

O-075-19

Bonding / Fees-In-Lieu



Planning & Zoning Committee
March 12, 2019

Resolution No. 048, Series 2018

RESOLUTION NO. 048, SERIES 2018

A RESOLUTION REQUESTING THE LOUISVILLE METRO PLANNING COMMISSION TO REVIEW BONDING PROCEDURES AND FEE-IN-LIEU PAYMENTS IN THE LAND DEVELOPMENT CODE.

SPONSORED BY: COUNCILMAN JAMES PEDEN

WHEREAS, pursuant to the Land Development Code ("LDC") 7.2.45 et seq., developers are required to post bonds as security to ensure completion of sidewalks, sewers, and other improvements;

WHEREAS, the financial amount of such security is determined in the discretion of the Metro Department of Public Works and the Metropolitan Sewer District;

WHEREAS, there have been numerous instances where such bond amounts have been insufficient to complete improvements causing Louisville Metro Government to expend taxpayer dollars to complete improvements in private developments which creates an undue financial burden on Louisville Metro Government and an unfair claim on citizens' tax dollars;

WHEREAS, the LDC permits fee-in-lieu payments for certain required development improvements, such as sidewalks (LDC 6.2.6(B)(1)), landscaping (LDC 10.1.3(A)(4)), and amenity areas (LDC 5.12.2(A)(4)); and

WHEREAS, fee-in-lieu payments often do not reflect the actual cost of the required improvements which reduces the effectiveness of the application of the funds received for the alternative projects.

NOW, THEREFORE, BE IT RESOLVED BY THE LEGISLATIVE COUNCIL OF THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT ("METRO COUNCIL") AS FOLLOWS:


SECTION I: The Metro Council requests that the Louisville Metro Planning Commission review the bond/security requirements of the LDC to ensure that security for improvements in private developments is sufficient to cover all costs associated with the completion of required improvements in the event of the developers' default.

SECTION II: The Metro Council requests that the Louisville Metro Planning Commission review the fee-in-lieu procedures of LDC Sections 6.2.6, 10.1.3, and 5.12.2 to ensure that the fee accurately reflects the actual cost of the improvements that were required.

SECTION III: This Resolution shall take effect upon passage and approval.


H. Stephen Ott
Metro Council Clerk


David James
President of the Council


Greg Fischer
Mayor

4-23-18
Approval Date

APPROVED AS TO FORM AND LEGALITY:

Michael J. O'Connell
Jefferson County Attorney

BY: 

LOUISVILLE METRO COUNCIL
ADOPTED
April 12, 2018

R:053-18 Resolution Regarding Review of Bonding Procedures in LDC(3-14-18).docx

19AMEND1001

Subdivision Bonding

- Chapter 7 of the LDC
- Stops at Planning Commission

19AMEND1002

Fees-In-Lieu

- Chapter 5 of the LDC
 - Amenity Areas
- Chapter 6 of the LDC
 - Sidewalks
- Chapter 10 of the LDC
 - Tree Canopy
- Requires Legislative Action

19AMEND1001

7.2.45 Subdivider's Commitment and Bond Requirement

Before Planning Commission approval may be shown on the record plat for recording, the subdivider shall deliver to the Director of Works the following items:

- A. Subdivider's Commitment - The subdivider shall be responsible for the installation, good repair and proper functioning of all improvements, **including private roads**, required by the approved construction plan and the installation of all reference monuments required by the record plat. Installation shall begin within a year after approval of the record plat, or within any one year extension granted by the Director of Works, and shall proceed in a manner which, in the judgment of the Director of Works, does not cause unreasonable harm, inconvenience or annoyance to any other property owner in or outside of the subdivision. The judgment of the Director of Works with respect to the manner of proceeding may not be questioned in any judicial proceeding by anyone except the subdivider, but said judgment when exercised in favor of the subdivider shall not constitute a defense to the subdivider in a judicial action against the subdivider by a complaining property owner. This obligation of the subdivider shall continue until the Director of Works, acting on behalf of the Planning Commission, has granted a release pursuant to Section 7.2.60.
1. The required installations shall be completed and properly functioning within five (5) years from the date of which construction plans are approved, unless an extension is requested by the subdivider and approved by the Director of Works in writing. **If an extension is granted, the Director of Works may increase the amount of the bond, if necessary, to insure fulfillment of the subdivider's commitment.**
 2. If eighty percent (80%) of the lots do not have a completed structure on them, the subdivider may request that the Director of Works, also acting on behalf of MSD, waive the eighty percent (80%) requirement and notify the Planning Commission of such waiver. If the waiver is granted, the subdivider or design engineer, acting on behalf of the subdivider, shall initiate the bond release process by sending a written request for bond release inspection to Public Works, MSD, the Health Department, and the local fire protection district.
 3. At any time after the date of approval of the record plat, the subdivider shall abide by any time limits which the Director of Works may specify in writing. This obligation shall be evidenced in writing signed by the subdivider on forms provided by the Director of Works.

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6.2.6 Requirements for Specific Types of Streets and Alleys

- A. Minimum Requirements - New streets shall provide right-of-way and improvements specified in Tables 6.2.1 and 6.2.2, according to the functional class of the street and the form district in which it is located, subject to the following exception:
- B. Development activity that meets the thresholds in the form district for Street and Roadside Design and new streets shall provide sidewalks in accordance with Tables 6.2.1 and 6.2.2 subject to the following exceptions:
- Sidewalks shall not be required on lots that are five acres or greater in area and developed for single family residential uses unless they connect with existing sidewalks on both sides of the property.
 - Lots within approved major subdivisions in which the sidewalk(s) were waived as part of the subdivision approval for the applicable street frontage shall not be required to provide sidewalks.
1. Fee in Lieu Option - The Director of Works and the Director of Planning or designees may allow the payment in lieu of sidewalk construction upon a finding that construction of a sidewalk is not appropriate due to one of the following ~~applicability requirements~~ **reasons**.
- Sidewalks construction is impracticable due to topographical conditions or site constraints. **Site constraints may include, but are not limited to, steep slopes, utility infrastructure or tree removal;** or
 - A determination by the Director of Works and the Director of Planning or designees that sidewalks do not exist in the area and there is not a likelihood for sidewalks to be constructed in the future, except for areas where sidewalks are recommended within a Planning Commission or legislatively adopted plan recommending sidewalk construction.
- a. ~~Amount of fee shall be set by Metro Public Works based on average sidewalk construction~~ **The fee amount shall be calculated using the Metro Public Works primary contracts for new sidewalks multiplied by the area of sidewalk. The area of sidewalk shall be calculated as follows.**
- **Multi-family, non-residential and major subdivision developments shall be calculated based on the area of sidewalks required to be constructed per the LDC.**
 - ~~The fee in lieu amount for S~~**single family residential property that is not part of a major subdivision plan shall be calculated based on the minimum lot frontage of the applicable zoning district or actual lot width, whichever is less.**
- b. All fees paid shall be used for sidewalk construction within the same Metro Council District. **The sidewalk fee-in-lieu does not account for site constraints that may increase the cost of construction.**

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- ~~It should be noted that p~~**Payment** of a fee in lieu of sidewalk construction is an option available to developers that must be approved by the Director of Works and the Director of Planning or designees. Applicants retain the right to request a sidewalk waiver (see B.2 below). In no case shall the Planning Commission or Director of Works require the payment of a fee in lieu of sidewalk construction.
- d.** The fee in lieu option shall not be approved and the sidewalk shall be constructed **permitted** when one of the following situations apply:
- Where an existing sidewalk network can be completed or extended, except in locations where site constraints cause construction difficulties as determined by the Director of Works and the Director of Planning or designees.
 - The required sidewalk would provide a direct means of access to a lot that contains a pedestrian generator such as a school, church, library, community center or park, **except in locations where site constraints cause construction difficulties as determined by the Director of Works and the Director of Planning or designees.**
- f.** A new fee in lieu or sidewalk shall not be required in the future for a street frontage in which a fee in lieu has already been approved and paid.