

AGENDA ITEM SUMMARY

March 17, 2015

City Council

STAFF

Jon Haukaas, Water Engr Field Operations Mgr
Ken Sampley, Stormwater/Floodplain Program Mgr

SUBJECT

First Reading of Ordinance No. 042, 2015, Amending Chapter 26 of the Code of the City of Fort Collins to Clarify the Conditions Under Which a Development May Defer Stormwater and Drainage Facility Requirements to Obtain a Certificate of Occupancy by Providing Certain Escrows as Assurance of Completion.

EXECUTIVE SUMMARY

The purpose of this item is to amend Chapter 26 of City Code, which provides developers an option for obtaining a certificate of occupancy prior to completion of installation, certification, and acceptance of stormwater and drainage facilities. This amendment provides clarification as to when this is allowable, initiates a non-refundable fee for processing and tracking the escrow, and timelines for completion of the work associated with the escrow.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

Staff believes that this amendment will provide needed clarifications in the Code. It will also institute timelines that are necessary to ensure that stormwater and drainage facilities are constructed in a timely fashion. This amendment will create revenue in order to cover the costs associated with handling Stormwater escrows.

BACKGROUND / DISCUSSION

City Code Chapter 26-544 currently allows for the approval of subdivisions and construction on parcels within the City once sufficient information has been provided and reviewed by the Utility. The applicant may proceed once "acceptable assurance that such facilities will be constructed" has been received in the form of an escrow deposit.

This amendment initiates a non-refundable fee for processing and tracking the escrow and timelines for completion of the work associated with the escrow. This amendment is necessary to allow for a fee to cover City costs of handling Stormwater escrows and to ensure that stormwater facilities are installed within a reasonable timeframe.

Historically, Stormwater escrows have been accepted with no formal procedure in cases where construction cannot be completed prior to the date certificate of occupancy is needed due to circumstances, such as frozen ground. As a result, City staff has spent time processing and tracking these escrows. As well, there has not been a timeline for fulfilling the requirements of the escrow; therefore, multiple escrows have stayed on the books for many years without the required work being completed and no mechanism for the City to apply those escrowed funds to complete the required facilities.

This amendment establishes a non-refundable fee to help cover the cost of the time City staff spends processing and tracking these escrows. Additionally, it establishes a reasonable timeline (180 days) for the

completion of construction, certification, and acceptance of the stormwater and drainage facilities being escrowed. The escrowing party will receive multiple notices of this timeline before the escrow will be forfeited and alternative means of installing the facilities can be sought. The escrowing party will be notified in writing on the escrow receipt as well as at the expiration of 180 days, when they will be given a final 60 days to comply before escrow forfeiture.

CITY FINANCIAL IMPACTS

There are no negative financial impacts expected from this policy. A positive financial impact will be establishment of a fee collected to help cover the administrative costs associated with City staff administering and tracking Stormwater escrow compliance.

BOARD / COMMISSION RECOMMENDATION

At its February 19, 2015 meeting, the Water Board voted unanimously to recommend the City Council adopt the Ordinance amending Chapter 26 of City Code to clarify conditions under which a development may defer stormwater installation requirements to obtain a Certificate of Occupancy for up to 180 days by providing certain escrows as assurance of completion.

PUBLIC OUTREACH

Local developers and engineering firms were consulted on the details of the procedure to ensure it met the needs of the City and other effected stakeholders.

ATTACHMENTS

1. Water Board minutes, February 19, 2015 (PDF)

DRAFT

**Fort Collins Utilities Water Board Minutes
Thursday, February 19, 2015**

Excerpt

Stormwater Escrow Policy

(Attachments available upon request)

Civil Engineer Dan Mogen of the Stormwater Department provided a PowerPoint presentation. The Water Board was also provided, prior to the meeting, an agenda item summary, draft ordinance, and several draft certification and receipt documents for residential and commercial properties. City Code currently has language allowing for the City to grant a Certificate of Occupancy (CO) if given an “acceptable assurance” that the necessary stormwater facilities will be constructed as soon as possible. For some properties, cold temperatures and frozen ground do not allow for completion of all stormwater facilities at the site even if all other aspects of the project have been completed. The City has historically accepted escrow payments without any formal written policy, fee, or timeline for completion of the stormwater projects. This agenda item is to formalize and improve upon this historical policy. Mr. Mogen thought that about 10% of development projects require this type of escrow for delayed completion of stormwater facilities, with about 180 escrow accounts in 2014 and 25 escrow accounts so far in 2015. Additional details of this agenda item were provided in the summary and related materials.

Discussion: A board member inquired about the two payment structures provided in the PowerPoint presentation. Mr. Mogen and Mr. Haukaas clarified that the formulaic payment structure was for multi-lot development sites while the fixed payments were for individual lots. A board member inquired about the purpose of visual inspections by City staff. Mr. Mogen and Mr. Haukaas responded that an engineer certification would still be required at the site, but that the City visual inspection would be an informal check on the completion of planned stormwater facilities at the site.

***Motion:* Board Member Michael Brown moved that the Water Board approve the Stormwater Escrow Procedure, and recommend that City Council approve the Ordinance amending Chapter 26 of City Code to clarify conditions under which a development may defer stormwater installation requirements to obtain a Certificate of Occupancy for up to 180 days by providing certain escrows as assurance of completion.**

Board Member Alex Maas seconded the motion. It passed unanimously.

ORDINANCE NO. 042, 2015
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AMENDING CHAPTER 26 OF THE CODE OF THE CITY OF FORT COLLINS
TO CLARIFY THE CONDITIONS UNDER WHICH A DEVELOPMENT MAY DEFER
STORMWATER AND DRAINAGE FACILITY REQUIREMENTS TO OBTAIN A
CERTIFICATE OF OCCUPANCY BY PROVIDING CERTAIN ESCROWS AS
ASSURANCE OF COMPLETION

WHEREAS, the City Council is empowered and directed by Article XII, Section 6, of the Fort Collins City Charter to fix, establish, maintain, and provide for the collection of such rates, fees, or charges for utility services furnished by the City as will produce revenues sufficient to pay the costs, expenses, and other obligations of the Water Utility; and

WHEREAS, Section 26-544 of the City Code allows the Utilities Executive Director to approve plans for stormwater and drainage facilities associated with subdivisions and building permits, and for an applicant to proceed with construction subject to furnishing the City acceptable assurance that such facilities will be constructed and installed as approved; and

WHEREAS, pursuant to Section 26-544 of the City Code, the Water Utility has accepted certain escrows in cases where stormwater and drainage facility construction cannot be completed prior to the date a Certificate of Occupancy is needed due to circumstances such as frozen ground; and

WHEREAS, the process for administering stormwater and drainage escrows has not been codified, leading staff to spend time processing and tracking escrows, and uncertain expectations for developers as to the timeline to certify completion of escrow requirements; and

WHEREAS, on February 19, 2015, Water Utility staff presented to the Water Board amendments to the City Code to update the conditions under which a development may deposit an escrow in order to defer installation of stormwater and drainage facilities, creating a deadline of 180 days by which certified completion of such facilities must be provided; and

WHEREAS, the Water Board voted unanimously to recommend the City Council approve the proposed amendments to Chapter 26 of City Code, which clarify the conditions under which a developer may deposit an escrow in order to obtain a Certificate of Occupancy and defer stormwater and drainage requirements for up to 180 days; and

WHEREAS, the City Council desires to continue and clarify the process for allowing developers to provide an escrow as assurance of completion of stormwater and drainage requirements, and thereby obtain a Certificate of Occupancy prior to completion of installation, certification, and acceptance of such facilities.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council finds that amending Chapter 26 of the City Code to update the procedures for collecting, releasing, and applying stormwater and drainage facility escrows is in the best interest of Water Utility ratepayers and the City.

Section 2. That Section 26-544 of the City Code shall be amended to read as follows:

Sec. 26-544. Stormwater facilities required for subdivisions.

(a) Prior to the final approval of the plat of any subdivision, or prior to commencement of construction upon any lot or parcel of land for which a drainage report and construction plan for the installation of stormwater facilities has not been prepared and approved by the City, the owners of the property being subdivided or upon which construction is being commenced shall, at such owners' cost, prepare a detailed drainage report and construction plans for the installation of all stormwater facilities required for such subdivision or lot, including any off-site facilities required to convey stormwater to existing drains, channels, streams, detention ponds or other points, all in conformity with the master plan of the stormwater basins, the Fort Collins Stormwater Criteria Manual adopted pursuant to § 26-500, and the Water Utilities Development Construction Standards adopted pursuant to § 26-29.

(b) The Utilities Executive Director shall review such reports, plans and costs estimates; and after approval of the same, the plat of the subdivision or the building permit, if applicable, may be approved subject to the City's being furnished with acceptable assurance that such facilities will be constructed and installed as indicated and approved.

(1) In order to obtain a certificate of occupancy for property prior to construction, certification, and acceptance of stormwater facilities, an owner may file a request with the Utilities Executive Director, along with a non-refundable administration fee of two hundred dollars (\$200), and deposit an escrow in an amount determined by the Utilities Executive Director to be adequate to assure construction, installation, and certification of the facilities in accordance with final development plan documents.

(2) All deferred construction, installation, and certification of stormwater facilities shall be completed within 180 days of the date on the escrow receipt, issued at the time of its deposit with the City.

(3) Escrows held by the City as assurance for deferred construction and installation of stormwater facilities shall be released upon filing by the property owner of the required lot grading or overall site drainage certification for the property prepared by a licensed engineer. Any escrow not claimed or released

within the period established herein may be considered forfeited and the City may use such funds to address the drainage and grading requirements of the property.

Introduced, considered favorably on first reading, and ordered published this 17th day of March, A.D. 2015, and to be presented for final passage on the 21st day of April, A.D. 2015.

Mayor

ATTEST:

City Clerk

Passed and adopted on final reading on the 21st day of April, A.D. 2015.

Mayor

ATTEST:

City Clerk