



# PLANNING COMMISSION

2267 North 1500 West  
Clinton City, UT 84015

Phone: (801) 614-0740

Fax: (801) 614-0752

Web Site: [www.clintoncity.net](http://www.clintoncity.net)

*Clinton City  
Planning Commission*

*Chairman  
Bob Buckles*

*Vice Chairman  
Anthony O. Thompson*

*Members  
Jacob Briggs  
Jolene Cressall  
Andy Hale  
Jeff Ritchie*

*City Staff  
Will Wright*

## AGENDA

**January 17, 2017**

**7:00 pm**

There will be a work session meeting of the Clinton City Planning Commission held on the date mentioned above in the **Council Chambers** of Clinton City; **City Hall located at 2267 North 1500 West.**

	Pledge	Appointed
	Invocation or Thought	Appointed
	Roll Call	Chair
	City Council Report	Staff
	Planning Commission Minutes for December 6, 2016	Chair
	Declaration of Conflicts	Chair
1.	<b>WORK SESSION:</b> Consider update of the City's Subdivision Ordinance with a review of Chapter 4 and other chapters of this ordinance, as time permits.	
2.	<b>COMMISSION COMMENTS</b>	
3.	<b>ADJOURN</b>	



**CLINTON CITY PLANNING COMMISSON  
CITY HALL  
2267 North 1500 W Clinton UT 84015**

**Planning Commission Members**

*Chair – Jacob Briggs  
Vice Chair – Bob Buckles  
Tony Thompson  
Dave Coombs  
Jolene Cressall  
Jeff Ritchie  
Andy Hale*

<b>Date of Meeting</b>	<b>December 6, 2016</b>	<b>Call to Order</b>	<b>7:50 p.m. Due to a prior meeting with the Board of Zoning Adjustment</b>
<b>Staff Present</b>	Community Development Director Will Wright and Lisa Titensor recorded the minutes.		
<b>Citizens Present</b>			
<b>Pledge of Allegiance</b>	Commissioner Hale		
<b>Prayer or Thought</b>	Commissioner Coombs		
<b>Roll Call &amp; Attendance</b>	Present were: Commissioners’ Dave Coombs, Jolene Cressall, Tony Thompson, Bob Buckles, Jeff Ritchie and Commissioner Andy Hale.  Commissioner Jacob Briggs arrived at 8:05 p.m.		
<b>City Council Report</b>	Mr. Wright reported on the November 29, 2016 Special City Council meeting as recorded in the minutes.		
<b>Declaration of Conflicts</b>	There were none.		
<b>Approval of Minutes</b>	<b>Commissioner Coombs moved to approve the November 15, 2016 Planning Commission minutes. Commissioner Ritchie seconded the motion. Commissioners Coombs, Cressall, Thompson, Hale and Ritchie voted in favor of the motion.</b>		
<b>PUBLIC HEARING: REVIEW AND RECOMMEND ADOPTION OF ORDINANCE 16-03S TO THE CITY COUNCIL AMENDING CHAPTER 4 OF THE SUBDIVISION ORDINANCE OF THE CITY CODE:</b>			
<b>Petitioner</b>	Planning Commission and Community Development Director		
<b>Discussion</b>	<p>Some important considerations in Chapter 4 are what the prerequisites are for subdivision improvements including inspection and maintenance requirements for those improvements. Further, this chapter explains what assurances are needed for the construction of those improvements.</p> <p>Chapter 4 Assurance for Completion and Maintenance of Improvements</p> <p><b>26-4-1</b> Improvements and Subdivision Improvement Agreement  <b>26-4-2</b> Inspection of Improvements  <b>26-4-3</b> Acceptance of Off-Site Improvements  <b>26-4-4</b> Maintenance of Improvements  <b>26-4-5</b> Deferral of Waiver of Required Improvements  <b>26-4-6</b> Escrow Deposits for Lot Improvements          Issuance of Building  <b>26-4-7</b> Issuance of Building Permits and Certificates of Occupancy</p> <p><b>26-4-1 <u>Improvements and Subdivision Improvement Agreement:</u></b>          (1) <b><u>Completion of Improvements:</u></b> Before the final plat of the subdivision is signed by</p>		

the Mayor or recorded with the Davis County Recorder's Office, all subdividers shall be required to complete necessary improvements, in accordance with the Council's decision and to the satisfaction of the Public Works Inspector. These include all the street, sanitary and other public improvements, including lot improvements on the individual lots of the subdivision, as required in these regulations, specified in the final plat of the subdivision and approved construction drawings as approved by the Council. The subdivider is to dedicate those public improvements to the City, free and clear of all liens and encumbrances on the dedicated property and public improvements.

(2) **Subdivision Improvement Agreement and Guarantee:**

(a) **Agreement:** The Community Development Director may waive the requirement that the subdivider complete and dedicate all public improvements prior to recording the final plat of the subdivision and, as an alternative, permit the subdivider to enter into a Subdivision Improvement Agreement by which the Subdivider covenants to complete all required public improvements no later than two (2) years following the date on which the Council approves the final plat of the subdivision. Additionally, the subdivider shall warrant, as defined in Utah Code 10-9a-103(19), that all required public improvements will be free from defect for the same one (1) year following the conditional acceptance. The Subdivision Improvement Agreement shall contain such other terms and conditions agreed to by the subdivider and the Council.

(b) **Security:** Whenever the Community Development Director permits a subdivider to enter into a Subdivision Improvement Agreement, it shall require the subdivider to provide a cash escrow as security for the promises contained in the Subdivision Improvement Agreement. Security shall be in an amount equal to one hundred ten percent (110%) of the estimated cost of completion of the required public improvements, including lot improvements. The estimated cost shall be reviewed and verified by the City Engineer. The escrow agent shall be a state-licensed institution approved to conduct business in this capacity and shall be acceptable to the Community Development Director. The Subdivider may also have a cash escrow with the City, but without interest amenities available with banks.

(c) **Cash Escrow:** When the subdivider posts a cash escrow as security for its promises contained in the Subdivision Improvement Agreement, the escrow instructions shall provide:

(i) That the Subdivider will have no right to a return of any of the funds except as provided in section 26-4-2(2)

(ii) That should the subdivider fail or refuse to make the improvements required as outlined in this agreement, the City Subdivision Ordinance or approved construction drawings within two (2) years following the date on which the Council approves the final subdivision plat, the City may declare the funds on deposit with the Escrow Agent forfeited, and the escrow agent shall have a legal duty to deliver the proceeds of the account. The funds shall be used to install the improvements required by the City Subdivision Ordinance and approved construction drawings.

(d) **Escrow Deficiency:** If at any time prior to completion of the subdivision or acceptance of the improvements by the City, the City determines the amount held in escrow (exclusive of the 10% reserve) is not sufficient to complete the needed improvements, subdivider shall put such additional amounts into escrow within 30 days of receiving written notice from the City.

(e) **Appeal:** The Subdivider may request a hearing before the City Council for a review of the opinion of the Community Development Director, Public Works Inspector or City Engineer or upon action by the City to seize a cash escrow, provided said request is made in writing and served by certified mail within thirty (30) days after written notification of any nonconformity with City ordinances, rules, regulations, requirements and standards or the Subdivision Improvement Agreement or Approved Construction Drawing or as to the insufficiency of any work.

If and when the municipality conditionally accepts the offer of dedication for the last completed required public improvement, the municipality shall execute a waiver of its right to receive all but ten percent (10%) of the funds represented by the cash escrow if the Subdivider is not in breach of the Subdivision Improvement Agreement. The residual funds shall be security for the Subdivider's covenant to maintain the required public

improvements and its warranty that the improvements are free from defect.

(3) **Temporary Improvement:** The subdivider shall build and pay for all costs of temporary improvements required by the Council and shall maintain those temporary improvements for the period specified by the Council. Prior to construction of any temporary facility or improvement, the developer shall file with the City a separate Subdivision Improvement Agreement and a cash escrow in an appropriate amount for the temporary facilities to be properly constructed, maintained, and removed.

(4) **Required Improvements:** All required improvements shall be made by the developer, at its expense, without reimbursement by the City or any improvement district except that, as may be allowed under state law and approved by the Council.

(5) **Governmental Units:** Governmental units to which these contract and security provisions apply may file, in lieu of the contract and security, a certified resolution or ordinance from officers or agencies authorized to act in their behalf, agreeing to comply with the provisions of this Ordinance.

(6) **Failure to Complete Improvement:**

(a) For subdivisions for which no Subdivision Improvement Agreement has been executed and no security has been posted, if the improvements are not completed within the period specified by the Council in the action approving the final plat any such approval shall be deemed to have expired. Additionally:

(i) If the city is required to disconnect public utilities that may have been connected the city may file a lien against the property to recoup any costs incurred;

(ii) The city may, for the purpose of public notice record a document with the Davis County Recorder's Office indicating the incomplete status of the subdivision.

(b) In those cases where a Subdivision Improvement Agreement has been executed and security has been posted and required public improvements have not been installed within the terms of the agreement, the City may then:

(i) Declare the agreement to be in default and require that all the improvements be installed regardless of the extent of the building development at the time the agreement is declared to be in default;

(ii) Suspend approval of the final plat of the subdivision until the improvements are completed and record a document to that effect for the purpose of public notice;

(iii) Obtain funds under the security and complete improvements itself or through a third party;

(iv) Assign its right to receive funds under the security to any third party, including a subsequent owner of the subdivision for which improvements were not constructed, in whole or in part, in exchange for that subsequent owner's promise to complete improvements in the subdivision; or

(v) Exercise any other rights available under the law.

(c) Prior to the end of the two-year period, the City Council may grant an extension of up to one (1) year for completion of the improvements within the subdivision. The Subdivider, in writing shall make application for an extension with a copy provided to the Escrow Agent of record, if any. Upon action by the Council, the Community Development Director shall notify the Subdivider and Escrow Agent of any action taken by the Council. The decision to grant any extension period shall be within the sole discretion of the Council.

(7) **Acceptance of Dedication Offers:** Acceptance of formal offers of dedication of streets, public areas, easements, and parks shall be by motion of the City Council with such motion authorizing the Mayor to sign the final plat of the subdivision. The approval of a subdivision plat by the Planning Commission or Council, whether preliminary or final, shall not be deemed to constitute or imply the acceptance by the municipality of any street, easement, or park shown on the final plat. The Council may require the final plat to be endorsed with appropriate notes to this effect.

**26-4-2 Inspection of Improvements:**

(1) **General Procedure and Fees:** The Public Works Inspector shall inspect required improvements during construction and ensure their satisfactory completion. The subdivider shall pay to the municipality an inspection fee based on the estimated cost of inspection, and where the improvements are completed prior to approval of the final plat of the subdivision, the subdivision plat shall not be signed by the Mayor unless the inspection fee has been paid at the time of application. These fees shall be due and payable upon demand of the Community Development Director and no building permits or certificates of occupancy shall be issued until all fees are paid. The amount of the fees shall be established by resolution, from time to time by the Council and included in the Consolidated Fee Schedule. If the Public Works Inspector finds upon inspection that any one or more of the required improvements have not been constructed in accordance with the municipality's construction standards, specifications or approved construction drawings, the subdivider shall be responsible for properly completing the improvements.

(2) **Release or Reduction of Security:** The Community Development Director may release funds from an established escrow in an amount equal to that set in the Subdivision Escrow Agreement for said improvements. Prior to release of any funds the Public Works Inspector shall inspect all improvements for which the release of funds is being requested and verify proper material, construction, and compliance with city standards and approved construction drawings. For improvements that are not to be city owned infrastructure inspection shall be done by and verified by an inspector authorized by the appropriate utility. The amount of the escrow shall be reduced upon satisfactory inspection of the public improvements and then only to the ratio that the cost of the public improvement inspected bears to the total cost of public improvements for the subdivision. In no event shall a release be greater than the amount of the inspected item established in the escrow or shall the cash escrow be reduced below ten percent (10%) of the principal amount.

**26-4-3 Acceptance of Off-Site Improvements:**

(1) **Conditional Acceptance of Improvements:** The City Council will not conditionally accept dedication of required improvements, nor release nor reduce the amount of any security posted by the Subdivider until the Public Works Inspector has submitted a certificate stating that all required improvements have been satisfactorily completed and until:

(a) The Community Development Director has verified that all fees, charges, transfers, and deposits related to the development have been paid to the City;

(b) The subdivider's engineer or surveyor has certified to the Public Works Inspector, through submission of a detailed "as-built" survey plat of the subdivision, indicating location, dimensions, materials, and other information required by the Public Works Inspector, that the layout of the line and grade of all public improvements are in accordance with construction plans for the subdivision;

(c) A title insurance policy has been furnished to and approved by the Community Development Director indicating that the improvements have been completed, are ready for dedication to the City, and are free and clear of any and all liens and encumbrances; and

(d) Upon such approval and recommendation by the Public Works Inspector, the Community Development Director shall present to the City Council and the Council shall thereafter conditionally accept the improvements in accordance with the established procedure.

(2) **Special Exceptions to Conditional Acceptance:** At the time of conditional acceptance the City Council may hold back, in addition to the required guarantee funds the amount for seal coat, provided that the asphalt within the subdivision has not been down for at least one-year, or the season is not right for seal coat, and the Subdivider has indicated his willingness to participate in the city annual seal coat contract.

(3) **Final Acceptance:**

(a) The Subdivider shall request final acceptance of all improvements one year after

conditional acceptance. Final inspection by the Public Works Inspector shall be made upon the request of the Subdivider but no sooner than one (1) year after conditional acceptance. All defects as noted in the final inspection report of the Inspector shall be corrected to the satisfaction of the Inspector. Final acceptance shall be by approval of the City Council after written approval is received from the Inspector.

(b) Where repairs are necessary to be performed by the subdivider final acceptance may be delayed by the City Council a specific amount of time if, in the opinion of the Public Works Inspector the severity of the repairs requires an extended guarantee period.

(4) **Authority to Release:** Funds held in the escrow account shall not be released to the Subdivider, in whole or part, except upon express written instructions of the City. At the end of the maintenance and warranty periods and after final acceptance by the City, all escrowed funds shall be released to the Subdivider.

**26-4-4 Maintenance of Improvements:** The developer shall be required to maintain all required public improvements on the individual subdivided lots and provide for snow removal on streets and sidewalks, if required by the Council, until acceptance of the improvements by the Council. If there are any certificates of occupancy on a street not dedicated to the City, the City may on twelve (12) hours notice plow the street or effect emergency repairs and charge those costs to the developer. Following the conditional acceptance of the dedication of any public improvement by the City, the City may, in its sole discretion require the Subdivider to maintain the improvement for a period of one (1) year from the date of acceptance.

**26-4-5 Deferral or Waiver of Required Improvements:**

(1) **City Council Action:** The Council may defer or waive, at the time of approval of the final plat of the subdivision, subject to appropriate conditions, the provision of any or all public improvements as, in its judgment, are not requisite in the interests of the public health, safety, and general welfare, or which are inappropriate because of the inadequacy or non-existence of connecting facilities. Any determination to defer or waive the provision of any public improvement must be made on the record and the reasons for the deferral or waiver also shall be expressly made on the record.

(2) **Subdivider's Obligation:** Whenever it is deemed necessary by the Council to defer the construction of any improvement required under these regulations because of incompatible grades, future planning, inadequate or nonexistent connecting facilities, or for other reasons, the Subdivider shall pay his share of the cost of the future improvements to the City prior to signing of the final plat of the subdivision by the Mayor, or the developer may execute a separate Subdivision Improvement Agreement secured by a cash escrow guaranteeing completion of the deferred improvements upon demand of the City.

**26-4-6 Escrow Deposits for Lot Improvements:**

(1) **Non-Developer Builders:**

(a) Builders seeking a building permit in a subdivision that they are not the guarantor for shall deposit with the city a cash escrow in the amount established by resolution by the Council and published in the Consolidated Fee Schedule. Said bond shall be paid at the time a building permit is issued and shall insure and guarantee the lot improvements from damage during construction. Such improvements include but are not limited to curb, gutter, sidewalk, water meter structures, streetlights, grading, and other on lot improvements.

(b) Escrows deposited by non-developer builders shall not be returned until a structure has passed final inspection, a certificate of occupancy has been issued and the Public Facilities/Building Inspector has approved all lot improvements. Once authorized, escrows shall be returned to the person paying for the building permit by the end of the month following the date of authorization of approval for release. No interest shall be paid at the time of release of escrows deposited with the city.

(2) **Acceptance of Escrow Funds:** Whenever, by reason of the season of the year, any lot improvements required by the subdivision regulations cannot be performed, a

certificate of occupancy may be issued, provided there is no danger to health, safety, or general welfare upon accepting a cash escrow deposit in an amount to be determined by the Community Development Director for the cost of the needed lot improvements. The Subdivision Improvement Agreement and security covering the lot improvements shall remain in full force and effect.

(3) **Procedures on Escrow Fund:** All required improvements for which escrow monies have been accepted by the Community Development Director at the time of issuance of a certificate of occupancy shall be installed by the Subdivider within a period of six (6) months from the date of deposit and issuance of the certificate of occupancy. If the improvements have not been properly installed at the end of the time period, the Community Development Director shall give two (2) weeks written notice to the developer requiring it to install the improvements, and if they are not then installed properly, the Community Development Director may request the Council to proceed to contract out the work for the installation of the necessary improvements in a sum not to exceed the amount of the escrow deposit. At the time of the issuance of the certificate of occupancy for which escrow monies are being deposited with the City, the builder shall obtain and file with the City prior to obtaining the certificate of occupancy a notarized statement from the purchaser or purchasers of the premises authorizing the City to have the improvements installed at the end of the six-month period if the improvements have not been duly installed by the Subdivider.

(4) **Escrow With Authorized Agent:**

(a) The Community Development Director may accept proof of an escrow, established with a state licensed title company that guarantees any lot improvements required by the subdivision regulations. The escrow shall guarantee any lot improvements not completed due to seasonal conditions as outlined in 26-4-6(2) above. Upon acceptance of the Title Company escrow the certificate of occupancy may be issued, provided there is no danger to health, safety, or general welfare. The amount of the escrow is to be determined by Community Development Director for the cost of the lot improvements being escrowed.

(b) The guarantee from the Title Company shall state that the Title Company will have the required improvements installed by a professional contractor upon demand of the city.

**26-4-7 Issuance of Building Permits and Certificates of Occupancy:**

(1) **Security Required:** When a security has not been provided for a subdivision, no building permit or certificate of occupancy for any building in the subdivision shall be issued prior to the completion of the required public improvements and the acceptance of the dedication of those improvements by the City unless otherwise stipulated in the Council's approval of the final plat of the subdivision.

(2) **Street Improvements Required:** The extent of street improvement shall be adequate for vehicular access by the prospective occupant(s) and by police and fire equipment prior to the issuance of a certificate of occupancy. For the purposes of this section, adequate generally means "Hard Surfaced", however at the discretion of the Fire Chief and Community Development Director a temporary certificate of occupancy may be granted under the following conditions:

(a) The developer can show that asphalt for the subdivision has been scheduled;

(b) All underground improvements that would cause a street to be dug in are installed and inspected and approved by the Public Works Inspector; and

(c) Required road base is to be installed and compacted, and it may be reasonably assumed that the weather will not preclude access to a structure. Prior to the temporary certificate of occupancy being issued the developer shall provide a letter to the city signed by the occupants and stating that they are aware of limitations of service and that the city will not service the roadway until after the subdivision is accepted by the city.

Commissioner Buckles opened the public hearing at 8:18 p.m. With no public present to comment, he closed the public hearing at 8:19 p.m.

<b>CONCLUSION</b>	<b>Commissioner Thompson moved to forward a recommendation for approval of Ordinance 16-03S, Amending Title 26 Subdivision Ordinance Chapter 4 – Assurance for Completion and Maintenance of</b>
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	Improvements of the City Code on to the City Council. Commissioner Cressall seconded the motion. Voting by roll call is as follows: Commissioner Ritchie, aye; Commissioner Hale, aye; Commissioner Cressall, aye, Commissioner Thompson, aye; Commissioner Coombs, aye; Commissioner Briggs, aye; Commissioner Buckles, aye.
<b>DISCUSSION AND ACTION ON SELECTION OF A NEW CHAIR TO SERVE IN CALENDAR YEAR 2017:</b>	
<b>Discussion</b>	Mr. Wright asked the Planning Commission to vote for a Planning Commission Chair for 2017. There were three each for Tony Thompson, Jolene Cressall and Bob Buckles. Ms. Cressall stated she was not interested in serving as Chair.
<b>CONCLUSION</b>	<b>Commissioner Thompson said he was willing to service as Vice Chair allowing Mr. Buckles to serve as Chair for 2017.</b>
<b>APPOINTMENT OF THE PC REPRESENTATIVE TO THE BZA BOARD</b>	
<b>Commissioner Coombs said he was willing to serve as the PC Representative to the BZA Board for 2017.</b>	
<b>CONSIDER UPDATE OF THE CITY’S SUBDIVISION ORDINANCE WITH A REVIEW OF CHAPTERS 5 &amp; 6. THIS REVIEW MAY ALSO INCLUDE A REVIEW OF OTHER CHAPTERS IN THIS ORDINANCE.</b>	
<b>Petitioner</b>	Community Development
<b>Discussion</b>	Due to the late hour the Planning Commission postponed this discussion to January.
<b>Issues &amp; Concerns</b>	The December 20, 2016 Planning Commission meeting will be cancelled for the Commission to attend their annual Christmas dinner.  The Planning Commission discussed concerns over the graffiti in the City.
<b>ADJOURNMENT</b>	<b>Commissioner Cressall moved to adjourn. Commissioner Coombs seconded the motion. Commissioners’ Coombs, Thompson, Cressall, Hale, Ritchie and Briggs voted in favor of the motion., the meeting adjourned at 8:52 p.m.</b>

*Red – Proposed Changes*

*Yellow – Questionable language or policies*

*Green – Questions or comments*

## **Chapter 4 Assurance for Completion and Maintenance of Improvements**

- 26-4-1** Improvements and Subdivision Improvement Agreement
- 26-4-2** Inspection of Improvements
- 26-4-3** Acceptance of Off-Site Improvements
- 26-4-4** Maintenance of Improvements
- 26-4-5** of Waiver of Required Deferral Improvements
- 26-4-6** Escrow Deposits for Lot Improvements Issuance of Building
- 26-4-7** Issuance of Building Permits and Certificates of Occupancy

### **26-4-1 Improvements and Subdivision Improvement Agreement:**

(1) **Completion of Improvements:** Before the final plat of the subdivision is signed by the Mayor or recorded with the Davis County Recorder's Office, all subdividers shall be required to **either complete and dedicate all the necessary public improvements or establish a Subdivision Improvement Agreement (SIA) and Cash Escrow as outlined in this Chapter.** ~~in accordance with the Council's decision and to the satisfaction of the Public Works Inspector. These improvements include all the street, sanitary and other public improvements, including lot improvements on the individual lots of the subdivision, as required in these regulations, specified in the final plat of the subdivision and approved construction drawings. as approved by the Council. The subdivider is to dedicate these public improvements to the City free and clear of all liens and encumbrances on the dedicated property and public improvements.~~

### **(2) Subdivision Improvement Agreement and Guarantee:**

(a) **Agreement:** **If the subdivider chooses to enter into a SIA with the City for the subdivision public improvements,** ~~the~~ Community Development Director may ~~waive the requirement that the subdivider complete and dedicate all public improvements prior to recording the final plat of the subdivision and, as an alternative, permit the subdivider to enter into a Subdivision Improvement Agreement SIA by which the Ssubdivider covenants~~

to complete all required public improvements no later than two (2) years following the date on which the Council approves the final plat of the subdivision. Additionally, **at the time of City Council Conditional Approval of these public improvements,** the subdivider shall warrant, as defined in Utah Code 10-9a-103(19), that ~~all required public improvements will~~ **they shall** be free from defect for ~~the same a~~ one (1) year **period** following the **Conditional Acceptance.** ~~The Subdivision Improvement Agreement SIA shall contain such other terms and conditions agreed to by the subdivider and the City Council.~~

(b) **Security:** Whenever the Community Development Director permits a subdivider to enter into a ~~Subdivision Improvement Agreement SIA,~~ it shall require the subdivider to provide a cash escrow as security for the promises contained in the **SIA.** ~~Subdivision Improvement Agreement. Security~~ **The cash escrow** shall be in an amount equal to one hundred ten percent (110%) of the estimated cost of completion of the required public improvements, including lot improvements. The estimated cost shall be reviewed and verified by the City Engineer. The escrow agent shall be a state-licensed institution approved to conduct business in this capacity and **shall must** be acceptable to the Community Development Director. ~~The Ssubdivider may also have a cash escrow with the City, but without interest amenities available with banks.~~

(c) **Cash Escrow:** When the subdivider posts a cash escrow as security for its promises contained in the ~~Subdivision Improvement Agreement SIA,~~ the escrow instructions shall provide:

(i) That the ~~S~~subdivider will have no right to a return of any of the funds except as provided in section 26-4-2(2).

(ii) That should the subdivider fail or refuse to make the improvements required as outlined in this **SIA agreement,** the City Subdivision Ordinance or approved construction drawings within two (2) years following the date on which the Council approves the final subdivision plat, the City may declare the funds on deposit with the Escrow Agent forfeited, and the escrow agent shall have a legal duty to deliver the proceeds of the account **[see 26-4-1(6) (c)]**. The funds shall be used to install the improvements required by the City Subdivision Ordinance and approved

construction drawings. **If these escrowed funds prove to be insufficient for the improvement construction, the City shall follow the basic format found in subsection (d). If the additional funding is not received by the City within the allotted time, the City may place a lien against the subdivision property for the unpaid amount plus administrative fees.**

(d) **Escrow Deficiency:** If at any time prior to completion of the subdivision **by the subdivider** or acceptance of the improvements by the City, the City determines the amount held in escrow (exclusive of the 10% reserve) is not sufficient to complete the needed improvements, **the subdivider shall put such additional amounts into escrow within 30 days of receiving written notice from the City.**

(e) **Appeal:** The ~~S~~subdivider may request a hearing before the City Council for a review of the opinion of the Community Development Director, Public Works Inspector or City Engineer or upon action by the City to seize a cash escrow, provided said request is made in writing and served by certified mail within thirty (30) days after written notification of any nonconformity with City ordinances, rules, regulations, requirements and standards or the ~~Subdivision Improvement Agreement SIA~~ or Approved Construction Drawing or as to the insufficiency of any work.

If and when the ~~municipality~~ City conditionally accepts the offer of dedication for the last completed required public improvement, the ~~municipality~~ City shall execute a waiver of its right to receive all but ten percent (10%) of the funds represented by the cash escrow, if the ~~S~~subdivider is not in breach of the ~~Subdivision Improvement Agreement SIA~~. **The This residual ten percent (10%) of the original funds shall be held as security for the ~~S~~subdivider's covenant to maintain the required public improvements for the required time period and its warranty that they improvements are free from defect.**

(3) **Temporary Improvement:** **If temporary improvements are required for the subdivision, ~~T~~the subdivider shall build and pay for all costs of such temporary improvements required by the Council and shall maintain those temporary improvements for the period specified by the Council. Prior to construction of any temporary facility or improvement, the developer shall file with the City a separate Subdivision Improvement Agreement and a cash escrow in an appropriate amount for the temporary facilities to be properly constructed, maintained, and removed.**

(4) **Required Improvements:** All required improvements shall be made by the **developer???**

**(subdivider?)**, at its expense, without reimbursement by the City or any improvement district except that, as may be allowed under state law and approved by the Council.

(5) **Governmental Units:** Governmental units to which these contract and security provisions apply may file, in lieu of the contract and security, a certified resolution or ordinance from officers or agencies authorized to act in their behalf, agreeing to comply with the provisions of this Ordinance.

(6) **Failure to Complete Improvement:**

(a) **For subdivisions for which no Subdivision Improvement Agreement SIA has been executed and no security escrow has been posted, if the improvements are not completed within the period specified by the Council in the action approving the final plat any such approval shall be deemed to have expired. (When would this ever happen or be allowed???)** Additionally:

**(i) If the city is required to disconnect public utilities that may have been connected, the ~~e~~City shall appropriately bill the subdivider. If payment is not received within 30 days, the City may file a lien against the property to recoup any costs incurred;**

**(ii) The city may, for the purpose of public notice, record a document with the Davis County Recorder's Office indicating the incomplete status of the subdivision.**

**(b) Prior to the end of the SIA two-year improvement construction period, the City Council may grant an extension of up to one (1) additional year for completion of the improvements within the subdivision. The subdivider in writing shall make application for an extension with a copy provided to the Escrow Agent of record, if any. Upon action by the Council, the Community Development Director shall notify the subdivider and Escrow Agent of any action taken by the Council. The decision to grant any extension period shall be within the sole discretion of the Council.**

(c) In those cases where **no time extension has been granted and a Subdivision Improvement Agreement SIA has been executed and security escrow is in affect, has been posted and required public improvements have not been installed within the terms of the agreement,** the City may then:

**(i) Declare the agreement to be in default and require that all the improvements be installed regardless of the extent of the building development at ~~the that~~ time ~~the agreement is declared to be in default;~~**

(ii) Suspend approval of the final plat of the subdivision until the improvements are completed and record a document to that effect for the purpose of public notice; **(can we do this after the final plat has been approved and recorded??)**

(iii) Obtain funds under the ~~security escrow~~ and complete improvements itself or through a third party;

(iv) Assign its right to receive funds under the ~~security escrow~~ to any third party, including a subsequent owner of the subdivision for which improvements were not constructed, in whole or in part, ~~in exchange for that subsequent owner's promise to complete improvements in the subdivision;~~ **after that subsequent owner posts his own escrow for those same uncompleted improvements;** or

(v) Exercise any other rights available under the law.

~~(d) Prior to the end of the two year period, the City Council may grant an extension of up to one (1) year for completion of the improvements within the subdivision. The Subdivider, in writing shall make application for an extension with a copy provided to the Escrow Agent of record, if any. Upon action by the Council, the Community Development Director shall notify the Subdivider and Escrow Agent of any action taken by the Council. The decision to grant any extension period shall be within the sole discretion of the Council.~~

(7) **Acceptance of Dedication Offers:** Acceptance of formal offers of dedication of streets, public areas, easements, and parks shall be by ~~motion~~ **resolution** of the City Council **as part of the subdivision final plat approval with such motion and authorization** of the Mayor to sign the final plat of the subdivision. The approval of a subdivision plat by the Planning Commission or Council, whether preliminary or final, shall not be deemed to constitute or imply the acceptance by the ~~municipality~~ **City** of any **required public improvements. street, easement, or park shown on the final plat.** The Council may require the final plat to be endorsed with appropriate notes to this effect.

#### **26-4-2 Inspection of Improvements:**

(1) **General Procedure and Fees:** The Public Works Inspector shall inspect required improvements during construction and ensure their satisfactory completion. The subdivider shall pay to the ~~municipality~~ **City** an inspection fee based on the estimated cost of inspection, ~~and w~~ where the improvements are completed prior to approval of the final plat of the subdivision, the subdivision plat shall

not be signed by the Mayor unless the inspection fee has been paid. These fees shall be due and payable upon demand of the Community Development Director and no building permits nor certificates of occupancy shall be issued until all fees are paid. The amount of the fees shall be established by resolution, from time to time by the Council and included in the Consolidated Fee Schedule. If the Public Works Inspector finds upon inspection that any one or more of the required improvements have not been constructed in accordance with the municipality's construction standards, specifications or approved construction drawings, the subdivider shall be responsible for properly completing the improvements.

(2) **Release or Reduction of Security:** The Community Development Director may release funds from an established escrow in an amount equal to that set in the ~~Subdivision Improvement Agreement~~ **SIA** for said improvements. Prior to release of any funds the Public Works Inspector shall inspect all improvements for which the release of funds is being requested and verify proper material, construction, and compliance with city standards and approved construction drawings. For improvements that are not to be ~~e~~**City** owned, infrastructure inspection shall be done by and verified by an inspector authorized by the appropriate utility. The amount of the escrow shall be reduced upon satisfactory inspection of the public improvements and then only to the ratio that the cost of the public improvement inspected bears to the total cost of public improvements for the subdivision. In no event shall a release be greater than the amount of the inspected item established in the escrow ~~nor~~ shall the cash escrow be reduced below ten percent (10%) of the principal amount.

#### **26-4-3 Acceptance of Off-Site Improvements:**

(1) **Conditional Acceptance of Improvements:** The City Council will not conditionally accept dedication of required improvements, ~~nor~~ release nor reduce the amount of any security posted by the ~~S~~**subdivider** until the Public Works Inspector has submitted a certificate stating that all required improvements have been satisfactorily completed and until:

(a) The Community Development Director has verified that all fees, charges, transfers, and deposits related to the development have been paid to the City;

(b) The subdivider's engineer or surveyor has certified to the Public Works Inspector, through submission of a detailed "as-built" survey plat of the subdivision, indicating location, dimensions, materials, and other information required by the

Public Works Inspector, that the layout of the line and grade of all public improvements are in accordance with construction plans for the subdivision;

(c) A title insurance policy has been furnished to and approved by the Community Development Director indicating that the improvements have been completed, are ready for dedication to the City, and are free and clear of any and all liens and encumbrances; and

(d) Upon such approval and recommendation by the Public Works Inspector, the Community Development Director shall present to the City Council and the Council shall thereafter conditionally accept the improvements in accordance with the established procedure.

(e) The developer (subdivider?) shall be required to maintain all required public improvements on the individual subdivided lots and provide for snow removal on streets and sidewalks until Final Acceptance of the improvements by the City Council.

(f) If there are any certificates of occupancy on a street not dedicated to the City, the City may, on twelve (12) hours notice, plow the street or effect emergency repairs and charge those costs to the developer (subdivider?).

(2) **Special Exceptions to Conditional Acceptance:**

At the time of conditional acceptance the City Council may hold back, in addition to the required guarantee funds, the amount for seal coat; provided that the asphalt within the subdivision has not been down for at least one-year, or the season is not right for seal coat, and the Ssubdivider has indicated his willingness to participate in the eCity annual seal coat contract.

(3) **Final Acceptance:**

(a) The Ssubdivider shall ~~must initiate the request for final acceptance of all improvements no earlier than one year after conditional acceptance. Final inspection by the Public Works Inspector shall be made upon the request of the Ssubdivider. but no sooner than one (1) year after conditional acceptance.~~ All defects as noted in the final inspection report of the Inspector shall be corrected to the satisfaction of the Inspector. ~~After any defects are corrected and confirmed by the Inspector, Final aAcceptance of public improvements shall be sent to by approval of the City Council for their action. after written approval is received from the Inspector.~~

(b) Where the time required to complete the defects and repairs identified by the Public Works Inspector extends past the normal one (1) year Conditional

Acceptance time period, the subdivider shall be required to extend the guarantee period until such time as the defects and repairs are confirmed complete by the Inspector and the City Council has formally approved Final Acceptance of all the public improvements. ~~are necessary to be performed by the subdivider final acceptance may be delayed by the City Council a specific amount of time if, in the opinion of the Public Works Inspector the severity of the repairs requires an extended guarantee period.~~

(4) **Authority to Release:** Funds held in the escrow account after Conditional Acceptance shall not be released to the Ssubdivider, in whole or part, except upon express written instructions of the City. ~~At the end of the maintenance and warranty periods and after fFinal aAcceptance by the City. all eserowed funds shall be released to the Subdivider.~~

**26-4-4 Maintenance of Improvements:** The developer shall be required to maintain all required public improvements on the individual subdivided lots and provide for snow removal on streets and sidewalks, if required by the Council, until acceptance of the improvements by the Council. ~~If there are any certificates of occupancy on a street not dedicated to the City, the City may on twelve (12) hours notice plow the street or effect emergency repairs and charge those costs to the developer. Following the conditional acceptance of the dedication of any public improvement by the City, the City may, in its sole discretion require the Ssubdivider to maintain the improvement for a period of one (1) year from the date of acceptance.~~

**26-4-5 Deferral or Waiver of Required Improvements:**

(1) **City Council Action:** The Council may defer or waive, at the time of approval of the final plat of the subdivision, subject to appropriate conditions, the provision of any or all public improvements as, in its judgment, are not requisite in the interests of the public health, safety, and general welfare, or which are inappropriate because of the inadequacy or non-existence of connecting facilities. Any determination to defer or waive the provision of any public improvement must be made on the record and the reasons for the deferral or waiver also shall be expressly made on the record.

(2) **Subdivider's Obligation:** ~~Whenever~~ In the rare occasion it is deemed necessary by the Council to defer the construction of any improvement required under these regulations because of incompatible grades, future planning, inadequate or nonexistent connecting facilities, or for other reasons, the Ssubdivider shall pay his share of the cost of the

future improvements to the City prior to signing of the final plat of the subdivision by the Mayor, or the developer may execute a separate ~~Subdivision Improvement Agreement~~ **SIA** secured by a cash escrow guaranteeing completion of the deferred improvements upon demand of the City.

#### **26-4-6 Escrow Deposits for Lot Improvements:**

##### **(1) Non-Developer Builders:**

(a) Builders seeking a building permit in a subdivision that they are not the guarantor for, shall deposit with the ~~e~~City a cash escrow in the amount established by resolution by the Council and published in the Consolidated Fee Schedule. Said ~~bond~~ **cash escrow** shall be paid at the time a building permit is issued and shall insure and guarantee the lot improvements from damage during construction. Such improvements include but are not limited to curb, gutter, sidewalk, water meter structures, streetlights, grading, and other on lot improvements.

(b) Escrows deposited by non-developer builders shall not be returned until a structure has passed final inspection, a certificate of occupancy has been issued and the Public Facilities/Building Inspector has approved all lot improvements. Once authorized, escrows shall be returned to the person paying for the building permit by the end of the month following the date of authorization of approval for release. No interest shall be paid at the time of release of escrows deposited with the ~~e~~City.

(2) **Acceptance of Escrow Funds:** Whenever, by reason of the season of the year, any lot improvements required by the subdivision regulations cannot be performed, a certificate of occupancy may be issued, provided there is no danger to health, safety, or general welfare upon accepting a cash escrow deposit in an amount to be determined by the Community Development Director for the cost of the needed lot improvements. The ~~Subdivision Improvement Agreement~~ **SIA** and **security escrow funds** covering the lot improvements shall remain in full force and effect.

(3) **Procedures on Escrow Fund:** All required improvements for which escrow monies have been accepted by the Community Development Director at the time of issuance of a certificate of occupancy shall be installed by the ~~S~~subdivider within a period of six (6) months from the date of deposit and issuance of the certificate of occupancy. If the improvements have not been properly installed at the end of the time period, the Community Development Director shall give two (2) weeks written notice to the developer requiring it to install the improvements, and if they are not then installed properly, the

Community Development Director may request the Council to proceed to contract out the work for the installation of the necessary improvements in a sum not to exceed the amount of the escrow deposit. At the time of the issuance of the certificate of occupancy for which escrow monies are being deposited with the City, the builder shall obtain and file with the City prior to obtaining the certificate of occupancy a notarized statement from the purchaser or purchasers of the premises authorizing the City to have the improvements installed at the end of the six-month period if the improvements have not been duly installed by the ~~S~~subdivider.

##### **(4) Escrow With Authorized Agent:**

(a) The Community Development Director may accept proof of an escrow, established with a state licensed title company that guarantees any lot improvements required by the subdivision regulations. The escrow shall guarantee any lot improvements not completed due to seasonal conditions as outlined in 26-4-6(2) above. Upon acceptance of the Title Company escrow, the certificate of occupancy may be issued, provided there is no danger to health, safety, or general welfare. The amount of the escrow is to be determined by Community Development Director for the cost of the lot improvements being escrowed.

(b) The guarantee from the Title Company shall state that the Title Company will have the required improvements installed by a professional contractor upon demand of the ~~e~~City.

#### **26-4-7 Issuance of Building Permits and Certificates of Occupancy:**

(1) **Security Escrow Funds Required:** When a ~~security~~ **an escrow** has not been provided for a subdivision, no building permit or certificate of occupancy for any building in the subdivision shall be issued prior to the completion of the required public improvements and the acceptance of the dedication of those improvements by the City unless otherwise stipulated in the Council's approval of the final plat of the subdivision.

(2) **Street Improvements Required:** The extent of street improvement shall be adequate for vehicular access by the prospective occupant(s) and by police and fire equipment prior to the issuance of a certificate of occupancy. For the purposes of this section, adequate generally means "Hard Surfaced", however at the discretion of the Fire Chief and Community Development Director a temporary certificate of occupancy may be granted under the following conditions:

- (a) The developer can show that asphalt for the subdivision has been scheduled;
- (b) All underground improvements that would cause a street to be dug in are installed and inspected and approved by the Public Works Inspector; and
- (c) Required road base is to be installed and compacted, and it may be reasonably assumed that

the weather will not preclude access to a structure. Prior to the temporary certificate of occupancy being issued the developer shall provide a letter to the eCity signed by the occupants and stating that they are aware of limitations of service and that the eCity will not service the roadway until after the subdivision is accepted by the city. **improvements receive Final Acceptance from the City Council.**