

CITY OF SEGUIN

ORDINANCE NO.

STATE OF TEXAS

AN ORDINANCE OF THE SEGUIN CITY COUNCIL AMENDING APPENDIX A, SUBDIVISIONS, OF THE CITY OF SEGUIN CODE OF ORDINANCES BY ADDING SECTION 4, GUARANTEE OF PERFORMANCE FOR PUBLIC IMPROVEMENTS TO ARTICLE III, PLAT SUBMITTAL, INCLUDING PROCEDURAL PROVISIONS; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE; AND AUTHORIZING CITY STAFF TO PREPARE THIS ORDINANCE FOR SUBMISSION AS A SUPPLEMENT TO THE CODE OF ORDINANCES

WHEREAS, requests for development within the city and its extraterritorial jurisdiction has been increasing; and

WHEREAS, through these requests and staff's work on the Unified Development Code staff has identified a number of deficiencies in the City's current subdivision ordinance; and

WHEREAS, on March 11, 2014, the Planning and Zoning Commission held a public hearing to consider the addition of language setting out requirements for the guarantee of performance for public improvements; and

WHEREAS, upon consideration of the material presented, the Planning and Zoning Commission voted to recommend that the City Council approve the following addition to the City's Master Subdivision Ordinance.

NOW THEREFORE BE IT ORDAINED by the City Council of Seguin, Texas:

SECTION ONE. The Seguin Code of Ordinances, Appendix A, Subdivisions, Article III, Plat Submittal, Procedure, Conditions for Approval and Recording, is amended by creating a new Section 4, Guarantee of Performance for public improvements, to read as follows:

Sec. 4. Guarantee of performance for public improvements.

1. General Requirements.

(a) If the applicant chooses to construct the required improvements prior to recordation of the final plat, all such construction shall be inspected while in progress by the appropriate city department and must be approved upon completion by the City Engineer, Director of Utilities, and any other public utility if that utility provides service to the development. Written notification by such officials stating that the construction conforms to the specifications and standards contained in or referred to in this chapter must be presented to the Planning Director prior to recordation of the final plat.

(b) It the applicant chooses to file security in lieu of completing construction prior to the recording the plat the applicant may provide a:

- (1) Performance bond or surety bond;
- (2) Letter of credit; or
- (3) Escrow funds equal to the total installation cost of the required improvements.

(c) Security shall be in an amount equal to 115 percent of the estimated cost of completion of the required public improvements. The issuer of any surety bond or letter of credit shall be licensed and approved to conduct business in the State of Texas and subject to the approval of the City Engineer and the City Attorney.

2. Performance bond.

The performance bond shall comply with the following requirements:

(a) All performance bonds must be in the forms acceptable to the City Engineer and the City Attorney.

(b) All performance bonds must be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies", as published in Circular 570, as may be amended, by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury.

(d) All performance bonds must be signed by an agent, and must be accompanied by a certified copy of the authority for him or her to act.

(d) All performance bonds shall be obtained from surety or insurance companies that are duly licensed or authorized to conduct business in Texas to issue performance bonds for the limits and coverage required.

(e) In cases of dispute the Court of Jurisdiction shall be located in Guadalupe County, Texas.

3. Letter of credit.

The letter of credit shall:

- (a) Be irrevocable and renewable for the life of the project.

- (b) Be for a term sufficient to cover the completion of the required public improvements; and
- (c) Require only that the city present the issuer with a sight draft and a certificate signed by the issuer of the letter of credit.
- (d) The Issuer shall be licensed to conduct business in Texas and be approved by both the State of Texas and the City of Seguin.
- (e) In case of dispute the Court of Jurisdiction shall be located in Guadalupe County, Texas.

4. Partial Completion.

As portions of the public improvements are completed in accordance with the approved engineering plans, the applicant may make written application to the City Engineer to reduce the amount of the original security. If the City Engineer is satisfied that such portion of the improvements has been completed in accordance with city standards, the city may, but is not required to, cause the amount of the security to be reduced by such amount that it deems appropriate. Letters of credit may not be reduced more frequently than quarterly, so that the remaining amount of the security adequately insures the completion of the remaining public improvements.

5. Guarantee of materials and workmanship.

(a) The applicant or developer shall require of the construction contractors with whom he contracts and shall himself be responsible for guaranteeing that all materials required under this chapter and workmanship in connection with such improvements are free of defects for a period of one year after acceptance of the improvements by the City Engineer and any other utility provider.

(b) *Maintenance Bond.* Prior to acceptance of public improvements or approval of private improvements for each phase a maintenance bond or other surety instrument shall be accepted by the city in compliance with the following:

1. Shall be in an amount equal to fifteen percent of the cost of improvements for the first calendar years following acceptance of said improvements.
2. Shall cover all street, drainage, and utilities improvements. The construction value or final pay estimate shall be provided to the City Engineer to support said warranty and maintenance bond amounts.

3. Shall be satisfactory to the City Attorney as to form, sufficiency, and manner of execution.

4. In an instance where a maintenance bond or other surety instrument has been posted and a defect or failure of any required improvement occurs within the period of coverage, the city may declare said bond or surety instrument to be in default and require that the improvements be repaired or replaced.

5. Whenever a defect or failure of any required improvement occurs within the period of coverage, the city shall require that a new maintenance bond or surety instrument be posted for a period of one full calendar year sufficient to cover the corrected defect or failure.

6. In case of dispute the Court of record shall be in Guadalupe County, Texas.

(c) The City shall inspect all required improvements to ensure that construction is being accomplished in accordance with the plans and specifications approved by the city. The city shall have the right to inspect any construction work being performed to ensure that it is proceeding in accordance with the intent of the provisions of this chapter. Any change in design that is required during construction should be made by the licensed professional engineer whose seal and signature are shown on the plans. Another engineer may make revisions to the original engineering plans if so authorized by the owner of the plans, and if those revisions are noted on the plans or documents. All revisions shall be approved by the City Engineer. If the City Engineer finds, upon inspection, that any of the required public improvements have not been constructed in accordance with the plans and specifications approved by the city then the developer shall be responsible for completing and correcting the deficiencies at the developer's expense.

(d) The developer/applicant shall pay for testing services that verify conformance with the approved plans and specifications. All expenses for tests that fail to meet these specifications shall also be paid for by the developer.

(e) Upon completion, inspection, and acceptance of the required utility improvements, Utility provider(s) shall submit a letter to the City Engineer and the developer/applicant stating that all required utility improvements have been satisfactorily completed and accepted by the utility provider.

(f) The city may withhold all city services and improvements of whatsoever nature, including the maintenance of streets and the furnishing of all other city services from any subdivision or property until all of the street, utility, storm drainage and other public improvements are properly constructed according to the approved construction plans, and until such public improvements are dedicated to and accepted by the city.

(g) If the surety on any performance bond furnished by the applicant is declared bankrupt, or becomes insolvent, or its right to do business is terminated in the state, or the surety ceases to meet the requirements listed in ***Circular 570***, the developer shall, within 20 business days thereafter, substitute another performance bond and surety, both of which must be acceptable to the city.

(h) When all of the improvements are found to be constructed and completed in accordance with the approved plans and specifications and with the city's standards, and upon receipt of one set of "record drawing" plans, and a digital copy of all plans (in a format as determined by the City Engineer) the City Engineer shall accept such improvements for the city, subject to the guaranty of material and workmanship provisions in this section. The City Engineer may withhold approval for reasonable cause to include failure to construct public improvements to code or city specifications, for violations of this Code, for failure to provide accurate or complete data as required by the City Engineer, or for failure to correct subdivision public improvements which fail within a year of their acceptance in accordance with this chapter.

(6). Temporary improvements.

(a). The applicant shall build and pay for all costs of temporary improvements required by the city, and shall maintain those temporary improvements for the period specified by the city.

(b). Any temporary public improvement (e.g., a temporary cul-de-sac, alley turnout, drainage swale, erosion control device, etc.) shall be placed within an easement established specifically for that purpose. The recording information of the instrument establishing the temporary easement shall be by instrument and approved by the City Engineer. A temporary easement for a required public improvement shall not be abandoned without the City Engineer's approval and without written consent by the city.

(7). Government units.

Governmental units to which these contract and security provisions apply may file, in lieu of the contract and security, a certified resolution or ordinance from officers or agents authorized to act in their behalf, agreeing to comply with the provisions of this chapter.

(8). Acceptance

(a). Acceptance of dedication offers. Acceptance of formal offers for the dedication of streets, public areas, easements, or parks shall be by authorization of the City Council after review of the recommendation of the City Engineer. The approval by the planning commission of a preliminary or final plat shall not, in and of itself, be deemed to constitute or imply the acceptance by the city of any public improvements required by the plat. The city may require the plat to be endorsed with appropriate notes to this effect.

(b) No applicant or contractor shall begin construction of public improvements, including grading, within a subdivision until the construction plans are approved by the City Engineer. The developer/applicant shall notify the City Engineer prior to commencement of construction. This notice shall give the location and date of the start of construction.

(c) Acceptance of the development shall mean that the developer has transferred all rights to all the public improvements to the city for use and maintenance. The City Engineer may, at his option, accept dedication of a portion of the required public improvements if the remaining public improvements are not immediately required for health and safety reasons; and if the property owner has posted a performance bond, letter of credit or cash bond in the amount of 115 percent of the estimated cost of those remaining improvements for a length of time to be determined by the City Engineer.

(d) Upon acceptance of the required public improvements, the City Engineer (or designee) shall issue a Letter of Acceptance (LOA) to the developer/applicant stating that all required public improvements have been satisfactorily completed and accepted by the city.

(9). Deferral of required improvements

(a) The planning commission may upon petition of the property owner and favorable recommendation of the City Engineer defer at the time of plat approval, subject to appropriate conditions, the provision of any or all public improvements as in its

judgment, are not required in the immediate interests of the public health, safety and general welfare.

(b) Whenever a petition to defer the construction of any public improvements required under this chapter is granted by the planning commission, the property owner shall deposit in escrow with the City their share of the costs of the future public improvements as approved by the City Engineer prior to filing of the plat, or the property owner may execute a separate improvement agreement secured by a cash escrow or, where authorized, a letter of credit, including a contingency of 15 percent guaranteeing completion of the deferred public improvements upon demand of the City.

(10). Recordation.

(a) After approval of any final plat or development plat (Plat) by the planning commission or in cases of a minor plat the Director of Planning, and construction plans by the City Engineer and the applicable Utility Directors, the planning commission shall cause the Planning Director to record such Plat with the county clerk upon the applicant's performance of one of the following:

- (1) Completion of the construction of required improvements and acceptance letter by the City Engineer, prior to recordation in compliance with this chapter.
- (2) Filing of security in lieu of completing construction prior to recordation in a form approved by the City Attorney, and in compliance with this chapter.

(b) In addition to the performance required under subsection (a), the applicant shall provide as appropriate the following:

- (1) A check or checks payable to the County Clerk in the amount of the recordation fee for filing the final plat.
- (2) A tax certificate from the city, county, and school district showing that no taxes are currently due or delinquent against the property.
- (3) The applicant shall provide dedication of all streets, alleys, parks, easements and other land intended for public use, signed by the owner or owners and by all other persons owning an interest in the property subdivided and platted, which shall be acknowledged in the manner prescribed by the laws of the state for conveyance of real property, and which shall be submitted and attached to or placed in the final plat in accordance with the provisions in this chapter.

(4) The Planning Director shall cause such plat to be recorded with the County Clerk upon compliance with this chapter. After filing of the plat, the applicant shall provide the city with a Mylar copy, sufficient paper copies as determined by the Planning Director, and a digital copy of the Plat in a format acceptable to the Planning Director.

SECTION TWO. If any clause or provision of this Ordinance shall be deemed to be unenforceable for any reason, such unenforceable clause or provision shall be severed from the remaining portion of the Ordinance, which shall continue to have full force and effect.

SECTION THREE. All ordinances and resolution or parts of ordinances or resolutions in conflict with this ordinance are repealed

SECTION FOUR. City staff is authorized to prepare this Ordinance for submission as a supplement to the Seguin Code of Ordinances.

SECTION FIVE. In accordance with Section 3.10 of the Seguin City Charter, this Ordinance shall become effective upon ten (10) days following passage on second reading and shall be published in a newspaper of general circulation.

PASSED AND APPROVED on first reading this 6th day of May, 2014.

PASSED AND APPROVED on second reading this 20th day of May 2014.

DON KEIL
MAYOR

ATTEST:

Thalia Stautzenberger
City Secretary