

MEMO



To: Mayor Olson and City Council

From: Ryan Harris, Senior Planner

Date: June 14, 2024

RE: Code Amendment - Clarifying Warranty Requirements for Infrastructure Improvements

It is proposed that the City Council consider amending the language in Santaquin City Code 11.44.030 regarding the warranty requirement for infrastructure improvements.

The current code requires a warranty period of two (2) years, but the City Engineer and the Public Works Director can reduce it to one (1) year if specific requirements are met. Staff and legal council has reviewed this code section and changes need to be made to better align the Santaquin City Code with the State Code. Below are some of the proposed changes.

1. The warranty period will now be one (1) year.
2. The City Engineer can extend the warranty period for more than a year if one of the items below can be shown.
 - a. "Prior poor performance by the applicant and or the applicant's contractor or subcontractor."
 - b. "The area upon which the infrastructure will be constructed contains suspect soil, and the City has not otherwise required the applicant to mitigate the suspect soil." (Suspect soils can be found when a geotechnical report is completed, which is required during the subdivision review process.)
3. If the City Engineer determines that a one-year warranty period is insufficient due to one of the items listed above, the City Engineer shall determine the appropriate length of the warranty period, to protect the public interest.

These updates have been reviewed by Santaquin Cities legal counsel and will align Santaquin City Code with State Code requirements. The attached ordinance has the proposed language for the City council review.

The Planning Commission reviewed the proposed amendment on June 11, 2024, and their motion is below.

Commissioner Tolman made a motion to recommend approval of the proposed code amendment which amends Santaquin City Code 11.44.030 Clarifying Warrant Requirements for Infrastructure Improvements. Commissioner Nixon seconded the motion.

Commissioner Wood, Yes; Commissioner Weight, Yes; Commissioner Nixon, Yes; Commissioner Romero, Yes; Commissioner Hoffman, Yes; Commissioner Tolman, Yes; The motion passed.

Recommended Motion: "Motion to approve Ordinance No. 06-01-2024, an ordinance amending Santaquin City Code to clarify warranty requirements for infrastructure improvements, providing for codification, correction of scrivener's errors, severability, and an effective date for the ordinance."

ORDINANCE NO. 06-01-2024

AN ORDINANCE AMENDING SANTAQUIN CITY CODE TO CLARIFY WARRANTY REQUIREMENTS FOR INFRASTRUCTURE IMPROVEMENTS, PROVIDING FOR CODIFICATION, CORRECTION OF SCRIVENER'S ERRORS, SEVERABILITY, AND AN EFFECTIVE DATE FOR THE ORDINANCE

WHEREAS, the City of Santaquin is a fourth-class city of the state of Utah; and

WHEREAS, the state legislature has granted general welfare power to the City Council, independent, apart from, and in addition to, its specific grants of legislative authority, which enables the city to pass *ordinances* which are reasonably and appropriately related to the objectives of that power, i.e., providing for the public safety, health, and welfare; and

WHEREAS, the City Council has specific authority pursuant to Title 10, Chapter 9a, Utah Code Ann. (1953 as amended) to adopt ordinances to regulate the uses and development of land within the City boundaries, and the design and construction of certain subdivision infrastructure improvements; and

WHEREAS, the City Council desires to amend Santaquin City Code Title 11 Chapter 44 Section 030 Guarantee of Improvements, to modify and provide clarification of subdivision infrastructure warranty requirements; and

WHEREAS, the Santaquin City Planning Commission held a public hearing on June 11, 2024, which hearing was preceded by the posting of public notice in at least three public places within the City limits of Santaquin City; and

WHEREAS, after the noted public hearing, the Santaquin City Planning Commission forwarded a recommendation to the City Council.

NOW, THEREFORE, BE IT ORDAINED by the City Council of Santaquin City, State of Utah, as follows:

Section I. Findings

The Santaquin City Council finds as follows:

- A. Santaquin City has experienced an unacceptable number of infrastructure improvement failures during the first year after the acceptance of such improvements by the City, and also between the first and second years after acceptance by the City.
- B. The premature failure of infrastructure improvements is often caused by collapsible soils settling, which in turn causes uneven and unstable roads, trenches, sidewalks, curbs and gutters.

- C. Records obtained by the City, including many geotechnical reports show that the majority of the land that has been developed within the City's boundaries during the past twenty years contains suspect soils, which are unstable and often lead to the failure, or shortened useful life of infrastructure improvements.
- D. The premature failure of infrastructure improvements is often caused by the use of unacceptable workmanship and/or unacceptable materials, which often lead to the failure, or shortened useful life of infrastructure improvements.
- E. The shortened useful life of infrastructure improvements caused by collapsible soils or poor workmanship results in an avoidable, unacceptable, and unjust burden upon Santaquin City and its residents, who often bear the burden of repairs and replacement of such failed infrastructure improvements.

Section II. Amendments

Title 11 Chapter 44 Section 030 is amended as follows:

11.44.030 GUARANTEE OF IMPROVEMENTS

- A. Guarantee Required: Prior to the recording of any final plat for a subdivision in the office of the county recorder, the city must receive a guarantee that all subdivision improvements identified on the subdivision plat will be completed in a timely and workmanlike manner.

Developers may choose to construct subdivision improvements "at risk", meaning construction takes place prior to recording of the subdivision plat. However, no subdivision improvements may be constructed without the required inspections or prior to obtaining the required city engineer's cost estimate and payment of all fees associated therewith (e.g., inspection, streetlight, street signs, etc.).

- B. Purpose Of The Guarantee: The guarantee shall be provided to the city as a security only and shall serve to ensure the completion of all subdivision improvements shown or described on the final plat in accordance with applicable construction standards and to warrant the materials and workmanship of the same ~~for during the two (2) years from the completion of said improvements~~ warranty period; however, the guarantee does not release the developer from any obligation for the installation of improvements, the quality of work, any of the materials used therein or the applicable warranty of the same.
- C. Acceptable Forms Of Guarantee: The guarantee referred to in paragraph A shall consist of one or more of the following:
 1. A performance bond in a form and with a surety that is acceptable to the City;
 2. A cash bond, together with a written agreement of the terms by which said cash bond shall be held or dispersed;
 3. A letter of credit from an institution or a surety that is acceptable to the City; or
 4. ~~An escrow account as approved by the City.~~

Together, the acceptable forms of guarantee may be referred to herein as "bond" or "guarantee". Each bond shall guarantee that all improvements shall be constructed in

accordance with the content of the final plat and completed within two (2) years of the commencement of construction of the same.

D. Guarantee Amount: The amount of a guarantee shall be determined in accordance with the steps described below:

1. The person from whom a bond is required (hereinafter "developer" or "subdivider") shall deliver to the City Engineer a written estimate, prepared by a licensed engineer, of the costs of the subdivision improvements for which a bond is required;
2. The developer shall deliver to the City Engineer a written request for a City Engineer's cost estimate. The City will not provide an estimate without such written request;
3. The City Engineer shall review whatever information he deems relevant, including the developer's engineer's estimate, and shall determine the "City Engineer's cost estimate";
4. The City Engineer shall deliver a written copy of the City Engineer's cost estimate to the developer;
5. The minimum bond amount shall be one hundred ~~twenty five~~ ten percent (~~125~~110%) of the City Engineer's cost estimate.

E. Acceptance Of Improvements:

1. Initiation Of Inspection For Release Of Guarantee: The developer shall request in writing that the City inspect completed improvements.
2. Acceptance Of Improvements: The City shall accept improvements only if and when City inspections show that the improvements have been constructed in accordance with all applicable standards and specifications. If, in the opinion of the City, improvements have not been constructed in accordance with all such standards and specifications, the City shall not accept said improvements and shall not release any portion of the bond for the improvements until appropriate completion, removal, reconstruction or correction is satisfactory to the City.

F. Release Of Bond:

1. Partial Release: At the developer's written request, from time to time and prior to one hundred percent (100%) completion of improvements, the City may release up to eighty percent (80%) of the bond as work is completed and accepted by the City. No such partial release may exceed the amount attributed to the completed improvements in the City Engineer's cost estimate. In no event shall the amount of the bond that is retained by the City be less than one hundred ~~twenty five~~ ten percent (~~125~~110%) of the total of the estimated cost to complete the improvements and the amount required for the ~~two (2) year~~ warranty period.
2. Release Of Bond: Any remaining balance of the bond, except that required for the ~~two (2) year~~ warranty period described below, shall be released within fourteen (14) business days from the acceptance of all of the improvements by the City.

G. Warranty:

1. Warranty Period: In order to warrant that all improvements are free from any defects in materials or workmanship, the City shall hold ten percent (10%) of the original bond for a minimum period of ~~two (2) years~~ one (1) year from the date of final acceptance of all improvements.
 - a. ~~Based on proper and adequate documentation provided by a licensed geotechnical engineer, and based on sufficient field evidence of proper performance of improvements, the City Engineer and Public Works Director may reduce the warranty period to one year for improvements installed in areas of the City that are less susceptible to failure due to inadequate soil conditions and based on geotechnical technical data provided. The Improvement Warranty Period shall not exceed one (1) year after the City's acceptance of required infrastructure, unless the City Engineer determines for good cause that a one-year period would be~~

inadequate to protect the public health, safety, and welfare; and has substantial evidence on record:

- i. of prior poor performance by the applicant and or the applicant's contractor or subcontractor; or
 - ii. that the area upon which the infrastructure will be constructed contains suspect soil and the City has not otherwise required the applicant to mitigate the suspect soil; or
 - b. If the City Engineer determines, pursuant to the criteria set forth above, that a one-year Warranty Period is insufficient, the City Engineer shall determine the appropriate length of the Warranty Period, to protect the public interest.
2. City's Right To Draw On Bond: The City may draw on the bond at any time during, or at the end of, the warranty period to correct or replace any patent or latent defects in the improvements.
 3. Final Release Of Bond: If, at the end of the warranty period described above, the City determines that the improvements are free of any defects, the remainder of the bond will be released.
 4. Liability Of Developer: In the event that the bond does not cover the costs incurred in any correction of defect in the improvements, the developer shall, at the election of the City, either make all necessary corrections or replacements to the improvements, or immediately reimburse the City for all such costs.

Section III. Severability

If any part of this ordinance or the application thereof to any person or circumstances shall, for any reason, be adjudged by a court of competent jurisdiction to be unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remainder of this ordinance or the application thereof to other persons and circumstances, but shall be confined to its operation to the section, subdivision, sentence or part of the section and the persons and circumstances directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the City Council that this section would have been adopted if such invalid section, provision, subdivision, sentence or part of a section or application had not been included.

Section IV. Contrary Provisions Repealed

Any and all other provisions of the Santaquin City Code that are contrary to the provisions of this Ordinance are hereby repealed.

Section V. Codification, Inclusion in the Code, and Scrivener's Errors

It is the intent of the City Council that the provisions of this ordinance be made part of the Santaquin City Code as adopted, that sections of this ordinance may be re-numbered or re-lettered, and that the word ordinance may be changed to section, chapter, or other such appropriate word or phrase in order to accomplish such intent regardless of whether such inclusion in a code is accomplished. Typographical errors which do not affect the intent of this ordinance may be authorized by the City without need of public hearing by its filing a corrected or re-codified copy of the same with the City Recorder.

Section V. Posting and Effective Date

This ordinance shall become effective at 5:00 p.m. on Wednesday, June 19, 2024. Prior to that time, the City Recorder shall deposit a copy of this ordinance in the official records of the City and place a copy of this ordinance in three places within the City.

PASSED AND ADOPTED this 18th day of June, 2024

Daniel M. Olson, Mayor

Councilmember Art Adcock	Voted	___
Councilmember Brian Del Rosario	Voted	___
Councilmember Lynn Mecham	Voted	___
Councilmember Jeff Siddoway	Voted	___
Councilmember Travis Keel	Voted	___

ATTEST:

Amalie R. Ottley, City Recorder

AFFIDAVIT OF POSTING

STATE OF UTAH)
) ss.
COUNTY OF UTAH)

I, AMALIE R. OTTLEY, City Recorder of Santaquin City, Utah, do hereby certify and declare that prior to the ordinance taking effect, I posted a short summary of the ordinance on the Utah Public Notice Website as required by Utah State Code 10-3-711(1)(b) as a Class A Notice and Santaquin City Code 1-2-050(D)

I further certify that copies of the ordinance were posted online at www.santaquin.org, at the City Hall Building at 110 S. Center Street and on the State of Utah's Public Notice Website, <https://www.utah.gov/pmn/index.html>. A copy of the notice may also be requested by calling (801)754-1904.

AMALIE R. OTTLEY
Santaquin City Recorder

The foregoing instrument was acknowledged before me on this ___ day of ___ 2024, by AMALIE R. OTTLEY.

My Commission Expires:

Notary Public