



## MEMORANDUM

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March 16, 2013

TO: Board of Mayor and Aldermen

FROM: Eric Stuckey, City Administrator  
Vernon Gerth, Assistant City Administrator for Community and Economic Development

SUBJECT: Ordinance 2013-01, Contractor's Security Deposit (Lot Bonds) Text Amendment  
City of Franklin Municipal Code

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### **Purpose**

The purpose of this memorandum is to provide the Board of Mayor and Aldermen (BOMA) with information in consideration of amending Title 12, Chapter 1, and Section 107 of the City of Franklin Municipal Code relating to Contractor's Security Deposits (Lot Bonds).

### **Background**

The Board of Mayor and Alderman recently approved changes to the City's Zoning Ordinance, specifically Performance Agreements and Maintenance Obligations as they pertain to the installation, approval, and acceptance of the final topping (finished surface) to neighborhood streets within newly developed subdivisions. The purpose of this Municipal Code amendment and the recent Zoning Ordinance amendment are intended to allow the final topping on streets to occur when 90 percent the lots were built upon or no earlier than four (4) years after the base and binder has been installed while insuring the approved and accepted finished street and infrastructure are protected from damage resulting from future construction activity.

Prior to the BOMA revising the Zoning Ordinance, 90 percent of the lots within a subdivision or section had to be developed before the final topping could be installed. This created a situation where without the final topping the base and binder may begin to fail if not completed within 4-5 years. The determination to authorize the installation of the final topping after four (4) years will be made by our Street Department team. Upon approval and acceptance of the final topping, the Performance Agreement could be released provided a Maintenance Obligation would be in place until one year beyond the 90 percent lot completion threshold. During the period of the Maintenance Obligation and thereafter, a Contractor's Security Deposit will be collected at the time a Building Permit is issued to insure the finished street, greenway, landscaping, stormwater drainage improvements, and other approved and accepted infrastructure not covered by a Performance Agreement remain in good repair after the enthusing construction activity is completed.

The Design Professionals-Developers Group has provided input on both the recent Zoning Ordinance amendments and this proposed Contractor's Security Deposit Municipal Code amendment. Additionally, this amendment provides more clarity than the current lot bond ordinance.

### **Financial Impact**

This text amendment will benefit the residents of and visitors to subdivisions under development by allowing curb, gutter and smooth surface with the final topping to be installed while insuring the structural integrity of streets is protected and reducing potential costly repairs.

### **Recommendation**

Approval of the ordinance amendment is recommended.

**ORDINANCE 2013-01**

**TO BE ENTITLED: "AN ORDINANCE TO AMEND TITLE 12, CHAPTER 1, SECTION 107 OF THE FRANKLIN MUNICIPAL CODE RELATING TO CONTRACTOR'S SECURITY DEPOSIT TO INSURE RESTORATION OF DAMAGED CITY STREETS, SIDEWALKS, LANDSCAPING, STORMWATER DRAINAGE IMPROVEMENTS, AND OTHER APPROVED AND ACCEPTED INFRASTRUCTURE ASSOCIATED WITH CONSTRUCTION ACTIVITY."**

**WHEREAS**, for the purpose of promoting the public health, safety, comfort, convenience, and general welfare of the people of Franklin, Tennessee the Board of Mayor and Aldermen is authorized to prescribe regulations, standards, and processes that guide the design, quality of materials, and construction of buildings and structures within the City; and

**WHEREAS**, the Franklin Municipal Planning Commission and Board of Mayor and Aldermen with input from development and design professionals have discussed and modified policies related to the timing final improvements are made, approved, and accepted within the public right-of-way in areas experiencing construction activity and have found the current Municipal Code section pertaining to lot bonds for new construction is vague and does not coincide with the criteria recently established for development performance agreements and maintenance obligations; and

**WHEREAS**, to insure construction activity progresses in a workmanlike manner, the Board of Mayor and Aldermen is authorized to require development and construction performance assurances to insure approved and accepted public and private property and infrastructure are not damaged during the construction activity and, to assess reasonable fees to off-set the cost associated with monitoring development activity within the corporate limits of the City; and

**WHEREAS**, the Board of Mayor and Aldermen has determined that Contractor's Security Deposits are the most effective form of surety to insure approved street pavement, curbing, catch basins, manholes, sidewalks, landscaping, stormwater drainage improvements and, other approved infrastructure no longer covered by a performance agreement are maintained throughout construction on adjacent private property; and

**WHEREAS**, the Board of Mayor and Aldermen believes it is in the best interest of the City of Franklin to require Contractor's Security Deposits.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF FRANKLIN BOARD OF MAYOR AND ALDERMEN, AS FOLLOWS:**

**SECTION I:** that Title 12, Chapter 1, Section 107 of the Franklin Municipal Code is hereby deleted in its entirety and replaced with the text below and approved to read as follows:

**12-107. Contractor's Security Deposit Required.**

(1) Except as provided herein, it shall be unlawful for any person or firm to obtain a building permit for a new building, structure, addition, swimming pool, or other project that involves the disturbance or excavation of one thousand (1,000) square feet or more land without first having posted a Contractor's Security Deposit to insure City approved and accepted street pavement, curbing, catch basins, manholes, sidewalks, landscaping, stormwater drainage improvements, and other approved and accepted infrastructure no longer covered by a performance agreement are

maintained and not damaged during construction activity whether it be located on public or private property. The Contractor's Security Deposit shall not be released until damaged street pavement, curbing, catch basins, manholes, sidewalks, landscaping, stormwater drainage improvements and, other approved infrastructure have been repaired, cleaned, restored to their pre-construction condition, approved by the City and, a Final Certificate of Use and Occupancy or Certificate of Completion has been issued for the applicable project and parcel.

(2) Submittal of Contractor's Security Deposit. Submittal of a Contractor's Security Deposit shall be made to the Building and Neighborhood Services Department Director in conjunction with an issuance of a building permit, as described.

(3) Security Deposit Required, Applicability, and Duration.

(a) Required Deposit: A Contractor's Security Deposit shall be submitted at the time of permitting in the amount specified in in Title 22 – Comprehensive Fees and Penalties for any damage to approved and accepted infrastructure and improvements as described in this section. The Contractor's Security Deposit shall be in the form of an insurance bond, letter of credit, cash, or cashier's check made payable to the City of Franklin.

(b) Applicability: Except as provided herein, only one Contractor's Security Deposit shall be required per building permit. It shall be unlawful for any person or firm to operate under another person or firm's Contractor's Security Deposit.

i) Licensed Building Contractors obtaining building permits subject to the Contractor's Security Deposit requirement and building on two or more parcels within the corporate limits of the City, shall be entitled to establish a non-interest bearing Contractor's Security Deposit Escrow Account in the amount specified in Title 22 – Comprehensive Fees and Penalties provided this value is maintained until the Final Certificates of Use and Occupancy have been issued for all parcels subject to the Contractor's Security Deposit requirement.

ii) In subdivisions where the developer and builder are the same legal entity, the Contractor's Security Deposit shall not be required until the Maintenance Obligation is no longer in effect for the subdivision.

(c) Duration: The Contractor's Security Deposit shall be in effect for the duration of construction and until a Final Certificate of Use and Occupancy or Certificate of Completion has been issued by the City for the project/parcel covered by the Contractor's Security Deposit. No interest shall be paid to the Contractor by the City for the duration of time that the deposit is held.

(d) Contractor Security Deposit Waived: Contractor Security Deposits may be waived for any certified 501(c) (3) not-for-profit organization developing and constructing owner-occupied Affordable Housing Unit in accordance with Title 21 of the City of Franklin Municipal Code.

(4) Deposit Return. The person or firm whose Contractor's Security Deposit is on file with the City may request it be returned when all permits and projects assigned to said person or firm has obtained approved final inspections and received Final Certificates of Use and Occupancy or Certificate of Completion. The Contractors Security Deposit shall be processed within thirty (30) days of the Building & Neighborhood Services Department receiving a written request.

(5) Verification of Existing Conditions – Notarized Affidavit

- (a) It is the responsibility of the applicant to verify that public and private street pavement, curbing, catch basins, manholes, sidewalks, landscaping, stormwater drainage improvements and, other approved infrastructure located immediately adjacent to the construction site for which a permit is pending and within one hundred (100) lineal feet in either direction along said right-of way is free of debris, sediment, and without damage during construction and until a Final Certificate of Use and Occupancy or Certificate of Completion has been issued. Accordingly, the applicant, prior to receiving a permit for a new building, structure, addition, swimming pool, or other project that involves the disturbance or excavation of 1,000 square feet or more land, shall submit a notarized affidavit, on a form as provided by the City, that certifies the condition of the municipal and private street pavement, curbing, catch basins, manholes, sidewalks, landscaping, stormwater drainage improvements and, other approved infrastructure immediately adjacent to the construction site for which a permit is pending and within one hundred (100) lineal feet in either direction along said right-of way is free of debris, sediment, and without damage. In the event damage exists, a City inspector shall visit the site to confirm site conditions prior to the issuance of a permit. Photographs taken by the applicant or City personnel may be used to document site conditions prior to commencing construction. The notarized affidavit shall include the permit holder's name and contact information in the event City staff observes the accumulation of debris, sediment, or damage during construction that requires prompt attention.
- (b) From the issue date of a building permit, through construction, and prior to issuing of a Final Certificate of Use and Occupancy or Certificate of Completion, the permit holder shall maintain the public and private street pavement, curbing, catch basins, manholes, sidewalks, landscaping, stormwater drainage improvements and, other approved infrastructure in its original undamaged, unimpeded, and clean condition. If upon inspection a City inspector determines repairs, cleaning, or monetary restitution is required, then said repairs, cleaning, and monetary restitution, as determined by the inspector, shall be made within the time prescribed by the inspector.
- (c) At any time during the course of construction and until a Final Certificate of Use and Occupancy or Certificate of Completion is issued, City staff, upon written notice to the permit holder as specified on the notarized affidavit, may issue a Stop Work Order and cause to be removed any construction material, debris, or sediment deposited on the public or private right-of-way immediately adjacent to the construction site and within 100 feet in either direction along said right-of way, and/or on adjacent properties. Such determination shall be at the discretion of the inspector.
- (d) Prior to the City removing the Stop Work Order the permit holder shall replenish the Contractor's Security Deposit to its original amount.
- (e) In the event the inspector determines said repairs are greater than the amount of the Contractor's Security Deposit the permit holder shall deposit funds in the amount sufficient to make the needed repair(s) within the timeframe and value determined by the inspector. It is understood the deposit value determined by the inspector for the repair of damaged public or private property will be in addition to the original value of the Contractor's Security Deposit.

- (f) When more than one inspection is required to ensure compliance with conditions of the Contractor's Security Deposit, a re-inspection fee as specified in Title 22 – Comprehensive Fees and Penalties, shall be deducted from Security Deposit or paid by the permit applicant prior to the issuance of either a Temporary, Final Certificate of Use and Occupancy, or Certificate of Completion.

(6) Appeals. Any person or firm may appeal the decision of a City inspector to the Building and Neighborhood Services Department Director provided the applicants Contractor's Security Deposit is restored to its original value prior to submitting a request for an appeal. The person or firm shall complete an appeal form and submit to the Building and Neighborhood Services Department Director within ten (10) days from the issue date of the Final Certificate of Use and Occupancy or Certificate of Completion. A written statement, and pictures or other documentary evidence supporting the appeal shall accompany the appeal form. The Building and Neighborhood Services Department Director may sustain, modify, or withdraw the appeal. Any person or firm aggrieved by the decision of the Building and Neighborhood Services Department Director may seek further relief from any court of competent jurisdiction, as provided by the laws of Tennessee.

**SECTION II. Severability.** In the event that any section, clause, provision, or part of this ordinance shall be found and determined to be invalid by a court of competent jurisdiction, all valid parts that are severable full force and effect. If any part of this ordinance is found to be invalid in any one or more of its several applications, all valid applications that are severable from the invalid applications shall remain in effect.

**SECTION III. Repeal and Savings Clause.** All ordinances or parts of ordinances in conflict herewith are hereby repealed; provided, however, that nothing herein contained shall affect any rights, actions or causes of action which shall have accrued to the City of Franklin prior to the effective date of this ordinance.

**SECTION IV. BE IT FINALLY ORDAINED BY THE BOARD OF MAYOR AND ALDERMEN OF THE CITY OF FRANKLIN,** Tennessee, that this Ordinance shall take effect from and after its passage on second and final reading, the public health, safety and welfare requiring it.

ATTEST:

CITY OF FRANKLIN, TENNESSEE:

By: \_\_\_\_\_  
**Eric S. Stuckey**  
City Administrator/Recorder

By: \_\_\_\_\_  
**Dr. Ken Moore**  
Mayor

PASSED FIRST READING \_\_\_\_\_

PASSED SECOND READING \_\_\_\_\_

Approved as to form:

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Kristen L. Corn