



Certified Recommendation

Raleigh Planning Commission

CR#

Case Information: TC-8-16 / Construction Surety, Warranty & Acceptance

Comprehensive Plan Guidance

<i>Applicable Policy Statements</i>	N/A
<i>Action Items</i>	N/A

Summary of Text Change

<i>Summary</i>	Amends Sections 8.1.3., 8.1.4., & 8.1.5. of the Part 10A Raleigh Unified Development Ordinance to modify the Construction Surety, Acceptance and Warranty provisions for development-related improvements to reallocate a year of the required warranty period to the required construction period to allow for more time for infrastructure completion.
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Summary of Impacts

<i>Impacts Identified</i>	<p><u>Adoption of TC-8-16:</u></p> <ol style="list-style-type: none"> 1. Adoption of the text change would maintain the same general four (4) year acceptance window specified, but would allow one additional year of build out and reduce the warranty period by the same one year. 2. Adoption of the text change would not impact the amount and duration of use of the infrastructure prior to acceptance; the reallocation of time will seek to provide a better finished product by reducing time of construction traffic on the non-structural, final layer of asphalt pavement. 3. A potential negative impact of adopting this text change will expose residents residing in, or utilizing, under construction projects to an additional year of incomplete infrastructure <p><u>No Action:</u></p> <ol style="list-style-type: none"> 1. The existing two (2) year build out and two (2) year warranty period would remain in effect. 2. With the shorter build out period, smaller project phases would be required which will increase potential plan review and inspection closeout responsibilities that may result in an increased need for staff resources.
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Public Meetings

<i>Submitted</i>	<i>Committee</i>	<i>Planning Commission</i>
4-5-16		

Attachments

1. Draft Ordinance

Planning Commission Recommendation

<i>Recommendation</i>	Approval
<i>Findings & Reasons</i>	
<i>Motion and Vote</i>	Motion: Second: Approval:

This document is a true and accurate statement of the findings and recommendations of the Planning Commission. Approval of this document incorporates all of the findings of the attached Staff Report.

Planning Director

Date

Planning Commission Chairperson

Date

Staff Coordinator:

Eric Hodge: eric.hodge@raleighnc.gov



Zoning Staff Report – TC-8-16

Construction Surety, Warranty & Acceptance

Request

<i>Section Reference</i>	Part 10A Unified Development Ordinance §8.1.3, Construction Surety, §8.1.4, Acceptance and §8.15, Warranty.
<i>Basic Information</i>	Amends the Part 10A Raleigh Unified Development Ordinance, to reallocate a year of the required warranty period to the required construction period to allow for more time for infrastructure completion.

Comprehensive Plan Guidance

<i>Applicable Policies</i>	N/A
<i>Action Items</i>	N/A

Contact Information

<i>Staff Coordinator</i>	Eric Hodge: eric.hodge@raleighnc.gov ; 919.996.2639
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History/Overview

The adoption of the Unified Development Ordinance (UDO) in 2013 necessitated a reassessment of the City's development-related public infrastructure acceptance policy by a group consisting of representatives from multiple city departments to propose a policy consistent with the new requirements of chapter 8. As part of the reassessment process, staff engaged in presentations and discussions with external stakeholder groups such as the Development Services Advisory Committee (DSAC), Development Management Team Stakeholders, and the Home Builders Association of Raleigh-Wake County to ensure a practical and globally-protective policy moving forward. During these discussions, stakeholders expressed concern with the aggressive nature of the two year public infrastructure completion requirement and two year warranty specified in the UDO from a standpoint of construction logistics and concerns with the ultimate infrastructure product provided to the citizens of Raleigh. The proposed text change maintains the four year total window specified in the UDO, while reallocating a year of the required warranty period to the required construction completion period.

Purpose and Need

The request to reallocate a year from the warranty period to the construction completion period has benefits with regard to the long term viability of the public infrastructure, especially the public street infrastructure. The requirements for public utility infrastructure acceptance will remain unchanged with the proposed text change as state administrative code requires public infrastructure to be accepted by the maintaining authority prior to initial occupancy of any project which will utilize the utility. With respect to the quality of public street infrastructure the City will

be accepting, this proposed text change should not have any adverse impacts. The addition of an additional year for infrastructure completion, in fact, should provide more time for assessment of the pavement substructure to ensure its viability long term. Obtaining a satisfactory substructure is the most vital component of asphalt pavement construction as the top layer has no structural benefits to the overall pavement structure. The reduction of the warranty period to one year will still provide the City with adequate time to assess the final right-of-way improvements (i.e. top layer of asphalt, sidewalk, and street trees) for long term viability.

Alternatives Considered

During discussions with stakeholders, various alternatives were discussed both within, and outside of, the codified four (4) year acceptance window. Other discussed alternatives would have effectively extended the codified acceptance window or eliminated the codified warranty period which staff was not in support of given the desire to provide accommodating, but expedient, build out and acceptance requirements for all public infrastructure.

Scoping of Impacts

Potential adverse impacts of the proposed text change have been identified as follows:

A potential negative impact of adopting this text change will expose residents residing in, or utilizing, under construction projects to an additional year of incomplete infrastructure.

The adverse impacts of taking no action (retaining the existing regulations) have been identified as follows:

With the shorter build out period, smaller project phases would be required which will increase potential plan review and inspection closeout responsibilities that may result in an increased need for staff resources.

Impacts Summary

Adoption of Proposed Text Change

Adoption of the text change would maintain the same general four (4) year acceptance window specified, but would allow one additional year of build out and reduce the warranty period by the same one year. Adoption of the text change would not impact the amount and duration of use of the infrastructure prior to acceptance; the reallocation of time will seek to provide a better finished product by reducing time of construction traffic on the non-structural, final layer of asphalt pavement.

No action

The existing two (2) year build out and two (2) year warranty period would remain in effect. With the shorter build out period, smaller project phases would be required which will increase potential plan review and inspection closeout responsibilities that may result in either longer processing times or an increased need for staff resources to meet demand.

**ORDINANCE NO. 2016 – 625 TC 382
TC-8-16**

**AN ORDINANCE TO AMEND THE CONSTRUCTION
SURETY, ACCEPTANCE AND WARRANTY REQUIREMENTS
OF THE PART 10A UNIFIED DEVELOPMENT ORDINANCE**

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF RALEIGH THAT:

Section 1. Section 8.1.3. of the Part 10A Raleigh Unified Development Ordinance, Construction Surety, is hereby amended by insertion of the following underlined provisions and deleting the language shown with a strike-through:

Sec. 8.1.3. Construction Surety

- A. If all development-related improvements and installations are not completed and accepted by the City prior to a request to record all or a part of any subdivision or issuance of a building permit for any site plan, whichever first occurs, a security instrument shall be posted, in lieu of completion of the work, in an amount of 125% of the estimated construction cost of the development related improvements which remain incomplete and with surety and conditions satisfactory to the City, providing for and securing to the City the actual construction and installation of improvements.
- B. All development-related improvements that are secured by a surety shall be installed prior to the issuance of the first certificate of occupancy within the subdivision phase or prior to the issuance of the first certificate of occupancy for the site plan, whichever event first occurs on the property. Except the final coat of asphalt for street improvements and the installation of ~~permitted street furniture or~~ sidewalks, street trees, street lights and permitted street furniture may at the option of the applicant be installed within ~~24~~ 36 months following the issuance of the first certificate of occupancy provided surety in the amount of 125% of these improvements are first provided to the City. Where improvements are required on a State-maintained road, a 100% construction surety is required. In this instance, proof of bond or surety with the State must be supplied to the City.
- C. Where the Development Services Director or designee determines that circumstances out of the control of the applicant have prohibited substantial progression of construction, an extension of not more than 2 years on the completion of the final coat of asphalt and installation of sidewalks, street trees, street lights and permitted street furniture may be granted. A surety in the amount of 125% of these improvements shall remain in place during the extension and the warranty period shall not commence until the outstanding items have been installed and inspected.

- D. Where the ~~Public Works Director~~ Development Services Director or designee determines that landscaping in the public right-of-way cannot be installed due to inclement weather conditions, a surety in the amount of 125% of the value of the landscaping shall be provided to the City, in accordance with Sec. 8.5.1.B. The landscaping improvements shall be installed ~~within 12 months of issuance of the conditional letter of acceptance~~ within 30 days of the start of the next October 1 to April 30 planting period.

Section 2. Section 8.1.4. of the Part 10A Raleigh Unified Development Ordinance, Acceptance, is hereby amended by insertion of the following underlined provisions and deleting the language shown with a strike-through and reorganizing the order of existing Sections 8.1.4 and 8.1.5 such that Section 8.1.4 becomes “Warranty” and Section 8.1.5. becomes “Acceptance”:

Sec. 8.1.4. Warranty

- A. All development-related improvements must have a warranty guaranteeing the work against defects for a period of 21 years from the date of ~~final acceptance of construction~~ warranty period commencement for the respective infrastructure system.
- ~~B. If the development related improvements are constructed at different times, then the guarantee shall continue until 2 years from the date of final acceptance of the improvement last completed.~~
- ~~B.~~ The warranty shall list the City as a beneficiary.
- ~~C.~~ A warranty surety shall be provided in an amount of 15% of the estimated value of the warranted development-related improvements. The surety shall expire 6 months after the expiration of the warranty period.

Section 3. Section 8.1.5. of the Part 10A Raleigh Unified Development Ordinance, Acceptance, is hereby amended by insertion of the following underlined provisions and deleting the language shown with a strike-through:

Sec. 8.1.5. Acceptance

Any development-related improvements shall not be officially accepted until the improvements have been inspected by the City, corrections are made in the field and on the approved infrastructure construction plans, a reproducible copy of the as-built drawings is provided to the ~~Public Works~~ Development Services Department and the warranty required in the ~~following previous~~ section is provided to the City completed.

Section 4. All laws and clauses of laws in conflict herewith are repealed to the extent of such conflict.

Section 5. If this ordinance or application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given separate effect and to this end the provisions of this ordinance are declared to be severable.

Section 6. This text change has been reviewed by the Raleigh City Planning Commission.

Section 7. This ordinance has been adopted following a duly advertised public hearing of the Raleigh City Council.

Section 8. This ordinance has been provided to the North Carolina Capital Commission as required by law.

Section 9. This ordinance shall be enforced as provided in N.C.G.S. 160A-175 or as provided in the Raleigh City Code. All criminal sanctions shall be the maximum allowed by law notwithstanding the fifty dollar limit in N.C.G.S. §14-4(a) or similar limitations.

Section 10. This ordinance is effective 5 days after adoption.

ADOPTED: August 2, 2016

EFFECTIVE: August 7, 2016

DISTRIBUTION: Planning – Bowers, Crane, Hodge
City Attorney – Botvinick, Hargrove-Bailey
Department Heads
Transcription Services – Taylor

Prepared by the Department of City Planning