

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 9 “COMMUNITY FACILITIES AGREEMENTS,” ARTICLE IV “COMMUNITY FACILITIES AGREEMENTS,” OF THE CODE OF THE CITY OF FORT WORTH, TEXAS (2015), AS AMENDED, BY AMENDING SECTION 9-310 AND ADDING SECTION 9-310.1 TO ALLOW FOR ADDITIONAL REDUCTIONS OF ESCROW AGREEMENTS THAT ARE PROVIDED AS THE FINANCIAL GUARANTEE FOR COMMUNITY FACILITIES AGREEMENTS AND GRANTING THE DIRECTOR OF THE DEVELOPMENT SERVICES DEPARTMENT THE AUTHORITY TO AUTHORIZE MORE THAN TWO REDUCTIONS OF DEVELOPMENT BONDS, CASH DEPOSITS, AND LETTERS OF CREDIT THAT ARE PROVIDED AS THE FINANCIAL GUARANTEES FOR COMMUNITY FACILITIES AGREEMENTS; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Community Facilities Agreements (“CFA”) Ordinance governs the design and construction of public infrastructure by developers to ensure that all developments are adequately served by public infrastructure and that the public infrastructure is constructed according to the City’s standards; and

WHEREAS, the CFA Ordinance requires that developers provide the City with adequate financial guarantees when executing community facilities agreements to ensure that the public infrastructure is constructed and all contractors and material suppliers are paid; and

WHEREAS, the CFA Ordinance authorizes developers to reduce the amount of their financial guarantees as construction of the public infrastructure commences; and

WHEREAS, reduction of the financial guarantees allows developers to pay contractors and material suppliers as construction commences in lieu of securing additional financing to pay those costs; and

WHEREAS, the City Council finds it necessary to revise the CFA Ordinance to allow for the reduction of the amount of escrow agreements that are provided as the financial guarantee for community facilities agreements every thirty days; and

WHEREAS, the City Council finds it necessary to revise the CFA Ordinance to grant the Director of the Development Services Department the authority to authorize more than two reductions of the amount of development bonds, cash deposits, or letters of credit that are provided as the financial guarantee for community facilities agreements;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FORT WORTH, TEXAS, THAT:

SECTION 1.

Chapter 9, Article IV, Section 9-310 of the Code of the City of Fort Worth, Texas (2015), as amended, is hereby amended in its entirety to be and read as follows:

§ 9-310 REDUCTIONS IN FINANCIAL GUARANTEES – DEVELOPMENT BONDS, CASH DEPOSITS AND LETTERS OF CREDIT

- (a) The Developer may request a reduction in the amount of a development bond, cash deposit, or letter of credit that is provided as the financial guarantee for a CFA if the initial term of the CFA is more than four (4) months.
- (b) No more than two (2) reductions of a development bond, cash deposit or letter of credit may be made for any CFA. The Director of the Development Services Department may authorize more than two (2) reductions of a development bond, cash deposit or letter of credit and establish the requirements that must be met for the additional reductions.
- (c) The first reduction in a development bond, cash deposit, or letter of credit may only be made after:
 - (1) One-third of the value of Community Facilities being constructed pursuant to the CFA have been verified by the City’s inspectors to have been constructed in accordance with the engineering plans; and
 - (2) The City has received an affidavit and release of lien executed by the contractor indicating that the contractor has been paid by the Developer and the contractor has paid all subcontractors and material suppliers for one-third of the value of the Community Facilities being constructed pursuant to the CFA.
- (d) After the City has confirmed that one-third of the Community Facilities have been constructed in accordance with the engineering plans and the City has received an affidavit and release of lien from the contractor in the amount of one-third of the value of the Community Facilities being constructed pursuant to the CFA, then the development bond, cash deposit, or letter of credit may be reduced in an amount that does not exceed one-third of the original amount of the development bond, cash deposit, or letter of credit.
- (e) The second reduction in a development bond, cash deposit, or letter of credit may only be made after:
 - (1) Two-thirds of the value of Community Facilities being constructed pursuant to the CFA have been verified by the City’s inspectors to have been constructed in accordance with the engineering plans; and

- (2) The City has received an affidavit and release of lien executed by the contractor indicating that the contractor has been paid by the Developer and the contractor has paid all subcontractors and material suppliers for two-thirds of the value of the Community Facilities being constructed pursuant to the CFA.

- (f) After the City has confirmed that two-thirds of the Community Facilities have been constructed in accordance with the engineering plans and the City has received an affidavit and release of lien from the contractor in the amount of two-thirds of the value of the Community Facilities being constructed pursuant to the CFA, then the development bond, cash deposit, or letter of credit may be reduced in an amount that does not exceed two-thirds of the original amount of the development bond, cash deposit, or letter of credit if more than thirty calendar days have passed since the first reduction in the financial guarantee.

SECTION 2.

Chapter 9, Article IV of the Code of the City of Fort Worth, Texas (2015), as amended, is hereby amended to add Section 9-310.1 to be and read as follows:

§ 9-310.1 REDUCTIONS IN FINANCIAL GUARANTEES – ESCROW AGREEMENTS

- (a) Every thirty (30) days, the Developer may request a reduction in the amount of an escrow agreement that has been provided as the financial guarantee for a CFA.

- (b) The reduction in an escrow agreement may only be made after:
 - (1) The City’s inspectors have verified the amount of the Community Facilities that have been constructed in accordance with the engineering plans; and

 - (2) The City has received an affidavit and release of lien executed by the contractor indicating that the contractor has been paid by the Developer and the contractor has paid all subcontractors and material suppliers for the Community Facilities that have been constructed pursuant to the CFA.

- (c) After the City has confirmed the amount of the Community Facilities that have been constructed in accordance with the engineering plans and the City has received an affidavit and release of lien from the contractor for the Community Facilities that have been constructed, then the escrow agreement may be reduced to an amount equal to one hundred twenty-five percent (125%) of the value of the Community Facilities that are remaining to be constructed that are guaranteed by the escrow agreement.

SECTION 3.

This ordinance shall be cumulative of all provisions of ordinances and of the Code of the City of Fort Worth, Texas (2015), as amended, except where the provisions of this ordinance are in direct

conflict with the provisions of such ordinances and such Code, in which event conflicting provisions of such ordinances and such Code are hereby repealed.

SECTION 4.

It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs and sections of this ordinance are severable, and, if any phrase, clause, sentence, paragraph or section of this ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

SECTION 5.

All rights and remedies of the City of Fort Worth, Texas, are expressly saved as to any and all violations of the provisions of the Code of the City of Fort Worth, or any other ordinances of the City, that have accrued at the time of the effective date of this ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this ordinance, but may be prosecuted until final disposition by the courts.

SECTION 6.

This ordinance shall take effect on June 15, 2022, and it is so ordained.

APPROVED AS TO FORM AND LEGALITY:

ATTEST:

Richard A. McCracken
Sr. Assistant City Attorney

Jannette S. Goodall, City Secretary

ADOPTED: _____