

Article

7

Surety Standards

*City of Shelbyville
Unified Development
Ordinance*

Surety Requirements

7.01 Surety Requirements

- A. **Surety Required:** At the time when the Final Plat is placed on the Board of Public Works and Safety agenda for their signatures, the petitioner shall provide appropriate surety for the public improvements related to the subdivision (including both on and off-site improvements). All surety shall be filed with the Zoning Administrator and maintained in the office of the City of Shelbyville Clerk-Treasurer.
- B. **Sectionized Plat Surety:** For plats that have been divided into sections for the purpose of a phased development, surety shall only be required to be provided for the public improvements included in the section that is the subject of the Final Plat approval request. This provision shall not be interpreted as relieving the subdivider of surety requirements for off-site improvements or those in previously recorded or future sections, that were/shall be required at the time of their respective Final Plat approval.
- C. **Surety Specifications:** All surety shall be in a format and amount consistent with the requirements of *Article 7: Surety*, including the following requirements:
1. ***Recipient:*** The surety shall be drawn in favor of the “City of Shelbyville, Indiana.”
 2. ***Improvements Requiring Surety:*** Performance surety shall be provided for all incomplete public improvements, including but not limited to street compaction, subsurface, base, and surface; street signs; pedestrian pathways; sanitary sewers; curbs; gutters; sidewalks; surface swales; subsurface and storm drainage systems; seeding/erosion control; landscaping; required through lot buffering and screening; and any other public improvements required by this Ordinance, the Plan Commission, or other appropriate public agency.
 3. ***Asphalt Surface Exception:*** A developer may request permission, in writing, of the City Engineer to delay the installation of the one and one-half (1 ½) inch surface layer of asphalt until the binder layer has had a sufficient time period to prove its durability under the stress of traffic. The developer shall be required to submit a separate performance bond to cover the cost of the installation of the surface layer of asphalt.
 4. ***Amount and Time Frame:*** The surety shall be in an amount and time period sufficient to adequately maintain completed improvements or to install yet incomplete improvements in compliance with this Ordinance. The petitioner’s engineer or contractor shall supply an estimate of the cost of the improvements and their installation to aid the City Engineer in the determination of the amount of the surety. The petitioner’s estimate, however, shall not be binding.
 - a. **Maintenance Surety:** Maintenance surety shall be provided in an amount equal to ten percent (10%) of the cost of the public improvements and their installation and shall be provided for a period of three (3) years from the date the improvements are accepted by the Board of Public Works and Safety.
 - b. **Performance Surety:** Performance surety shall be provided in an amount equal to 125% of the cost of the yet incomplete public improvements and their installation, and shall be provided for a time period sufficient to ensure the installation of the improvements, but not less than two (2) years.
 - c. **Multiple-Use Surety:** If multiple types of improvements (such as street surface and sanitary sewers) are included on a single bond, the Board of Public Works and Safety shall be permitted to use the entire bond amount for the installation of a single improvement, regardless of any itemization that has been established.
 5. ***Form of Surety:*** The surety shall be provided in the form of either a bond or an irrevocable letter of credit. All forms of surety shall be securable by the “City of Shelbyville, Indiana.” Updates and extensions to any irrevocable letters of credit used shall be provided to the City Engineer annually for the duration for which the surety is required.
 6. ***Applicability:*** The surety shall specifically list the name of the subdivision (including phase and/or section) to which it applies, the date from which it is valid, the time period for which it is valid, the public improvements to which it applies, and whether it is “maintenance” or “performance” surety. The surety shall further comply with all statutory requirements and shall be satisfactory to the City Attorney, City Engineer, Zoning Administrator, and Clerk-Treasurer as to form, sufficiency, and manner of execution as set forth in this Ordinance.
- D. **Performance Surety Reduction:** The amount of performance surety may be reduced upon the actual dedication and acceptance of portions of the public improvements for which the surety was originally posted. A maximum of two (2) reductions are permitted during the life of any surety. Any such reduction shall be at the discretion of the Board of Public Works and Safety, based on the recommendation of the City Engineer. The reduction of performance surety shall follow the procedure for the release of performance surety provided by *Section 7.02: Release of Performance Surety*.

Release of Performance Surety

7.02 Release of Performance Surety

- A. **Release Request:** Upon completion of the public improvements for which performance surety has been provided, the subdivider shall make a written request to the City Engineer for the release of the surety and the acceptance of public improvements. The request shall include the following:
1. *Description of Improvements:* a description of the public improvements that have been completed;
 2. *Engineering Report:* A report from the subdivider's engineer, who shall be licensed by the State of Indiana, certifying that the improvements were completed consistent with all applicable requirements and standards, and that the improvements are free and clear of all liens and other encumbrances; and
 3. *Maintenance Surety:* maintenance surety for the public improvements consistent with the requirements *Section 7.01: Surety Requirements.*
- B. **Inspection of Improvements:** The Zoning Administrator and City Engineer shall provide appropriate inspections of the public improvements.
1. *Testing:* Before any performance surety covering a street installation is released, the Zoning Administrator or City Engineer may request that core borings of the street be done at the subdivider's expense. Cores shall be reviewed by an independent testing laboratory or registered engineer for analysis. Any requests for testing by the Zoning Administrator and/or City Engineer may be appealed by the subdivider to the Board of Public Works and Safety.
 2. *Satisfactory Findings:* If, based upon the recommendations of the Zoning Administrator and City Engineer, the Board of Public Works and Safety finds that the public improvements were completed consistent with all applicable standards and that appropriate maintenance surety is provided, it shall accept the improvements.
 3. *Unsatisfactory Findings:* If, based upon the recommendations of the Zoning Administrator and City Engineer, the Board of Public Works and Safety finds that the public improvements have not been completed in a satisfactory manner then it may deny the request for the release of the performance surety, providing a written statement of denial to the subdivider that includes a detailed list of required corrections. The applicant shall make the required corrections and reapply for the release of the surety.
- C. **Decision Criteria:** In reviewing requests for the release of performance surety the Board of Public Works and Safety shall consider the following:
1. Whether or not the improvements were completed in a manner consistent with the approved Preliminary Plat, approved Construction Plans, and all applicable standards and requirements;
 2. Whether or not the report provided by the subdivider's engineer is complete and satisfactory; and
 3. Whether or not the public improvements are in good condition and appropriate for use by the public.
 - a. All streets, sidewalks, and other pedestrian pathways shall be clear of all dirt, debris, standing water, and construction equipment and/or supplies.
 - b. All drainage structures shall be clear of sedimentation, debris, or other obstructions and be adequately secured to prevent access by the public.
 - c. All erosion control measures shall be consistent with applicable standards for the limiting of erosion and sedimentation.
 - d. The areas adjacent to all sidewalks and other pedestrian pathways shall be graded and seeded.
 - e. All sanitary sewer infrastructure and facilities meet the inspection, testing, and other requirements of the Waste Water Treatment Superintendent.
- D. **Default:** In any case where the required public improvements have not been completed prior to the date the performance surety expires, and the Board of Public Works and Safety and the subdivider are unable to reach agreement on an extension of the time frame for the surety and the completion of the public improvements, the Board may declare the surety to be in default. The required public improvements may then be installed by the City, using the funds from the surety.

Release of Maintenance Surety

7.03 Release of Maintenance Surety

- A. **Maintenance Required:** The subdivider shall be required to ensure that the public improvements covered by the maintenance surety remain free of construction related defects for the term of the surety.
1. *Inspections:* The public improvements shall be subject to periodic inspection by the City. Written notice shall be provided to the subdivider of any defects that are detected and any corrections that are required. The subdivider shall make the necessary corrections consistent with all applicable construction requirements.
 2. *Surety for Repairs:* The Board of Public Works and Safety may require that additional maintenance surety be provided for any portion of the public improvement that was subject to repair for a time period of three (3) years from the date the repair was completed.
- B. **Release Request:** Two months prior to the expiration of the surety, the subdivider shall make a written request to the City Engineer for the release of the surety on the expiration date. The request shall include the following:
1. *Description of Improvements:* a description of the public improvements to which the surety applies; and
 2. *Engineering Report:* a report from the subdivider's engineer, who must be licensed by the State of Indiana, certifying that the improvements remain free of construction related defects, and that the improvements are free and clear of all liens and other encumbrances.
- C. **Inspection of Improvements:** The Zoning Administrator and City Engineer shall provide appropriate inspections of the public improvements, including a final on-site inspection.
1. *Satisfactory Findings:* If, based upon the recommendations of the Zoning Administrator and City Engineer, the Board of Public Works and Safety finds that the public improvements are in satisfactory condition and free of construction related defects, it shall release the maintenance surety and assume complete responsibility for the upkeep of the improvements.
 2. *Unsatisfactory Findings:* If, based upon the recommendations of the Zoning Administrator and City Engineer, the Board of Public Works and Safety finds that the public improvements are not in satisfactory condition and do contain unresolved construction related defects then it may deny the request for the release of the maintenance surety, providing a written statement of denial to the subdivider that includes a detailed list of required corrections. The applicant shall make the required corrections and reapply for the release of the surety.
 3. *Substitution of Performance Surety:* Subject to the approval of the Board of Public Works and Safety, the subdivider may provide a performance surety for any portion of the public improvements to be corrected in lieu of the completion of the correction in order to obtain the release of the maintenance surety.
 - a. Generally, the use of performance surety in this manner shall be limited to instances when weather conditions or other features unique to the subdivision or nature of the public improvements prevent the timely completion of the required corrections.
 - b. In no case may the time period provided for the completion of the corrections and the performance surety be more than one (1) year from the date that notice of the required corrections is provided to the subdivider.
- D. **Decision Criteria:** In reviewing requests for the release of maintenance surety the Board of Public Works and Safety shall consider the following:
1. Whether or not the improvements are free of construction related defects;
 2. Whether or not the report provided by the subdivider's engineer is complete and satisfactory;
 3. Whether or not the public improvements are in good condition and appropriate for use by the public.
 - a. All streets, sidewalks, and other pedestrian pathways shall be clear of all dirt, debris, standing water, and construction equipment and/or supplies.
 - b. All drainage structures shall be clear of sedimentation, debris, or other obstructions and be adequately secured to prevent access by the public.
 - c. All erosion control measures shall be effective consistent with applicable standards for the limiting of erosion and sedimentation.
 - d. The areas adjacent to all sidewalks and other pedestrian pathways shall be graded and seeded.
 - e. All sanitary sewer infrastructure and facilities meet the inspection, testing, and other requirements of the Waste Water Treatment Superintendent.
- E. **Default:** In any case where the public improvements are not deemed to be free of construction defects and otherwise in unsatisfactory condition prior to the date the maintenance surety will expire, and the Board of Public Works and Safety and the subdivider are unable to reach agreement on an extension of the time frame for the surety and the correction of the public improvements, the Board may declare the surety to be in default. The required corrections to the public improvements may then be made by the City, using the funds from the surety.