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**ORDINANCE 2007-17****AN ORDINANCE AMENDING TITLE 17 OF THE FRUITA MUNICIPAL CODE  
EXTENDING THE WARRANTY PERIOD FOR PUBLIC AND OTHER  
REQUIRED SUBDIVISION IMPROVEMENTS FROM TWELVE MONTHS TO  
TWENTY FOUR MONTHS**

**WHEREAS**, the Fruita Land Use Code currently requires the developer to warrant that all public improvements are free of defects in materials and workmanship for a one year period, and

**WHEREAS**, the City of Fruita desires to extend the warranty period for public improvements constructed as part of the subdivision process from a one year period to a two year period to protect the public health, welfare and safety.

**BE IT HEREBY ORDAINED BY THE CITY COUNCIL OF THE CITY OF FRUITA,  
COLORADO:**

**Section 1:** Section 17.15.240 of the Fruita Municipal Code and Ordinance 2004-19 are hereby amended to read as follows:

**17.15.240 CONSTRUCTION AND WARRANTY OF ~~PUBLIC AND OTHER~~  
REQUIRED SUBDIVISION IMPROVEMENTS.** A subdivision improvements agreement (SIA) entered into by the City and a subdivider pursuant to Chapter 17.21 shall set forth the plan, method and parties responsible for the installation of all required public and other subdivision improvements and shall make reasonable provision for the completion of said improvements in accordance with design and time specifications. The subdivider shall warrant such improvements for a period of ~~twelve (12) months from the date the City Engineer certifies that the private improvements conform with approved specifications as further described in Section 17.15.260, and for a period of twelve (12)~~ **TWENTY-FOUR (24)** months from the date the City Council accepts the ~~public~~ improvements ~~pursuant to Section 17.15.280 below.~~

**Section 2:** Section 17.15.250 of the Fruita Municipal Code and Ordinance 2004-19 are hereby amended to read as follows:

**17.15.250 INSPECTION OF SUBDIVISION IMPROVEMENTS.** The City shall have the right to make ~~engineering~~ **engineering** inspections and require testing during construction of all required ~~public and other~~ subdivision improvements in such reasonable intervals as the City may request in accordance with the City's design standards and construction specifications. Inspection, acquiescence and approval by any engineering inspector of the construction of physical facilities, at any particular time, shall not constitute the approval by the City of any phase of the construction of the ~~public and other~~ required subdivision improvements. Such approvals may be granted by the City only after completion of all construction and in the manner set forth in Section 17.15.260 below.

**Section 3:** Section 17.15.260 of the Fruita Municipal Code and Ordinance 2004-19 are hereby amended to read as follows:

**17.15.260 COMPLETION OF ~~PUBLIC AND OTHER~~ REQUIRED SUBDIVISION IMPROVEMENTS.** Upon completion of construction ~~by a subdivider~~ of the ~~public and other~~ required subdivision improvements, the City ~~Engineer, or his designee,~~ shall inspect the improvements and certify with specificity their conformity, or lack thereof, to the approved specifications and design standards. The subdivider shall make all corrections necessary to bring the improvements into conformity with City standards and the utility, drainage and street improvements plans and others, as approved. The City shall be under no obligation to provide any wastewater service or street maintenance, or issue planning clearances for building permits within the subdivision, or issue certificates of occupancy for buildings within the subdivision until all such facilities are brought into conformance with the approved specifications and City standards and approved by the City ~~Engineer.~~

**Section 4:** Section 17.21.040 of the Fruita Municipal Code and Ordinance 2004-19 are hereby amended to read as follows:

**17.21.040 TIMETABLE FOR CONSTRUCTION OF REQUIRED IMPROVEMENTS.** Every subdivision improvements agreement or development improvements agreement shall include a time schedule for the construction and completion of the public and other required subdivision improvements or development improvements. Said schedule shall provide for a commencement date as well as a date when such improvements will be substantially completed. Under such schedule, all required subdivision or development improvements shall be completed no later than one (1) year following the start of development, unless otherwise agreed by the City Council. ~~Such schedule shall be reviewed and approved by the City Council prior to the commencement of construction of any such improvements.~~

Where a developer or applicant is prevented from commencing or completing any of the required improvements within the time periods set forth in the ~~construction timetable or otherwise set forth in the~~ subdivision improvements agreement or development improvements agreement due to an unforeseeable cause or delay beyond the control and without the fault or negligence of the developer or applicant, the times for commencement and/or completion of such improvements may be extended by the City Council in an amount equal to the time lost due to such delay if a request is made in writing to the City by a developer or applicant. Delays beyond the control of a developer or applicant shall include, but are not be limited to, acts of neglect by the City, fires,

floods, epidemics, abnormal weather conditions, strikes, freight embargos or acts of God. Time extensions, however, will not be granted for rain, snow, wind or other natural phenomena at normal intensity within Mesa County. Delays attributable to and within the control of a developer's or applicant's contractors, subcontractors or suppliers shall be deemed to be delays within the control of the developer or applicant.

**Section 5:** Section 17.21.050 of the Fruita Municipal Code and Ordinance 2004-19 are hereby amended to read as follows:

**17.21.050 CITY INSPECTIONS OF IMPROVEMENTS.** Every subdivision improvements agreement or development improvements agreement shall provide that the City shall have the right to make **engineering** inspections and require testing during construction of the ~~public and other~~ required improvements in such reasonable intervals as the City ~~Engineer or Public Works Director~~ may request. Inspection, acquiescence and approval of any **engineering** inspector of the construction of physical facilities, at any particular time, shall not constitute an approval by the City of any phase of the construction of such improvements. Such approval shall be made by the City only after completion of construction of all improvements in the manner set forth in Section 17.21.060. **THE CITY ALSO RESERVES THE RIGHT TO PERFORM OR CONTRACT FOR INDEPENDENT QUALITY ASSURANCE TESTS TO CONFIRM COMPLIANCE WITH CITY REQUIREMENTS.**

**Section 6:** Section 17.21.060 of the Fruita Municipal Code and Ordinance 2004-19 are hereby amended to read as follows:

**17.21.060 FINAL APPROVAL OF IMPROVEMENTS BY CITY STAFF.** Every subdivision improvements agreement or development improvements agreement shall provide that upon completion of construction ~~by the applicant or developer~~ of all ~~public and other~~ required subdivision or development improvements, the City ~~Engineer or Public Works Director~~ shall perform a final inspection of the improvements and certify with specificity their conformity or lack thereof to the approved plans and specifications. The subdivision improvements agreement or development improvements agreement shall further provide that the applicant or developer ~~will~~ **SHALL** make all corrections necessary to bring the system or improvements into conformity with applicable City standards and the construction plans, as approved. The City shall be under no obligation to provide any wastewater collection service, street maintenance or issue any further planning clearances for building permits or certificates of occupancy, until all such facilities are brought into conformance with the applicable standards, plans and specifications and approved by the City ~~Engineer or Public Works Director~~.

**Section 7:** Section 17.21.070 of the Fruita Municipal Code and Ordinance 2004-19 are hereby amended to read as follows:

**17.21.070 CONVEYANCE OF PUBLIC IMPROVEMENTS.** A subdivision improvements agreement or development improvements agreement shall provide that all public improvements constructed ~~by the applicant or developer~~ in accordance with the subdivision improvements agreement or development improvements agreement, including **BUT NOT LIMITED TO** all wastewater collection mains, laterals and related improvements; public street improvements including required pavement, curbs, gutters and sidewalks; and public park, trail and recreation facilities shall be conveyed to the City. Upon completion of construction in conformity with the applicable plans, standards, specifications and any properly approved changes, and final approval by the City ~~Engineer or Public Works Director~~, the applicant or developer shall convey to the City, by bill of sale, all physical facilities constructed by the applicant or developer necessary for the extension, maintenance and repair of municipal utility services and other public facilities. Acceptance of said conveyance shall be made by the City by majority vote of the City Council. Following such conveyance, the City shall be solely responsible for the maintenance of such public improvements, unless otherwise provided for by the agreement, except for any correction work required during the warranty period.

**Section 8:** Section 17.21.080 of the Fruita Municipal Code and Ordinance 2004-19 are hereby amended to read as follows:

**17.21.080 WARRANTY FOR ~~PUBLIC AND OTHER~~ REQUIRED IMPROVEMENTS.**

~~A.~~—The applicant or developer shall warrant in the subdivision improvements agreement or development improvements agreement all ~~public~~ improvements ~~constructed by the applicant or developer and conveyed to the City~~ for a period of **TWENTY-FOUR (24)** ~~twelve (12)~~ months from the date the City Council accepts such improvements. Specifically, but not by way of limitation, the applicant or developer shall warrant the following:

1. That the title conveyed shall be good and its transfer rightful;
2. Any and all facilities conveyed shall be free from any security interest or other lien or encumbrance; and
3. Any and all facilities so conveyed shall be free of any and all defects in materials or workmanship.

~~B. In addition, all other required subdivision or development improvements such as private park or recreation improvements and shallow utility installations shall be warranted for a period of twelve(12) months following completion and approval as provided in subsection (A) above.~~

**Section 9:** Section 17.21.100 of the Fruita Municipal Code and Ordinance 2004-19 are hereby amended to read as follows:

**17.21.100 PERFORMANCE GUARANTEE REQUIRED.**

- A. Every subdivision improvements agreement or development improvements agreement shall provide that in order to secure the construction and installation of the ~~public and other~~ required improvements ~~itemized in the schedule of improvements, whether on-site or off-site, for which the applicant or developer is responsible,~~ the applicant or developer shall furnish the City with: (1) cash to be deposited in an escrow account that is acceptable to the City pursuant to an escrow and disbursement agreement approved by the City ~~Attorney~~; or (2) an irrevocable letter of credit that is acceptable to the City ~~Attorney~~; or (3) a performance bond issued by a surety approved by the City ~~Attorney~~, in an amount equal to one hundred ten percent (110%) of the estimated cost of all required improvements.
- B. The developer or applicant shall deliver to the City the performance guarantee required by subsection (A) above prior to the recording of a subdivision final plat, or prior to recording of a P.U.D. final development plan, or prior to the issuance of a conditional use permit or planning clearance, as applicable. Unless expressly authorized by the City ~~Engineer and the Community Development Department Director~~, a developer or applicant shall not commence any work within the development until the approved security is furnished to the City. The applicant or developer shall not convey any lot within the subdivision or Planned Unit Development to any third party until the approved security is delivered to the City and the final plat or final development plan, as applicable, has been recorded in the records of the Mesa County Clerk and Recorder.
- C. Upon completion of a certain class of improvements ~~by the developer or applicant~~, such as wastewater facilities by way of example, evidenced by a detailed cost breakdown of the

- completed improvements, the amount of any security tendered may be reduced by up to one hundred percent (100%) of the approved cost for the installation of such class of improvements, upon application by the developer or applicant, and upon approval by the City ~~Engineer and Community Development Department Director~~. Upon completion of all of the ~~on-site and off-site~~ improvements required by the subdivision improvements agreement or development improvements agreement, and upon final inspection and approval by the City ~~Engineer, Public Works Director and Community Development Department Director~~ of all such improvements, the City Council shall further authorize a reduction of the amount of the security guaranteeing the public and other required subdivision or development improvements to ten percent (10%) of the total actual cost of the improvements.
- D. Any performance guarantee tendered to the City shall be fully released and discharged **ONLY BY EXPRESS** action of the City Council upon expiration of the **TWENTY-FOUR (24)** ~~twelve (12)~~ month warranty period described in Section 17.21.080 and the correction of any defects discovered during such warranty period. In the event that the correction of defects are not satisfactorily completed upon the expiration of the **TWENTY-FOUR (24)** ~~twelve (12)~~ month warranty period, the City **WILL RETAIN THE EXISTING PERFORMANCE GUARANTEE AND** may require a new performance guarantee and withhold further planning clearances for building permits and certificates of occupancy within the subdivision or development until the new performance guarantee is tendered to the City.
- E. Every subdivision improvements agreement or a development improvements agreement shall provide that upon the developer's or applicant's failure to perform its obligations under such agreement and all other applicable plans, drawings, specifications and documents ~~submitted by the developer or the applicant to the City~~, as approved, within the time periods set forth in the agreement, the City may give written notice to the developer or applicant of the nature of the default and an opportunity to be heard before the City Council concerning such default. If the default has not been remedied within thirty (30) days of receipt of the notice or of the date of any hearing before the City Council, whichever is later (or such reasonable time period as is necessary to cure the default provided that the

developer or the applicant has commenced in good faith to cure the default), the City may then give written notice to the developer or applicant and any surety on a performance bond, issuer of a letter of credit, or escrow agent that the City, as agent for the developer or applicant, is proceeding with the task of installing and completing the remaining public and other required development improvements in whole or in part.

- F. Every subdivision improvements agreement or development improvements agreement must contain a power of attorney whereby the developer or applicant designates and irrevocably appoints the City Manager of the City of Fruita, Colorado as its attorney in fact and agent for the purpose of completing all necessary improvements required by the subdivision improvements agreement or development improvements agreement in the event of a default by the developer or applicant. The agreement shall be recorded in the office of the Clerk and Recorder of Mesa County, Colorado, and shall constitute constructive notice of the agreement and the power of attorney contained therein. The agreement and power of attorney contained therein may be enforced by the City pursuant to all legal and equitable remedies available, including an action for specific performance in a court of competent jurisdiction.
- G. If a substantial amount of time elapses between the time of delivery of the security and actual construction of the improvements, the City may require a reasonable increase in the amount of the applicable security, if necessary because of estimated increased costs of construction.

**Section 9:** Paragraph G of Section 17.13.030 of the Fruita Municipal Code and Ordinance 2004-19 is hereby repealed.

~~G. Performance Guarantee.~~

- ~~1. In order to secure the construction and installation of street improvements, access improvements, parking improvements, landscape improvements, and any other improvements required by the City as a condition of the issuance of a conditional use permit, the City may require the applicant to furnish the City,~~

~~prior to the issuance of the conditional use permit, with the following:~~

~~a. A disbursement agreement with escrow, a performance bond, or an irrevocable letter of credit to secure the performance and completion of such improvements in the amount equal to one hundred ten percent (110%) of the estimated cost of said facilities, or~~

~~b. Such other collateral as may be satisfactory to the City Attorney.~~

~~2. The estimated cost of such improvements shall be a figure mutually agreed upon by the applicant and the Community Development Director. The purpose of such cost estimate is solely to determine the amount of security and may be revised from time to time to reflect the actual cost. No representation shall be made as to the accuracy of these estimates, and the applicant shall in any event pay the actual cost of such required improvements.~~

~~3. All improvements required to be constructed shall be warranted to be free of any defects in materials or workmanship for a period of twelve (12)~~



~~months following completion and approval by the City. If any such improvements are public improvements, they shall also be dedicated or conveyed to the City of Fruita.~~

~~4. Upon the applicant's failure to perform its obligations as required by the conditions for the issuance of the conditional use permit, and in accordance with all plans, drawings, specifications and other documents submitted to the City as approved, within the required time periods, the City may give written notice to the permittee and the escrow agent pursuant to a disbursement agreement, the surety on a performance bond, or the issuer of an irrevocable letter of credit that the City, as agent for the permittee, is proceeding with the task of installing the required improvements in whole or in part. Upon the assumption by the City, the escrow agent, surety or issuer of the irrevocable letter of credit shall be authorized to disburse funds upon request from the City, showing the proposed payee and the amount to be paid. Copies of any such request shall be sent to the permittee's last known address. Permittee shall be given an opportunity to appear before the City Council concerning any such assumption by the City, within thirty (30) days after the giving of such notice by the City.~~

~~5. The permittee shall in writing designate and irrevocably appoint the Mayor of the City as its attorney in fact and agent for the purpose of completing all of the improvements required by the conditional use permit in event of a default by the permittee.~~

~~6.— If any legal proceedings are commenced by the permittee concerning the City's assumption of the task of installing the required improvements, and if the permittee does not prevail in said legal proceedings, the surety or issuer of the letter of credit as well as the City shall be entitled to recover the reasonable attorney's fees and costs incurred therein from the permittee.~~

**PASSED AND ADOPTED BY THE FRUITA CITY COUNCIL  
THIS \_\_\_ DAY OF \_\_\_\_\_, 2007**

City of Fruita

\_\_\_\_\_  
E. James Adams, Mayor

ATTEST:

\_\_\_\_\_  
City Clerk