

City of Laramie

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LARAMIE PLANNING COMMISSION January 25, 2021 STAFF REPORT

FILE: TA-20-04 Financial Security Options

REQUEST: An amendments to LMC 15.18.030.C – Financial Security & 15.18.070 – Reduction of Security for Public Improvements

APPLICANT: Dave Coffey, Coffey Engineering and Surveying

PURPOSE: Amending Laramie Municipal Code to allow for a “cash escrow drawdown” and “no lot sales” process as new financial security options related to required improvements

PREPARED BY: Derek T Teini, AICP, Planning Manager

RECOMMENDED MOTION:

Move to recommend that the City Council **approve** amendments to LMC 15.18.030.C – Financial Security & 15.18.070 – Reduction of Security for Public Improvements as shown in Attachment A.

APPLICABLE CODE SECTION(S):

Text Amendments must be reviewed by the Planning Commission and City Council. Planning Commission action is forwarded to the City Council as a recommendation.

- Laramie Municipal Code Title 15, Unified Development Code
- Wyoming State Statutes Title 15 Cities and Towns, Article 5 Planning
- Wyoming State Statutes Title 15 Cities and Towns, Article 6 Zoning
- Laramie Comprehensive Plan
- Thrive Laramie Community and Economic Development Action Strategy

BACKGROUND AND SUMMARY:

The proposed amendment is an applicant driven amendment submitted by Dave Coffey of Coffey Engineering and Surveying. All amendment requests are considered as part of the continual effort to keep the Unified Development Code (UDC) accurate, correct concerns, and remove potential avenues of confusion. All prior revisions to LMC Chapter 15 (Unified Development Code) can be found online at www.cityoflaramie.org/UDC.

The proposed text amendments, if approved, which can be found in Attachment A will allow for two new Financial Security options related to required improvements associated with development projects.

Development Agreements and Financial Securities

Almost all development projects require some sort of development agreement and associated financial security to back the required agreement. Laramie requires two main types of agreements; one called a "[Development Completion Agreement \(DCA\)](#)" and the other called a "[Subdivision Completion Agreement \(SCA\)](#)." Each agreement mentioned above is more specifically associated with either Subdivisions (Preliminary and Final Plats) or Site Plans (Site/Building Construction).

In the context of subdivisions, before a Final Plat can be considered by the City Council for approval, the developer must enter into the SCA and provided the required financial security related to all public improvements associated with the project. For example, a residential subdivision may be required to build streets, install water and sewer lines, drainage improvements and other public improvements. These improvements have a value which the developer must provide financial security in the form of cash, bond, letter of credit or cash escrow at an amount 125% (or 150% for delayed improvements) of the total value. This amount remains with the city and is "held" until the project is completed and accepted by the City of Laramie. At that time the developer receives 100% of the total amount financial secured, while the remaining 25% is held for warranty. The whole purpose of this process is to insure that anyone who purchases property receives the improvement promised by the developer at the time of approval. Sale of land can occur at any point after approval and after the Final Plat is recorded with the County. Sale of land often occurs prior to any improvements being installed so a guarantee the improvements go in is important to the City and those people buying land in the new subdivision.

In the context of Site Plans, a DCA and financial security are not required before approval, instead this agreement is used to provided flexibility in allowing a property owner use of their site or building, prior to all improvements being installed. For example, a new building may be required to install a parking lot, landscaping, drainage and other site improvements. As the project moves forward and the site is nearing completion (most improvements are done and building inspections are completed), an owner may be ready to occupy the building and start business, but all improvements may not be done yet. Often this agreement is used in Laramie related to landscaping; a project which is completed late in the year cannot install landscaping due to weather. This give staff the ability to postpone installation of landscaping until the next spring, subject to the developer agreeing and financially securing the value of the reaming improvements, while allowing the developer to being using the site and building.

Cash Escrow Amendment

Based on the proposed amendments developers will see two major changes in how either a DCA or SCA will be financially secured related to their associated projects. The first major change is the addition of what we call "cash escrow drawdown" as an alternative options for financially securing improvements associated with a project. Currently, a cash escrow can be used to financially secure

a project, however as noted above, the full value of the improvements remains held by the City until the project is completed. Under the “cash escrow drawdown” option, the developer will still provide the full 125%, however as improvements are completed and accepted the developer can request reimbursement of the value of those improvements so the money can be used to pay contractors and other personnel. This change is important and different than holding the full value of the improvements, as this allows the developer to use the money that has been secured as part of the project to pay for improvements and does not require the developer to have a full amount of the project cost held elsewhere to make payments. As part of the “cash escrow drawdown” process the changes can be found in LMC 15.18.030.C.2.a & LMC 15.18.070.A.1 – 9. Notable changes include:

- Allowance of the “Cash Escrow Drawdown” process as a financial security option.
- Notice to the City to use this option as a financial security option.
- Required “Cash Escrow Drawdown” agreement that will be used to formalize the release and other aspects of the process related to this option.
- Allowance to hire a 3rd party engineering consultant to aid in inspection and review of the drawdown requests. City staff may not have time to administer this process, thus by allowing the developer to pay for these services, staff time should not affect that ability of the developer to use this option. Developer is required to financially secure the cost of this hiring this consultant.
- Only the amount noted in the financial security subdivision quantities will be allowed to be reimbursed by the city. If overruns or cost go beyond that of the value assigned in the financial security quantities only that amount can be returned.
- How drawdown requests will be processed.

This amendment essentially reduces the financial burden on the developer by reducing their total need of cash on hand to develop a project. Staff believes that this change will help reduce development costs, which in turn we hope makes development easier within the city. Although this change is helpful for the development community, the City will be required to take on more work related to the administration of this process. At this time, and with the 3rd party engineering consultant option for review of improvements, staff believes this work load can be handled, however with reduced budgets and less staff, administration of this process may be difficult in the future if these budget and staff trends continue. This option will provide subdivision and site plan developments an additional financial security option, which we believe is good for the overall growth and development of the community.

No Lot Sales Amendment

The second amendment associated with this package of amendments relates to a “no lot sales” agreement associated with developments. As noted above, projects are required to provide agreements and financial security associated with the development in order to protect the community and people buying lots within a subdivision. In a worst-case scenario, the financial security put up by the developer can be used to “pay” for the developments if a developer walks away from a project that is incomplete. When a scenario like this happens, often individuals have already purchased land, because the final plat has already been recorded and were waiting on promised improvements. The financial security ensures that these improvements get done, even if the city has to use the

money financially secured by the developer. In the end the property owners get their promised improvements and the city has a completed subdivision in the community.

The “no lot sales” agreement provides a non-conventional way to allow for a plat to be recorded, thus giving a developer the ability to get loans and financial backing on an approved subdivision, without having the cash or other financial security in place ahead of time for the development. The “no lot sales” agreement eliminates a major issue for the city which is that the developer cannot sell a lot to anyone, but opens up financing options for the developer. By restricting lot sales, no other party, except the developer is impacted if the developer does not complete the project. As part of the “no lot sales” process the changes can be found in LMC 15.18.030.2.b. Notable changes include:

- By entering into this “no lot sales” agreement the developer may record the subdivision but may not sell lots, thus not being able to generate revenue through lot sales, which is typical for a development.
- Through recordation of the plat, the developer can use the recorded plat and approval a collateral to get financing to completed improvement required in the development, such as roads, water, sewer and the like. Until the final plat is approved, banks will often not financially back a project.
- The developer is still required to financial secure %25 of the total cost of the project. In a worst-case situation and a development is left incomplete, the city will have some limited money to fix any life safety issues left by the developer.
- Prior to any lot sales the developer will be able to complete required improvements so that the subdivision can be completed. When all improvements are completed the developer may be released from the “no lot sales” agreement with the 25% of the total costs being held for warranty.
- At anytime desired by the developer, the developer may enter into the standard SCA and financial security for any remaining improvements. Once the agreement and financial security is approved the developer will be released from the “no lot sales” agreement and can then sell lots as they desire.

This amendment will also provide an alternative way to allow for a subdivision to move forward through the process and give those developers alternative financing options as a means to fund development. By potentially opening up this option new developers may be able to enter into the development “game”, which can help bring more lots onto the market for residential and commercial development. Because this option is tied to subdivisions and lot sale, this option will only be used for Final Plats, and not site plans.

Comprehensive Plan:

Throughout the Laramie Comprehensive Plan, support for practices that aid in eliminating problems that may constrain or inhibit development is given. The Plan does not recommend outright elimination of regulations or codes, but instead recommends that the codes and plans be reviewed with a development and an economic growth mindset. These general economic growth strategies were a large factor in the development of the Unified Development Code and the direction that was given in code to support a code that is, “...regularly reviewed, evaluated and amended, if necessary,

based on private and city economic conditions...” among other factors. Support for amendment such as these are provided by the Comprehensive Plan.

Thrive Laramie

Thrive Laramie was adopted in 2020 as Chapter 9 of the Laramie Comprehensive Plan and is the City’s Economic Development Plan. The recommendations in Thrive Laramie Plan are designed to enact a future vision of Laramie as a welcoming cultural capital, education hub and center for economic opportunity for all current and future residents. In part this plan recommends identifying codes that may provide code relief or flexibility to developers and business owners; specifically if changes can be made that will encourage ecumenic development and the strategies found in the plan. Staff believes this amendments provides additional options that may allow new developers the ability to enter the development business or may aid existing developers in developing larger more impactful project for our community.

Laramie Chamber Business Alliance

During multiple meetings with the applicant during the development of this Text Amendment, Brad Enzi, CEO of the Laramie Chamber Business Alliance has been involved in the discussions from the general prospective of economic development and growth in our community. Please see the attached letter from the Laramie Chamber Business Alliance which provides explanation as to their support and interest in this amendment.

PROPOSED CODE CHANGES:

- The proposed code changes include amendments to clean up language, to be more specific on parking studies, to create easier parking calculations and to reduce parking space requirements between 20-30 percent across the City. **These changes are attached as a draft ordinance as well as Attachment A under the draft ordinance:**

PUBLIC COMMENTS:

This amendment was legally advertised in the Laramie Boomerang on January 9, 2021. Staff has received one comment from the LCBA (see above) regarding this proposed amendment to Laramie Municipal Code.

FINDINGS OF FACT:

The amendment is found to be in accordance with substantive and procedural requirements and necessities in City of Laramie code and best planning practice.

CONCLUSIONS OF LAW:

The amendment is proceeding in accordance with applicable law, including LMC Title 15.

STAFF RECOMMENDATION:

Move to recommend that the City Council approve amendments to LMC 15.18.030.C – Financial Security & 15.18.070 – Reduction of Security for Public Improvements as shown in Attachment A.

ATTACHMENTS:

1. Attachment A - Draft Ordinance (3 pages)
2. Applicant Request Letter (2 pages)
3. LCBA Support Letter (1 page)

“ATTACHMENT A”

15.18.030.C - Financial Security

1. The security for all improvement-security matters covered in this Chapter, except Warranty of Public Improvements (15.18.060), Temporary Certificates of Occupancy (15.18.080.B), and Delayed Improvements (15.18.110) , shall be one hundred and twenty five percent (125%) of the city engineer’s estimate for the required improvements being secured, **unless the option allowed in 15.18.030.C.2.b is used**. The city engineer’s estimate shall be submitted by the developer’s engineer on a form provided by the City Manager’s Office. The security shall be reviewed and approved by the City Manager’s Office prior to commencement of development activities.

2. The security shall be in a form of a letter of credit, bond, cash escrow, certificate of deposit, or certified or cashier’s check. The security shall explicitly be for the construction of the improvements, warranty and maintenance promises contained in the security and improvement deferral acknowledgement, including those pertaining to temporary improvements.

a. If a cash escrow form of financial security is selected per the amounts required in 15.18.030.C.1, the developer may choose to allow for the cash value within the escrow to be drawn upon during the course of the construction subject to the requirements found in 15.18.070 and the associated Cash Escrow Drawdown Agreement.

b. In lieu of a full financial security as required by LMC 15.18.030.C.1 and at the applicants written request, the City may reduce the required financial security to 25% of the total cost of improvements and shall authorize the Final Plat to be recorded subject to the developer entering into a recorded Agreement with the City, referencing the Final Plat and recorded at the same time as the Final Plat, that prohibits the sale of lots within the subdivision. The sale of lots shall be prohibited until;

(i). The required public improvements are completed to the satisfaction of the City of Laramie per 15.18.050 and financial security for warranty of public improvements per 15.18.060 has been submitted and approved, or

(ii). At any time during the construction of required public improvements the developer may demonstrate the financial capability to secure the remaining improvements through the Security and Deferred Improvement Agreement in an acceptable form permitted in 15.18.030.C.1 & 2 and completes the required Security and Deferred Improvement Agreement for all remaining improvements.

At such time the developer satisfies the requirements of 15.18.030.C.2.b.(i) or (ii) the developer shall be released from the agreement so lots may be sold. In the event the improvements are not completed within the required timeframe found

in 15.18.030.B.2 for any reason the City may use the financial security and/or may place a lien on the property in the amount needed to complete any required infrastructure as approved by the Final Plat or address life, health or safety issues related to the Final Plat.

LMC 15.18.070 Reduction of Security for Public Improvements

15.18.070.A Reductions

Reductions related to the required financial security associated with a cash escrow per LMC 15.18.030.C.2.a shall be permitted based upon the following requirements.

The amount of security posted by the developer may be reduced by the ratio of the costs of public improvements completed by the developer and inspected and approved by the city. In no event shall the security be reduced to less than 25 percent of its original amount unless and until a warranty security or other form is posted for the warranty period.

1. The developer, prior to consideration by the planning commission shall notify the City through completion of the Security and Deferred Improvement Agreement that Cash Escrow Drawdown is their desired financial security method.

2. The City of Laramie and the lending institution who is responsible for the Cash Escrow Drawdown shall be parties to the escrow account and shall enter into a legal agreement formalizing the escrow drawdown between the parties. At the discretion of the City Engineer or the lending institution a 3rd party engineering consultant may be hired for construction management and administration as outlined in 15.18.070.A.3 & 4 to aid in the release of the escrow related to the construction of public improvements.

3. A 3rd party engineering consultant may be hired for construction management and administration related to the construction of public improvements associated with a development and shall act for the City and the lending institution. The City with optional assistance of the lending institution shall select the consultant in accordance with the City's Purchasing Policy. The selected engineering consultant shall show that there is no conflict of interest with the development or parties associated with the development. The selected 3rd party engineering consultant shall be agreed upon by the City and the Developer before entering into a contract. The City shall administrate the 3rd party engineering consultant's contract.

4. The cost of the approved 3rd party engineering consultant shall be the sole fiscal responsibility of the developer and shall be financially secured within the cash escrow as part of the overall cost of public improvements as shown in the required quantities and financial security. In the event the portion of the escrow used to pay the 3rd party engineering consultant is reduced to 10% of the retained amount as designated in the quantities, additional escrow shall be deposited prior to any further inspections by the 3rd party engineering consultant. The 3rd party engineering consultant shall represent and be managed solely by the City for construction management, administrations and professional services.

5. In no event shall the financial security be reduced to less than 25% of its original amount unless and until a warranty financial security or other form is posted for the warranty period.

6. For each development one (1) drawdown request per month shall be permitted. All drawdown requests shall be recommended for approval or denial by the 3rd party engineering consultant if one is being used for the project and the city shall approve or deny the request prior to the escrow being released.

7. Each drawdown request shall be provided in writing and shall include the original quantities breakout provided with the Security and Deferred Improvement Agreement and Cash Escrow Drawdown Agreement and shall specify the items being requested for payment. Authorization of payment by the city and lending institution shall be made following receipt of the drawdown request, if all inspections and work is recommended for approval or denial by the 3rd party engineering consultant, and approved or denied by the City. All requests shall follow the lending institutions banking procedures associated with the escrow account.

8. For each drawdown request made no more than the value of the request, minus the 10% retainage, as shown in the quantities provided with the Deferred Improvement Agreement and Cash Escrow Drawdown Agreement shall be returned. No request shall be authorized until all parties agree to the amount and completion of associated improvements. The 10% retainage shall remain in the escrow and be held on all drawdown requests. Upon final acceptance of the development as outline in 15.18.050 the retainage shall be released to the developer.

9. In the event the project is not completed per the agreement the City shall be permitted to draw upon the escrow and/or place a lien against the property or other collateral.

15.18.070.B Request

The request of reduction of the security shall be made in writing by the developer to the City Manager's Office. The request shall include an itemized list of public improvements that were completed by the developer and inspected and approved by the city for which the reduction of the security is being sought. (Ord. 1728 § 16, 2017 Ord. 1671 § 15, 2014).

May 27, 2020



Derek Teini
Planning Manager, City of Laramie
Via email: DTeini@cityoflaramie.org

RE: City of Laramie Subdivision Financial Security Text Amendment

Dear Derek,

In order to help make development in Laramie more attainable to smaller developers, I am proposing some changes to the existing code specifically related to the required financial security. The goal of these changes is to allow the developer the ability to leverage the value of the proposed development as an asset created as part of the process. Our proposed changes to the Uniform Development Code are as follows:

Add 15.18.030 B 2.a

The City will allow the Final Plat to be recorded and financial security to be waived if the developer enters into an agreement with the City of Laramie that no lots will be sold until the required public infrastructure is completed to the satisfaction of the City of Laramie and the developer demonstrates the financial capability to construct the improvement in the form of a letter from a bank or other acceptable documentation. Once the City of Laramie has provided a final punch list to the developer and a financial security of acceptable form (15.18.030.B.2.) is provided for 25% of the construction cost, to be held for the required two year warranty period, the City will release the developer from the agreement and sales of lots may occur. At any time during construction, the developer may provide the City financial security in an acceptable form and, at such time, be released from the agreement so lots may be sold.

Add 15.18.030 B 2.b

The City will allow an acceptable financial security being contingent on the Final Plat being approved and recorded. The developer must sign an agreement, as described in 15.18.030 B 2.a. that prohibits lot sales.

Add 15.18.30 B 2.c

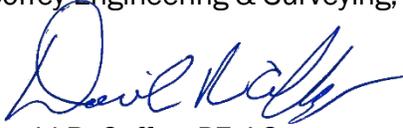
If a cash escrow form of financial security is used, the cash value may be drawn upon during the course of the construction provided that the City of Laramie and a lending institution, who shall be responsible for overseeing the construction, are the parties to the escrow account. The money in the escrow account shall only be used for construction expenses approved by both the City and lending institution, including warranty expenses.

Thank you for the opportunity to submit this proposal to the City of Laramie. I look forward to

working with the City and hopefully arrive at acceptable language that encourages further development in the community.

Sincerely,

Coffey Engineering & Surveying, LLC

A handwritten signature in blue ink, appearing to read "David R. Coffey".

David R. Coffey, PE, LS
CEO



Mr. Derek Teini
City Planning Manager
405 Grand Avenue
Laramie, WY 82070

Mr. Teini:

I am writing to voice my support of the Financial Security Text Amendment that is being considered by the City of Laramie. The Laramie Chamber Business Alliance, which I serve as the CEO and President, is the Economic Development and Chamber of Commerce organization in The City of Laramie and Albany County. In this capacity we work to ensure that existing businesses are able to thrive, and that our community is an attractive option for businesses looking to relocate.

In 2019 the City of Laramie, under the direction of the City Council, engaged in a thorough and inclusive effort to develop a comprehensive economic development plan with the assistance of the consulting firm Fourth Economy. The Thrive plan, as it the resulting work was adopted by Council, set forth a vision for the community as well as identified areas that the community had deficits. Housing was identified as an area that needed improvement in order to meet the 10-year objectives of the plan.

As we look to increase the numbers of housing units available in the community, we are in constant competition to attract both the investors and developers. From conversations with various members of both contingents, they make their business decisions in part based on the amount of capital that is required to get to saleable lots, and the amount of time that capital will be tied up for. Therefore, it is my belief that this amendment regarding financial security is one element that will help attract developers as well as the required dollars.

The changes to how the element of financial security work to help bridge the gap between what is required throughout the region to initiate a development and bring lots, and ultimately homes to the market. Consequently, when a developer is weighing multiple opportunities to deploy their resources Laramie will become an attractive choice by having both a pent-up need for housing and a financial security requirement that is comparable to other communities in the region.

Thank you to the team that has invested the time and effort to understanding the issue, and finding a way to address the problem while still providing the protections to make sure quality and uniform infrastructure is established.

Sincerely,

Brad Enzi
President and CEO, Laramie Chamber Business Alliance