

# Mayor and Council Communication

DATE: 06/14/22

M&C FILE NUMBER: M&C 22-0433

LOG NAME: 06CFA ORDINANCE FINANCIAL GUARANTEE AMENDMENT

## **SUBJECT**

(ALL) Adopt Ordinance Amending Chapter 9, Article IV of the City Code to Amend Section 9-310 and Add Section 9-310.1 to Authorize Additional Reductions in Financial Guarantees for Community Facilities Agreements

---

## **RECOMMENDATION:**

It is recommended that the City Council adopt the attached ordinance amending Chapter 9, Article IV of the City Code to Amend Section 9-310 and Add Section 9-310.1 to Authorize Additional Reductions in Financial Guarantees for Community Facilities Agreements.

---

## **DISCUSSION:**

City staff is recommending that the City Council amend the Community Facilities Agreements Ordinance to authorize additional reductions in financial guarantees.

The CFA Ordinance requires developers to execute Community Facilities Agreements ("CFA") to construct public infrastructure necessary to support their developments. To ensure that the public infrastructure is constructed and the contractors are paid, the CFA Ordinance requires developers to provide the City with a financial guarantee. The financial guarantee can be a development bond, a letter of credit, a cash deposit with the City, or an escrow agreement with a financial institution.

Prior to 2019, the City allowed developers to reduce the amount of their financial guarantee as construction of the public infrastructure progressed. From 2016 to 2019, City staff conducted a lean six sigma infrastructure delivery process improvement study to evaluate the 2001 CFA Policy, with the goal to reduce project review and delivery and improve City processes related to developer infrastructure delivery. As a result of this process, the CFA Policy was overhauled and codified into the City Code in 2019.

The CFA Ordinance allows developers to reduce the amount of their financial guarantee two times during construction, when one-third of the public infrastructure has been constructed, and again when two-thirds of construction has been constructed. The CFA Ordinance also allows developers to reduce their financial guarantee when all public infrastructure has been constructed and the development only needs electrical power to be supplied by a franchise utility.

Since 2019, the City has received a number of requests from the development community to allow for more than two reductions in financial guarantees. City staff have determined that the City can allow for more than two reductions in the financial guarantee for CFAs. This will allow the development community to draw down on their financial guarantees while construction commences in order to pay their contractors. The proposed change would also eliminate the need for developers to obtain financing for twice the cost of the public infrastructure when escrow agreements, cash deposits, or letters of credit are provided as the financial guarantee.

The proposed amendments to the CFA Ordinance would allow developers to reduce escrow agreements no more frequently than every 30 days. In addition, the proposed amendments would give the Director of the Development Services Department the authority to approve more than two reductions of development bonds, letters of credit, or cash deposits with the City.

The City has a number of measures in place to reduce the risk associated with reductions in financial guarantees:

- City staff verifies that the amount of each reduction request matches the value of the public infrastructure that has been constructed.
- Developers are required to provide the City with affidavits and lien releases from their contractors for the public infrastructure that has already been constructed.
- The payment and performance bonds required from the contractors are not reduced.
- When escrow agreements, letters of credits or cash deposits with the City are provided as the financial guarantee, those financial guarantees cannot be reduced to less than 125% of the remaining public infrastructure that must be constructed.

City staff have procedures in place to ensure that the measures outlined above are complied with.

The proposed amendments to the CFA Ordinance were presented to the Development Advisory Committee ("DAC") on May 19, 2022. DAC expressed its support for the proposed amendments. DAC has recommended that City staff study whether a fee will need to be adopted in the future to offset any additional staff time expended on processing the reductions.

A Form 1295 is not required because: This M&C does not request approval of a contract with a business entity.

---

## **FISCAL INFORMATION / CERTIFICATION:**

The Director of Finance certifies that this action will have no material effect on City funds.

**Submitted for City Manager's Office by:** Dana Burghdoff 8018

**Originating Business Unit Head:** D.J. Harrell 8032

**Additional Information Contact:** Richard McCracken 7611  
Jennifer Ezernack 2737