

**SCOTT COUNTY, KENTUCKY
ORDINANCE 11-02**

**AN ORDINANCE RELATED TO THE AMENDMENT
OF THE GEORGETOWN/SCOTT COUNTY SUBDIVISION & DEVELOPMENT
REGULATIONS REGARDING SECURITY FOR SUBDIVISION
AND DEVELOPMENT IMPROVEMENTS**

Whereas: The existing Subdivision and Development Regulations' security requirements have not satisfied community needs. The regulation requirements must be updated to reflect the Georgetown-Scott County Planning Commission's experience in the implementation of the community's development. This experience reveals the following:

- a. Letters of Credit function better than surety bonds as security for subdivision and development improvements.
- b. The community needs to secure the proper installation and interim maintenance of public or shared improvements.
- c. At present, there are approximately \$6,000,000 in letters of credit and bonds held by the Commission.
- d. There must be standards for the type and terms of security posted by developers.
- e. There must be procedures for renewal, tracking and release of security posted by developers.
- f. There must be certainty concerning what items may be secured.
- g. There must be security to insure quality work.
- h. There must be manageable timetables for the completion and dedication of improvements.
- i. There must be standards for reporting to and involvement of the local governments that ultimately take over responsibility for improvements.
- j. The current period before a sufficient number of homes are occupied (80% in the City and 50% in the County, by ordinance) and the public infrastructure may be completed and dedicated is too long. While current bonds or letters of credit are being held for completion of infrastructure, they may not cover maintenance, cleaning of streets and storm sewers, snow removal, erosion and sediment control, replacement of signage, restoration of staging areas and other essential work. These unsecured tasks are properly the responsibility of the developer. In recent months, the Commission and local government have been asked to assume these duties upon complaints from the public, or due to financial failure of developers. The extended period for completion and need for security for currently unsecured work provide major impetus for this ordinance.

Whereas: This proposed amendment was the subject of many meetings over many months, with input sought from all affected sectors of the community's economy and local government. The following recommended amendments and additions to the Subdivision and Development Regulations were presented to the Georgetown-Scott County Planning Commission, which held a properly advertised public hearing July 8, 2010. At the close of that public hearing, the Georgetown-Scott County Planning Commission voted unanimously to recommend to the respective legislative bodies the adoption of this ordinance.

Now, Therefore, be it Ordained by SCOTT FISCAL COURT, Kentucky, as follows:

Section One: Amended Provisions. (New language is underlined. Language which is unchanged is not marked. Superseded language is shown as ~~stricken~~.)

Article III
Major Subdivision Approval Procedure

[Procedure for Obtaining Final Plat Approval]

310 All applicants for major subdivision plat approval must obtain Final Plat approval pursuant to the procedure outlined below.

A. Prior to submission of Final Plat for approval and signature, applicants must install, file as-built plans for, and have field inspected by the Planning Commission Engineer, all water quality protection measures, followed by stormwater management installations, streets, sanitary sewers, water systems and other improvements; and file sufficient security pursuant to Article VI.

Article IV
Development Approval Procedure

[Procedure for Obtaining Final Plan Approval]

410 All applicants for major development plan approval must obtain Final Plan approval pursuant to the procedure outlined below.

A. Applicant must file one original with original signatures and six prints of the Final Plan for approval, accompanied by the required fee. There is no filing deadline for Final Development Plans.

B. Final Plans must be in conformity with the Contents and Format standards in Article VII and all changes from the approved Preliminary Plan must be noted thereon.

C. [Text is not changed.]

D. [Text is not changed.]

E. [Text is not changed.]

F. No building permit shall be issued until the Final Plan has been signed. No Certificate of Occupancy shall be issued by the building inspector until all the improvements shown on the approved plan are completed, inspected, and certified as approved by the Planning Commission Engineer and a security is provided to secure the installation of landscaping (see Article VI for security and release provisions).

Article VI
Security for Development Improvements and Maintenance

600 SECURITY REQUIREMENTS (All references to "security", "bond" or "letter of credit" include standby letters of credit, bank certificates of deposit, U.S. Treasury bills or short-term notes, or other acceptable means of security as described below). Security shall be provided both for unfinished improvements and for warranty and maintenance of public improvements; and shall be maintained until completion of all requirements and acceptance by the applicable city or county; and shall be established prior to final approval and recording of the final subdivision plat or, in the case of development plans, final approval and building occupancy or project use.

[Existing subsections A, B and C are deleted. New sections 1, 2 and 3 are created. The deleted text shall be provided.]

A. Security for Unfinished Improvements.

1. The developer shall provide and maintain security in an amount equal to one hundred twenty-five percent (125%) of the estimated cost of constructing the unfinished improvements in favor of the Planning Commission. Said security shall be for the construction and installation of unfinished improvements, and shall further serve as security against faulty materials and poor workmanship.
2. The estimated cost of constructing the unfinished improvements shall be determined by a written estimate prepared by a professional engineer and confirmed by the Planning Commission Engineer. Costs shall be based on current unit price estimate established and maintained by the Engineering Department of the Planning Commission.
3. Only the following items are eligible to remain unfinished contingent on posting of sufficient security for the amount of time specified;
 - a. Subdivisions - the final surface course of asphalt, sidewalk, and any required landscaping not installed prior to approval of the Final Subdivision Plat. Said items shall be secured for a period of one (1) year from the date of recordation of the final subdivision plat, subject to the developer's requests for extension
 - b. Developments - any required landscaping not installed prior to issuance of a Certificate of Occupancy, or final approval by Planning Commission staff, shall be secured consistent with the requirements of the Landscape and Buffer Ordinance. Said items shall be secured for a period of one (1) year from the date of recordation of the final subdivision plat, subject to the developer's requests for renewal.
 - c. Other items may be allowed to be unfinished contingent on sufficient security for a period of one (1) year from the date of recordation of the final subdivision plat, subject to the developer's requests for renewal, if recommended by the Planning Commission Engineer and approved by the Planning Commission, but in no circumstance shall any item be unfinished that is deemed necessary for the safety of the public or purchaser of a lot.

B. Warranty and Maintenance Security.

1. The developer shall post warranty and maintenance security as a guarantee of the improvements against faulty materials or poor workmanship and as a guarantee for maintenance of the improvements until after public acceptance as specified in Section 610.A. of these regulations, including, but not limited to: cleaning of streets and stormwater piping; signage; landscaping, erosion and sediment control (in addition to any security required under Section 1100.B. of these regulations); and compliance with the stormwater management plan or water quality protection measures. This security or portions thereof shall be posted in favor of both the Planning Commission and the applicable city council/city commission/fiscal court, and may be called if it is determined that such maintenance has not occurred by either (a) the Planning Commission Engineer, in consultation with the applicable city council/city commission/fiscal court or its designee; and /or (b) the applicable city council/city commission/fiscal court or its designee, in consultation with the Planning Commission Engineer.
2. This security shall be for all improvements;

a. Intended to be dedicated to a city in Scott County or to the Scott County Fiscal Court for public maintenance, or

b. Improvements that serve four (4) or more single-family residential units that may be dedicated to a city in Scott County or to the Scott County Fiscal Court for public maintenance.

3. This security shall be in an amount equal to 10% of the estimated cost of all required public and/or shared improvements shown on an approved subdivision plat and located in a right of way and/or easement. The estimated cost shall be determined by a written estimate prepared by a professional engineer and confirmed by the Planning Commission Engineer based on current unit price estimate (established and maintained by the engineering office of the planning commission). The security shall remain in effect for a period of:

a. one (1) year after the date of acceptance of the completed improvements by the applicable city or county, subject to the developer's requests for extension; or,

b. one (1) year after the date of final completion as acknowledged by the Planning Commission Engineer, subject to requests for renewal, for improvements not to be maintained by a public entity at that time

C. Extensions on security may be requested pursuant to Section 610.C. of this article.

D. Security sufficiency requirements.

Except where cash security is permitted as stated in Subsection D.3., below, the Planning Commission will only accept irrevocable standby letters of credit in favor of the Planning Commission and/or the applicable city council/city commission/fiscal court, in accordance with either Subsection A. I. or Subsection B. 1., above, as applicable. Such standby letters of credit are subject to the current International Standby Practice 98. Such standby letters of credit must be posted with terms and conditions satisfactory to the attorney for the Planning Commission before final plats are approved. Further, in addition to and notwithstanding any provision of ISP 98 or any other applicable document or provision to the contrary, standby letters of credit must be written upon a bank or other appropriate financial institution that has office(s) located within 120 miles of Georgetown, Kentucky that are authorized and able to receive presentation of demands on such letters of credit.

1. The Planning Commission shall review the posted security each year for adequacy according to the current unit price estimate established and maintained by the engineering department. The Planning Commission may require an increase in the principal amount secured up to the percentage of increase in the consumer price index published by the U.S. Department of Labor, Bureau of Labor Statistics for the Hamilton County, Ohio/Kentucky/Indiana area or closest market area, if that index is discontinued.

2. It is the developer's responsibility to notify the Planning Commission when public improvements are complete and to schedule final inspections.

3. In lieu of a standby letter of credit, the developer may post cash as security. For purposes of this provision, cash security includes certificates of deposit, Treasury certificates, certified checks and cashiers' checks. Said cash security shall be immediately deposited by the Planning Commission into an escrow account for the benefit of the Planning Commission and/or the applicable city council/city commission/fiscal court, in accordance with either Subsection A. I. or Subsection B. 1., above, as applicable. The

developer shall submit with the cash security a letter specifically describing the improvements, warranties and/or maintenance to be secured. The Planning Commission may use this cash security to pay for the timely and satisfactory completion of improvements or for the performance of maintenance or for other things covered by the cash security. The Planning Commission shall refund any unused portion of the cash security when the project is satisfactorily completed.

4. Any developer who posts security under these regulations shall sign a statement that he/she has read and understands this Article VI and all subsections thereunder and that he/she will abide by its terms. The developer must further acknowledge in writing that he/she is aware of the expiration date of the security and that he/she shall not attempt to hold either the Planning Commission or the applicable city council/city commission/fiscal court, nor any employees of the same, liable for any damages that may result from strict enforcement of this Article VI and related regulations.

605 INSTALLATION OF PART OF IMPROVEMENTS IN PHASED DEVELOPMENTS

The owner of a tract may prepare and secure approval of a preliminary plat for the entire tract and may install the required improvements in only a portion of such tract, but the improvements must be installed or provision made for their installation pursuant to the above paragraphs in any portion of the area for which a final plat is approved for recording; provided however, that any gas mains, storm sewers, trunk sewers, roads, and any sewage treatment plants shall be designed and built in such a manner that they can be expanded or extended to serve the entire area, and provided further that all other requirements of these regulations have been met.

If the proposed development is a phased development, and heavy construction equipment must cross public roads constructed in earlier phases within the development, the developer shall post security equal to 5% of the total current cost of final surfacing and concrete work for the streets, which may be called by the Commission if necessary to repair any damage done to surface pavement, curbs, storm water inlets, or other concrete work. This amount shall be retained until the project is completed or until construction traffic is limited to use of an alternative route.

The requirements of this section are separate from and in addition to the maintenance and repair requirements set out in Section 620 of these regulations.

610 RELEASE, REDUCTION, EXTENSION, OR CALLING OF LETTER OF CREDIT

[Existing of Section 610 is deleted. The following new sections A, B, C and D are created. The deleted text shall be provided.]

The standby letter of credit shall provide all release, extension and call provisions and shall be in agreement with the procedures below.

A. Release of Security

Security shall be released by written certification of the Planning Commission Director pursuant to the following procedures:

1. **Security for unfinished improvements** - proper installation of all improvements, with final subdivision plat and as-built plans furnished to the Planning Commission and inspection of work by Planning Commission's engineer.
2. **Warranty and maintenance security** -

a. one (1) year from the date of acceptance by the city or county of public improvements and with concurrence from the city council/city commission/fiscal court responsible for public maintenance; or

b. one (1) year after the date of final completion, inspection and certification by the design engineer has been provided to the Planning Commission Engineer and the developer or current owners provide acknowledgement of future maintenance needs by the submission of a Maintenance Agreement executed by owners of all benefitted lots, if the completed improvements are serving four (4) or more single-family residential units and are not to be dedicated or are choosing to remain private.

B. Reduction of Security

Reductions in the amount of security may be made only under the following circumstances:

1. Reductions must be requested in writing by the owner/developer, and must state:

a. the name of the subdivision or development project;

b. the current amount of the security being held for unfinished improvements;

c. the amount of reduction being requested;

d. an itemized list of the original unfinished items that documents what has been completed as of the date of the request and compares the original cost estimates with their current estimated costs;

e. the projected schedule of completion of remaining improvements; and

f. the amount for the warranty and maintenance security if such security was required.

2. No more than two reductions shall be approved for the duration of the project.

3. Reductions shall be made following completion of specific required improvements, e.g., water lines, sewer lines, retention basins, etc.

4. Reductions shall only be made after written approval of the improvements is made by the Planning Commission's Engineer.

5. Security for warranty and maintenance shall not be allowed to be reduced. Security for unfinished improvements shall not be reduced below the calculated amount of the security for warranty and maintenance.

C. Extensions of Time

1. Procedure. The Planning Commission staff shall maintain a calendar of security expiration dates and carefully monitor the valid dates of the security and, if a portion of the security is still being held 60 days prior to its ending date, (either the amount of time granted in Section 600.A.3. or lesser date established by the security document) the Commission shall notify the developer and the applicable city or county's designee that the developer has 30 days to submit as-built plans and/or request a final inspection, or request an extension of time on the construction of the improvements and related security,

stating specifically the factors delaying construction. If an extension is granted, the extended security must be received at least one (1) day prior to the expiration of the previous security. If extended security has not been received one day prior, the Planning Commission shall notify the bank of its intent to call the security, shall redeem the balance of the security and shall perform the work secured.

2. Length. The Planning Commission, with approval from the applicable city council/city commission/fiscal court or its designee, may grant an extension of up to, but not more than, one (1) calendar year from the security's original date of expiration. The Planning Commission may grant a second and final extension pursuant to the same procedures, requirements and limitations for a first extension. Requests for extension shall be evaluated based on the best interests of the applicable city or county.

3. No right to extension. Nothing about these provisions for extension requests shall obligate the Planning Commission to grant such requests nor shall they obligate the applicable city council/city commission/fiscal court (or designee) to give its approval. If a request for extension is denied or if no extension is requested, the Planning Commission may call the security pursuant to Section 610.D.

D. Calling of Security

The required security for unfinished improvements or warranty and maintenance security shall remain in effect until it is officially released as described above. If the improvements are not satisfactorily completed within the time specified above or stated in the security documents, the Planning Commission may proceed against the developer and the projects security. If at any time the Planning Commission is required to notify the bank or financial institution of its intention to call the security, this shall be deemed as a violation of these regulations and the following shall apply;

1. The owner or developer of the subdivision or development shall be notified of the violation and means to remedy such violation and shall be subject to all applicable rules of enforcement contained in these regulations or associated regulatory bodies, and

2. The entire amount of the security shall be drawn regardless of the improvements completed up to the date of draw request. Any funds not used after completion of all required work by the Planning Commission shall be returned to the bank or financial institution one (1) year after acceptance by public entity or final approval of all work, less five hundred dollars (\$500) or such greater amount if documented as an amount necessary to be expended by the Planning Commission in procuring completion of all work, but not to exceed one thousand dollars (\$1,000) in any case.

3. A fee in the amount of two hundred fifty dollars (\$250) shall be paid to the Georgetown-Scott County Planning Commission prior to acceptance of replacement security if it is determined that a replacement security other than cash security may be accepted. The replacement security amount shall be evaluated by the Planning Commission Engineer and an increase in the amount may be required. This evaluation shall be determined according to the most recent engineering cost estimate, status of project completion and/or maintenance or repairs needed, and current unit price estimate (established and maintained by the engineering office).

620 Maintenance and Repair of Improvements

The developer shall be responsible for all maintenance and repair of the improvements installed for one year after final acceptance by the city or county, (with the exception of snow removal for streets proposed for acceptance by the City of Georgetown). The developer shall be responsible for any damage done to the improvements by construction traffic, local traffic, or by any other means, and shall insure the accessibility to all occupied lots during this time period. Upon completion of work and prior to public acceptance, the developer shall clean up all ground occupied or affected with his work. Failure to maintain or repair improvements may result in withholding approval of subsequent development, or the billing of the developer for such cleanup services performed by the city or county. The requirements of this section are separate from and in addition to the maintenance and repair requirements set out in Section 605 of these regulations.

625 Liability Insurance

The developer shall furnish proof of liability insurance as required and approved by the governing body which shall indemnify and save harmless the Planning Commission and the applicable city council/city commission/fiscal court from any and all liability arising from any conditions related to the construction or installation of improvements by the developer. The insurance shall not be allowed to expire earlier than one (1) calendar year from the date of final acceptance of the improvements for maintenance by the city or county. A copy of the policy shall be filed with the City or County Clerk.

Article XI Site Preparation Standards

1100 Grading Standards

B. SOIL EROSION AND SEDIMENT CONTROL

SECURITY REQUIREMENTS

The cost of compliance with the erosion control plan shall be included in security that shall be provided in addition to any security required under Article VI of these regulations and prior to issuance of a grading permit or land disturbance permit (City of Georgetown Ordinance 2010-26). The terms and sufficiency of security under this section shall be consistent with the requirements of Section 600.D. of these regulations. A registered engineer shall estimate the cost of compliance with the approved Stormwater Pollution Prevention Plan (SWPPP) and shall include this amount in computing the total of the approved security as required in Article VI of these regulations. At such time that the developer has completed all requirements of the approved SWPPP and satisfied all terms of the security document, the security shall be released upon certification by the Planning Commission Engineer.

In the event of failure to complete work or failure to comply with all requirements, conditions, and terms of the permit or plan, the Planning Commission Engineer may order the stoppage of work; the Planning Commission Engineer may order such work as in its opinion, is necessary to eliminate any dangerous conditions or to achieve compliance with the intent of this ordinance; the Planning Commissioner Engineer may instruct the Division of Building Inspections to refuse to issue any additional building permits.

The permittee shall continue to be firmly bound under the continuing obligation for the payment of all necessary cost and expenses that may be incurred or expended by the Planning Commission in causing the work to be done. In cases where there is no security posted, the Fiscal Court or City Council of the relevant jurisdiction shall put a lien on the property to cover necessary cost of complying with the ordinance where (1) the permittee fails to complete the work or comply, and the final plan has not been approved, or (2)

where the erosion control plan has been approved in association with the development plan, and the work outlined in an approved erosion control plan has not been completed to the satisfaction of the Planning Commission Engineer or Building Inspector.

In cases where a permittee fails to comply with an approved SWPPP and there is security posted, the Planning Commission Engineer shall estimate the cost of complying with the erosion control plan and draw that amount from the security to ensure the timely completion of the work if the permittee fails to do so after receiving notification to complete the work within 20 days from the date of the letter, or within a shorter time frame if so required by the applicable city council/city commission/fiscal court.

(Amended by City of Georgetown Ordinance 1999-10, 4/1/1999.
Amended by City of Georgetown Ordinance 2010-26, 11/22/2010)

Section Two: New Section Created. [New language is underlined.]

Effective date of the Security Provisions: Any subdivision or development plan in which the application has been submitted on or after the effective date of these Subdivision Regulations, or any subdivision or development plan that has received preliminary approval but has not obtained a grading permit or started construction prior to the effective date of this amendment] to the Subdivision Regulations, shall comply with all provisions herein. Any subdivision or development plan that has received preliminary approval and is operating under a valid grading permit prior to the effective date shall comply with the previous version(s) of these Subdivision Regulations that were in effect as of the date of the preliminary plan approval WITH ONE EXCEPTION: As of the effective date of these Subdivision Regulations, ALL Subdivisions and Final Development plans with a security (bond or letter of credit) currently held by this office will be granted a one year preliminary approval extension beginning with the effective date of these Amendments dated _____. At the end of the one year time period, no further extension or renewals of sureties will be allowed and if the Subdivision is not complete, it shall comply with these Subdivision Regulations, including any Amendments approved in the interim, and all provisions herein.

This ordinance was introduced and read for the first time at a public meeting of the Scott Fiscal Court on March 11, 2011, and for a second time and approved on March 24, 2011.

Approved:


SCOTT COUNTY JUDGE/EXECUTIVE

Attested by:

SCOTT FISCAL COURT CLERK