

ORDINANCE NO. 1308

AN ORDINANCE OF THE CITY OF PANAMA CITY BEACH, FLORIDA, AMENDING THE CITY'S LAND DEVELOPMENT CODE TO CLARIFY THE DEFINITION OF "PUBLIC USE"; AUTHORIZING THE USE OF A COMPLETION AND PERFORMANCE BOND TO SECURE THE PERFORMANCE OF AN OBLIGATION TO COMPLETE STREETS, UTILITIES AND OTHER IMPROVEMENTS DEDICATED TO THE PUBLIC IN LIEU OF A CASH DEPOSIT OR IRREVOCABLE, UNCONDITIONAL LETTER OF CREDIT; CLARIFYING THAT COMPLETION OF STREETS AND UTILITIES IS NOT REQUIRED FOR THE CITY TO APPROVE A PLAT WITH NO DEDICATION TO THE CITY OR THE PUBLIC AT LARGE; CLARIFYING THE TERMS AND CONDITIONS OF A PUBLIC IMPROVEMENT COMPLETION AGREEMENT WHEN ONE IS REQUIRED; PROVIDING FOR CODIFICATION; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT; AND PROVIDING AN IMMEDIATELY EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PANAMA CITY BEACH:

SECTION 1. From and after the effective date of this ordinance, Section 1.02.01 of the Land Development Code of the City of Panama City Beach is amended to read as follows (new text underlined, deleted text ~~struckthrough~~):

## **1.02.00 ACRONYMS and DEFINITIONS**

### **1.02.01 Definitions**

As used in the **LDC**, the following terms shall have the meanings assigned to them. When one or more defined terms are used together, their meanings shall also be combined as the context shall require or permit. All terms not specifically defined shall carry their usual and customary meanings. Undefined terms indigenous to a trade, industry or profession shall be defined when used in such context in accordance with their usual and customary understanding in the trade, industry or profession to which they apply.

**Public Use** – The use of any land, water, utilities, roadway improvements, ~~or Buildings or other~~ improvements by the City, Bay County, Florida, a special district of the State of Florida, the State of

Florida, the federal government, or a municipality, public body or board, council or authority, county, state or federal government or any agency thereof for a public service or purpose.

SECTION 2. From and after the effective date of this ordinance, Section 1.02.04 of the Land Development Code of the City of Panama City Beach is amended to read as follows (new text underlined, deleted text ~~struck through~~):

## 10.02.00 APPLICATION REQUIREMENTS

### 10.02.04 Additional Submittal Requirements for *Subdivision Plats* and Lot Splits

- A. Each application for a preliminary or final **Subdivision Plat** shall contain all of the following information.
1. All information required pursuant to section 10.02.02.
  2. *Development* specifications: area of the tract, proposed number and layout of **Lots** and blocks, location, names and widths of proposed roadways and easements.
  3. Location of land to be dedicated or reserved for *Public Use* for rights-of-way, easements, schools, **Open Spaces** or other **Public Uses**.
  4. Locations of utilities, utility service and connections.
  5. Location of all **Protected Trees** pursuant to section 4.06.06.
  6. Topographic survey, soil report and a grading, drainage and erosion control plan.
  7. Location of significant natural features and habitats.
  8. Environmental impact report.
  9. When required elsewhere by this **LDC**, infrastructure impact reports.
  10. Stormwater Management Plan which meets the requirements of Chapter 3 of the **LDC**.
  11. A boundary survey of the subject property obtained, prepared under the responsible direction and supervision of a profession surveyor and mapper, and prepared not later than two years prior to submittal of the application.

12. A title opinion of an attorney at law licensed in Florida or a certification by a title company licensed in Florida to issue title insurance, demonstrating that all parties with an interest of record in the subject property have appropriately joined in the dedication of the **Plat**. The opinion or certification shall be made by reference to the legal description shown on the plat and submitted pursuant to the application, and shall be dated, or updated, no less than 60 days prior to final approval of the **Plat**.

13. If the **Plat** dedicates or otherwise proposes any improvements or utility facilities designated or intended for **Public Use**, then either (i) evidence that the construction of those items has been completed, that they are not encumbered and that they have been approved by the City Engineer, or (ii) a fully executed performance agreement and security therefor satisfying the requirements of section 10.19.04.

B. Each application for a **Lot Split** shall contain all of the following information, unless determined by the **City Manager** to be inapplicable or an undue hardship based upon circumstances unique to the particular **Lot** in question:

1. All information required pursuant to section 10.02.02.
2. Development specifications: area of the tract, proposed number and layout of Lots and blocks, location, names and widths of proposed roadways and easements.
3. Location of land to be dedicated or reserved for **Public Use** for rights-of-way, easements, schools, **Open Spaces** or other **Public Uses**.
4. Locations of utilities, utility service and connections.
5. Location of all Protected Trees pursuant to section 4.06.06.
6. Stormwater Management Plan which meets the requirements of Chapter 3 of the **LDC**.
7. A sketch to scale of the described **Lots, Parcels**, tracts, etc., showing the assessor's property identification numbers for contiguous parcels, the metes and bounds along the property lines, and the approximate locations of rights of way and easements located within or abutting said lots, parcels, tracts, etc. The sketch shall have been obtained no more than thirty (30) days prior to the filing of the application.

[End of SECTION 2.]

SECTION 3. From and after the effective date of this ordinance, Section 10.19.02, 10.19.03 and 10.19.04 of the Land Development Code of the City of Panama City Beach are amended to read as follows (new text underlined, deleted text ~~struckthrough~~):

## 10.19.00 INFRASTRUCTURE CONSTRUCTION, ACCEPTANCE and MAINTENANCE

### 10.19.01 *Developments Proposed with Public Improvements*

All improvements designated for *Public Use* to be constructed by private parties shall be constructed in accordance with construction drawings and specifications approved in writing by the *City*. All such improvements shall be constructed prior to acceptance by the *City* or within the time period specified in an escrow agreement that complies with the performance and security requirements of this part.

### 10.19.02 Construction Phasing Plan Required

The following *Developments* to be constructed by private parties shall require a written statement describing the date for commencement and completion of construction, by phase and a chart indicating the approximate construction period for each of the utilities and ~~public and private~~ roadway improvements, whether designated or intended for *Public Use* or not, prior to approval of the utilities plan and public and private roadway improvements:

- A. *Subdivision Plats*;
- B. *Site Plans*; and
- C. *PUD* Master Plans.

### 10.19.03 Construction of Improvements or Installation of Utility Facilities Designated or Intended for *Public Use*

- A. The property owner shall notify the City Engineer a minimum of three (3) days prior to starting the private construction of improvements (including installation of utility facilities) designated or intended for *Public Use*.
- B. Construction ~~improvements~~ or installation by private parties of utility facilities which are designated or intended for *Public Use* shall not commence or continue until and unless all the following obtain~~has occurred~~:
  - 1. ~~Final *Subdivision Plat* has been accepted by the City Council and recorded with the County Clerk; or a performance agreement between the *City* and the Developer~~

regarding completion of improvements shown on the *Plat* or required by this *LDC* has been executed and secured by an unconditional letter of credit, all in a form approved by the *City*;

~~12.~~ A current and valid **Local Development Order** issued by the *City*;

~~3~~ If applicable, **Variance** application approval filed with the *City*; and

~~24.~~ The City Engineer has approved all construction plans and construction proceeds according to the approved plans. and the City Attorney has approved the surety agreement.

~~3.~~ Where the improvements or utility facilities are being constructed on property owned or controlled by the *City*, a performance agreement between the *City* and the third party meeting the requirements of section 10.19.04.

### 10.19.04 Performance Agreements and Security

A. Before the City will consider a performance agreement, ~~the developer or property owner~~ shall submit to the City Engineer a cost estimate prepared by a licensed Florida civil engineer for construction of private improvements designated for **Public Use** based on normal construction practices and procedures. In lieu of an engineer's cost estimate, a property owner may provide bid contracts and other documentation sufficiently illustrating the owner's costs to have the improvements installed by a third party.

B. Construction of such improvements and completion of the performance agreement shall be secured by one ~~ensured by either of the following:~~

1. An irrevocable and unconditional letter of credit or an escrow agreement in a form approved by the City Attorney in an amount of money sufficient to pay 110 percent of the costs of construction of all public improvements and public utilities. The City Engineer shall confirm that the amount is adequate. The City Manager shall approved the credit worthiness of the issuer of the letter of credit.

2. A cash deposit escrow agreement with the City in form approved by the City Attorney in an amount of money sufficient to pay 110 percent of the cost of the improvements. The City Engineer shall approve the amount of deposit. Upon approval, the City Engineer shall arrange for filing of the cash deposit with the *City* finance department. At the developer's request, the cash escrow shall bear interest at the locally prevailing pass book rate under the developer's tax identification number.

3. A performance and completion bond issued by a surety licensed to do business in the state of Florida in a form approved by the City Attorney and in an amount sufficient to pay 110 percent of the costs of construction of all public improvements and public utilities. The City Engineer shall confirm that the amount is adequate. The City Manager shall be approve the credit-worthiness of the surety.

- C. The performance escrow agreement shall provide that no funds shall be released, nor shall the amount of the letter of credit be reduced, until all improvements have been installed by the developer and accepted by the **City**.
- D. If the property owner intends to have any part of the improvements installed by contractors or subcontractors, copies of the contracts, along with copies of performance and payment bonds naming the property owner as obligee, shall be submitted to the City Engineer and the City Attorney for approval. Approval shall be limited to the terms of performance.
- E. The **City** may use ~~Use~~ all available escrow- deposited funds, draw the full amount of the letter of credit or make demand upon the surety to complete the required improvements when, in the opinion of the City Engineer, the following two (2) conditions are met:
1. No substantial work on the improvements has been accomplished for a period of eighty (80) days (in the absence of inclement weather conditions, intentional shutdowns, work stoppages, etc.); and
  2. It is in the public interest to complete the required public improvements.
- F. Prior to Useusing ~~of available deposit escrow funds or, drawing upon the letter of credit,~~ the City Engineer shall serve upon the property owner, by certified mail, return receipt requested, a letter requiring the property owner to resume work on the required improvement or show good cause in writing within thirty (30) days why the work on the required improvements has ceased. If the property owner resumes work and makes substantial progress on the required public improvements within thirty (30) days, the City Engineer shall not begin the work using the escrow funds or funds drawn under the credit. If the property owner does not respond to the notice to show cause or if the reasons cited by the property owner for failure to make progress are not deemed by the City Engineer to be sufficient or if the property owner resumes work but does not make substantial progress on the required improvements in the City Engineer's opinion, the owner's right to complete the improvements shall be waived and the **City** shall Useuse the available-escrow funds or funds drawn under the credit to complete the required improvements. The City Engineer shall promptly notify the property owner of the **City's** intent to complete the improvements. The performance agreement shall provide (i) that failure of the City to comply with the notice or opportunity to cure provisions of this section shall not be asserted by any person or court to delay, prevent, enjoin or interfere with the City's use of the escrowed funds or the City's drawing and using funds available under the unconditional and irrevocable letter of credit, and (ii) that the owner's or developer's sole remedy the city's for wrongful use, draw or notice to the surety shall be an action at law for damages, injunctive relief being expressly waived in the public interest.

- G. If applicable, upon acceptance of the improvements, the balance upon deposit with the city in the escrow account shall be returned to the developer with any interest earned thereon, or the city shall release the letter of credit.

SECTION 4. All ordinances or parts of ordinances in conflict herewith are repealed to the extent of such conflict.


SECTION 5. The appropriate officers and agents of the City are authorized and directed to codify, include and publish in electronic format the provisions of this Ordinance within the Panama City Beach Land Development Code, and unless a contrary ordinance is adopted within ninety (90) days following such publication, the codification of this Ordinance shall become the final and official record of the matters herein ordained. Section numbers may be assigned and changed whenever necessary or convenient.

SECTION 6. This Ordinance shall take effect immediately upon passage.

PASSED, APPROVED AND ADOPTED at the regular meeting of the City Council of the City of Panama City Beach, Florida, this 27<sup>th</sup> day of March, 2014.

  
GAYLE F. OBERST, MAYOR

ATTEST:

  
Holly J. White, City Clerk

EXAMINED AND APPROVED by me this 27<sup>th</sup> day of March, 2014.

  
GAYLE F. OBERST, MAYOR

Published in the Panama City News Herald on the 10<sup>th</sup> day of March, 2014.

POSTED AT:

PCB City Hall Annex

Dated: March 28, 2014

PCB Public Library

Dated: March 28, 2014

W PCB Post Office

Dated: March 28, 2014