in the contract.

E. **Reduction and Termination of Performance Guarantee.** The performance guarantee shall not be terminated, allowed to expire without written authorization from


the City Engineer. The City Engineer may allow reduction of the performance guarantee as portions of the improvements are constructed, inspected and approved. Ten percent of the cost of those portions constructed shall be retained as the guarantee amount is reduced. Upon acceptance for ownership and operation, the guarantee shall be released or returned unless required to satisfy the warranty guarantee requirement in Section 16.12.080.

**F. Procedures.** The City Engineer shall establish standard forms for the guarantee, agreement referenced in subsection (D) above, and an administrative procedure for reduction of the guarantee when permitted.

Read for the first time: May 27<sup>th</sup>, 2008.

Read for the second time and passed: June 9<sup>th</sup>, 2008, to become effective thirty (30) days hence.

Signed June 9<sup>th</sup>, 2008.

  
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Linda Streich, Mayor

ATTEST:

  
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Jennifer McKenzie, City Recorder