

September 12, 2012
Updated September 21, 2012
Updated March 5, 2013

To: Yachats Planning Commission
From: Larry Lewis, City Planner
Re: Performance Agreements – Yachats Zoning and Land Use Code
Section 9.56 Approval and General Requirements of Partitions and Subdivisions

Existing Code Section 9.56.020 General requirements and minimum standards of design and development for partitions and subdivisions

- G. Performance Agreement. If all improvements required by the planning commission and this title are not completed according to specifications as required herein prior to the time the plat is duly submitted for consideration and approval, the planning commission may accept in lieu of the completion of improvements a performance agreement or bond executed by the partitioner or subdivider and his or her surety company with the city council conditioned upon faithful performance and completion of all such improvements within a period of time stated in such performance agreement and approved by the planning commission.

Draft Amendment

- G. Performance Agreement. If all improvements required by the *Planning Commission* and this title are not completed according to specifications ~~as required herein~~ prior to the time the plat is ~~duly~~ submitted for consideration and approval, the *Planning Commission* may accept a performance agreement in lieu of the completion of improvements ~~a performance agreement or bond executed by the partitioner or subdivider and his or her surety company with the City Council conditioned upon faithful performance and completion of all such improvements within a period of time stated in such performance agreement and approved by the Planning Commission.~~

1. *Improvements.* *Improvements include all infrastructure, e.g. streets, water, sewer, storm drainage, pedestrian facilities, and any other improvements required as part of the tentative approval.*
2. *Performance Agreement Required.* *When a performance agreement is required the subdivider shall file an assurance of performance with the City supported by one of the following:*
 - a. *An irrevocable letter of credit executed by a financial institution authorized to transact business in the state of Oregon;*
 - b. *A surety bond executed by a surety company authorized to transact business in the state of Oregon which remains in force until the surety company is notified by the City in writing that it may be terminated; or*
 - c. *Cash.*

3. **Determination of Sum.** *The assurance of performance shall be for a sum determined by the City as required to cover the cost of the improvements and repairs, including related engineering and incidental expenses.*
4. **Itemized Improvement Estimate.** *The developer shall furnish to the City an itemized cost estimate for each improvement, certified by a registered civil engineer, to assist the City in calculating the amount of the performance assurance.*
5. **Agreement.** *An agreement between the City and developer shall be recorded with the final plat that stipulates all of the following:*
 - a. *Specifies the period within which each required improvement and repair shall be completed, and how performance funds are released;*
 - b. *A provision that if work is not completed within the period specified, a time extension may be granted or the City may complete the work and recover the full cost and expenses from the applicant;*
 - c. *Stipulates the improvement fees and deposits that are required.*

The agreement may be prepared by the City, or in a letter prepared by the applicant. It shall not be valid until it is signed and dated by both the applicant and the City.
6. **When Developer Fails to Perform.** *If the developer fails to carry out all provisions of the agreement the City shall call on the performance agreement for completion of the project.*
7. **Termination of Performance Agreement.** *The developer shall not cause termination of nor allow expiration of the agreement without having first secured written authorization from the City.*