

ORDINANCE NO. 19-08

**AN ORDINANCE AMENDING TITLE 16 OF THE WASATCH COUNTY CODE
TO ADDRESS PERFORMANCE AND WARRENTY BONDS.**

RECITALS

WHEREAS, Utah Code Section 17-50-302 authorizes the County to provide services, exercise powers, and perform functions that are reasonably related to the safety, health, morals, and welfare of their inhabitants, and Utah Code Section 17-27a-102 authorizes the County to enact ordinances necessary or appropriate for the use and development of land within the unincorporated area of the County; and

WHEREAS, the County desires to allow developers to use bonds to provide performance assurance and warranties on landscaping and other infrastructure improvements while allowing the county to ensure the improvements will be completed;

WHEREAS, Utah Code 17-27a-604.5 has been revised, and the County desires to remain compliant with the Utah Code;

NOW THEREFORE, The County Legislative Body of Wasatch County ordains as follows:

SECTION I: Enactment.

The following provisions of Title 16 of the Wasatch County Code is hereby AMENDED to read as follows:

16.27.21: BONDS GUARANTEEING CONSTRUCTION OF IMPROVEMENTS

- ...
- B. Performance Bonding Required: For subdivision construction permits, the performance bonding requirements of 14.02.04 must be complied with. A performance bond shall be posted with Wasatch County prior to any final approved plat being released by the planning department for recording, or any development activity, in a principal amount of one hundred ~~ten~~ percent (100~~10~~%) of the total estimated cost of any improvement or other performance required by or promised to Wasatch County as part of the development, provided the improvements or other performance are not completed and accepted by Wasatch County prior to any final approved plat being released by the planning department for recording. The bond must include protection for the county legislative body, county standards or county code. The bond ~~may~~ shall consist of cash, and the bond agreement shall be on a form approved by the county attorney. The Bond Agreement shall require the infrastructure improvements to be completed before building permits can

be issued, and landscaping improvements to be completed before certificates of occupancy can be issued. The County Manager, in his sole discretion, may accept a letter of credit from an FDIC insured financial institution, or an escrow as approved by the County. Any letter of credit must expire not less than 1 year after the reasonably anticipated completion date of the improvements, at the discretion of the county engineer. The bond, including any escrow or letter of credit, must be subject to the laws of the State of Utah and Wasatch County, and must provide the forum of Wasatch County. The bond may name the developer or the contractor as the "principal". Each bond shall be accompanied by a bond agreement between the developer, contractor, county and financial institution (if applicable and necessary). The estimated cost shall be based upon the estimate of the county engineer (typically for infrastructure) or the planning director (typically for landscaping), who shall take into account some or all of the following factors when making his estimate:

1. The developer's engineering estimate or landscaping estimate;
2. The estimate of any reviewing engineer or other qualified reviewer;
3. The average cost paid for the same type of performance in Wasatch County in the past; and
4. Any other relevant information.

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- D. Warranty Bonding: ~~Upon completion of the required improvements or other performance subject to a performance bond, the developer shall petition the county for release of the proceeds of the performance bonds. However, the developer, prior to release of the performance bond, shall obtain a warranty bond warranting the required improvements or other promised performance for a period of one year, or up to two (2) years if the requirements of Utah Code Annotated section 17-27a-604.5 and Utah Code 17-27-103's definition of "improvement warranty period", as currently amended, are met, following the date of acceptance of the improvements by the county. A ten percent (10%) warranty bond is required for the County to accept or approve any required improvement. The warranty bond shall be cash. The bond shall be valid for a period of one year from the time of final acceptance or approval of the improvements to guarantee compliance with the requirements of this chapter, but may be for up to two years for infrastructure improvements if the County Manager or engineering coordinator finds good cause. The bond shall be released upon approval of the engineering coordinator and the County Manager (typically for an infrastructure improvement), or by the planning director (typically for landscaping). The warranty bond shall be on a form approved by the County Attorney.~~ In some cases, the warranty bond will be on the same document as the performance bond. ~~However, the county manager may require a separate document containing the warranty bond.~~ The warranty bond must provide that in the event the completed and accepted improvements or other promised performance covered by the bond fail, are not structurally sound, or are found to be less than the accepted standard during the term of the bond, that the county has the right to require repair

and/or replacement, and in the event of failure by the developer to adequately respond, the county shall have the right to recover against the warranty bond and repair or replace the covered improvements or other promised performance. The warranty bond shall be in the amount of ~~tenfifty~~ percent (1050%) of the lower of: i) the actual cost of the required improvement or other promised performance, or ii) the county engineer's original estimated cost of completion. In the event the performance and warranty bond are on the same document, the performance bond may not be released for an amount lower than the amount required for the warranty bond.

E. Partial Release Of Bonds:

1. ~~Performance Bonds: At its sole discretion, the~~ The county may approve partial releases of the performance bond prior to final release. Each release must be approved by all of the following: county planning director, county engineering director, county manager and county attorney. When the number of releases exceed two (2), a two one hundred dollar (\$200.00) fee will be assessed for each release thereafter to cover any administrative costs. The releases approved by the county shall not exceed the contractor's bond and shall not exceed the percentage of work completed and, at no time prior to final acceptance or approval of the improvements by the county, may the total amount of the bond be allowed to be reduced lower than the greater of: a) one hundred ten percent (110%) of the value of the county manager or engineering coordinator's ~~engineer's~~ estimate of the incomplete infrastructure improvements or the planning director's estimate of other promised performance; or b) the amount required by the warranty bond in the event the performance bond and warranty bond are on the same document. Until complete, the County shall maintain a balance of a minimum of 25% of the total bond amount.
2. ~~Warranty Bonds: At its sole discretion, the county may approve up to two (2) partial releases of the warranty bond prior to final release. However, at no time prior to the expiration of the warranty period will the warranty bond amount be allowed to be reduced lower than twenty five percent (25%) of the value of the county engineer's estimate of the improvements to be warranted.~~

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G. Required Time Period For Performance:

1. ~~The duration of the time to perform performance bonds for infrastructure required by this section shall be determined by the county manager depending on the size of project, the number of phases, the climatic conditions, the soil conditions, or any other consideration reasonably related to the public health, safety or welfare. Bonds for landscaping or other requirements may have a different duration.~~ All improvements must be completed by the date set in the bond according to county approved plans and specifications unless the county manager or engineering coordinator for infrastructure improvements, or the planning director for other

improvements, agrees in writing to extend the duration. Any escrow, or letter of credit shall be extended to match the revised anticipated completion date, and in no event shall expire prior to the bonded for improvements being completed and approved by the county. of the bond and the county manager receives a new acceptable guarantee of performance from the financial institution.

~~2. Warranty bonds required by this chapter shall have a period of one year, or up to two (2) years if the requirements of Utah Code Annotated section 17-27a-604.5, as currently amended, are met.~~

3. It is the express obligation of the developer and/or contractor to either complete the improvements before the performance bond expires, or, in the case of a warranty bond, to repair and/or replace the substandard improvements before the warranty bond expires, or to provide the county with a new bond and bond agreement approved by the county to guarantee and/or warrant the improvements. The new bond and bond agreement must be provided to the county one year month in advance of the expiration of the performance ~~or warranty~~ bond, or one month before the expiration of the warranty bond. It shall not be a defense to the validity of the bond or bond agreement that the time to perform as listed in the bond or bond agreement has expired. The obligations in the bond and bond agreement shall continue until such time as the applicable statute of limitation expires under Utah law.

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SECTION II: Repealer. If any provisions of the County Code heretofore adopted are inconsistent herewith they are hereby repealed.

SECTION III: Amendment of Conflicting Ordinances. To the extent that any ordinances, resolutions, or policies of Wasatch County conflict with the provisions of this ordinance, they are hereby amended to comply with the provisions hereof.

SECTION IV: Effective Date. This Ordinance shall become effective immediately upon execution by the Chair of the County Council and the completion of public notice requirements imposed by state statute.

SECTION V: Severability. If any section, subsection, sentence, clause, or phrase of this ordinance is declared invalid or unconstitutional by a court of competent jurisdiction, said portion shall be severed and such declaration shall not affect the validity of the remainder of this ordinance.

SECTION VI: Public Notice. The Wasatch County Clerk, and ex officio Clerk of the Wasatch County Council, is hereby ordered, in accordance with the requirements of Section 17-53-208, Utah Code Annotated, 1953, as amended, to do as follows:

- a. Enter at length this ordinance in the ordinance book;
- b. Deposit a copy of this ordinance in the office of the County Clerk;
- c. Publish a short summary of this ordinance, together with a statement that a complete copy of the ordinance is available at the County Clerk’s office and with the name of the members voting for and against the ordinance,

for at least one publication in a newspaper published in and having general circulation in the county; or post a complete copy of this ordinance in nine (9) public places within the County.

APPROVED and PASSED this 16 day of October, 2019.

Attest:

WASATCH COUNTY COUNCIL:



Cal Griffiths
Cal Griffiths
Wasatch County Clerk / Auditor

Danny Goode
Danny Goode, Chair
Wasatch County Council

	VOTE
Danny Goode, Chairman	y
Mark Nelson, Vice-Chair	y
Kendall Crittenden	-
Marilyn Crittenden	y
Jeff Wade	y
Steve Farrell	y
Spencer Park	y

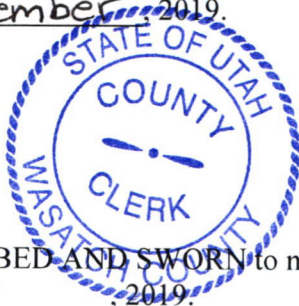
ADOPTION OF ORDINANCE AFFIDAVIT

STATE OF UTAH)
) : ss.
COUNTY OF WASATCH)

I, the undersigned, the duly qualified and acting County Clerk of Wasatch County, Utah, and ex officio Clerk of the Wasatch County Council do hereby further certify, according to the records of said Council in my official possession, and upon my own knowledge and belief, that I have fulfilled the requirements of Section 17-53-208, Utah Code Annotated, 1953, as amended, by:

- (a) Causing this ordinance to be entered at length in the ordinance book;
- (b) Causing three (3) copies of this ordinance to be deposited in the office of the County Clerk;
- (c) Causing a short summary of this ordinance, together with a statement that a complete copy of the ordinance is available at the County Clerk's office and with the name of the members voting for and against the ordinance to be published for at least one publication in *The Wasatch Wave*, a newspaper of general circulation within the geographical jurisdiction of Wasatch County; or posting a complete copy of this ordinance in nine (9) public places within the County.

IN WITNESS WHEREOF, I have hereunto subscribed my official signature and impressed hereon the official seal of the County Council of Wasatch County, Utah, this 6 day of November, 2019.



Cal Griffiths
Cal Griffiths
Wasatch County Clerk / Auditor

SUBSCRIBED AND SWORN to me, a Notary Public, this 6 day of November, 2019.

Wendy McKnight
Notary Public

Residing in: Wasatch
My commission expires: 09-10-2022

