



RESOLUTION NO. 2008-100

A RESOLUTION OF THE COUNCIL OF THE CITY OF FRESNO, CALIFORNIA AUTHORIZING THE PUBLIC WORKS DIRECTOR OR CITY ENGINEER TO ENTER INTO AMENDMENTS TO EXISTING SUBDIVISION AGREEMENTS TO ALLOW FOR ACCEPTANCE OF THE MAJOR STREETS, TRAILS, BRIDGES, TRAFFIC SIGNALS, WATER WELL SITES, SEWER LIFT STATIONS, WATER MAINS AND SEWER MAINS; AND A CORRESPONDING ONE-TIME PERFORMANCE SECURITY REDUCTION, PRIOR TO COMPLETION OF THE ENTIRE SUBDIVISION

WHEREAS, the Subdivision Map Act generally requires that prior to the approval and recording of a Final Map, the subdivider must comply with all of the conditions of approval for the corresponding Tentative Tract Map; and,

WHEREAS, the Subdivision Map Act permits a subdivider to satisfy certain conditions of approval related to the construction of certain public infrastructure by entering into a subdivision agreements with the local jurisdiction responsible for approving the Final Map to permit the construction of the public infrastructure identified in the subdivision agreement by a date certain after the Final Map is approved and; and,

WHEREAS, the City of Fresno ("City") utilizes these subdivision agreements ("Subdivision Agreements") in accordance with the Subdivision Map Act to allow the Final Map to record and lots to be offered for sale prior to completion of the public infrastructure; and,

WHEREAS, the subdivider is required to provide security, typically in the form of a performance bond and payment bond and a certificate of deposit or cash, to cover the cost of constructing the public infrastructure required for the subdivision such as major streets, underground utilities (sewer, water), street lighting, sidewalks, interior local streets, street trees, trails, traffic signals, water well sites and sewer lift stations; and,

WHEREAS, the Section 12-1016 of the Fresno Municipal Code requires performance security that is 100 percent of the total estimated cost of the improvements or of the act to be performed; five percent of such amount shall be cash or a certificate of deposit conditioned upon the faithful performance of the act or agreement and 95 percent of such amount shall be in the form of a performance bond; and payment security in the form of a payment bond that is 50 percent of the total estimated cost of the improvement or the performance of the act, securing payment to the contractor, the subcontractors, and to persons furnishing labor, materials or equipment to them for the improvement or the performance of the required act to be completed under the Subdivision Agreement; and,

WHEREAS, the Government Code requires the recordation of notices of acceptance of all of the work covered under the Subdivision Agreement pursuant to Article 3(commencing with Section 3114) of Chapter 2 of Title 15 of Part 4 of Division 3 of the California Civil Code to serve as notification to contractors, subcontractors and material suppliers that the City is accepting the work and to provide opportunity for the contractors, subcontractors and material suppliers to record their claim of lien if they have not been paid the work performed ; and,

Adopted 5/6/08
Approved 5/13/08
Effective 5/13/08

2008-100



WHEREAS, the existing subdivision agreements and current authority delegated to the Public Works Director and City Engineer do not provide the ability for a partial acceptance of the work to be performed under the Subdivision Agreement but rather that all items of work must be complete; and,

WHEREAS, the Building Industry Association has requested that the City establish a policy wherein a subdivision may be partially accepted upon completion of all of the required major street work to allow for reduction of bonds; and,

WHEREAS, the current housing market is such that numerous subdivisions do not have the potential to complete all of their residential lots in the near future but have completed their major street improvements; and,

WHEREAS, it is in the interest of the community to have the major street work completed as soon as possible; and,

WHEREAS, the current City policies do not provide any financial incentive for the subdivider to complete the major street improvements early in the process since the improvement security cannot be reduced and reimbursements cannot be made until the complete subdivision is accepted; and,

WHEREAS, the City wishes to encourage the timely completion of major street infrastructure and associated improvements; and,

WHEREAS, the cost of renewing the performance bonds for existing subdivisions for the full dollar value of the required public infrastructure is creating an adverse economic impact upon the development industry; and,

WHEREAS, should the developer fail to complete the required public infrastructure and the City elects to exercise its option to call in the bonds, the City will need a dollar amount sufficient to complete the improvements, which is the cost of the entirety of the improvements required under the subdivision agreement less the cost of the improvements that have been completed by the developer and are ready for acceptance by the City; and,

WHEREAS, it is in the public interest to accept the major street improvements once all of the required improvements on that major street have been completed, including curbs, gutters, paving, signing, striping, median islands, sidewalks, street lighting, traffic signals, street trees, landscaping, sewer mains, water mains, storm drains, relocation and/or undergrounding of overhead utilities and power/telephone poles; and,

WHEREAS, the City does not have the personnel or financial resources to process multiple amendments to these existing subdivisions agreements and it is not in the public interest to segment the work into multiple partial acceptances of the work; and,



WHEREAS, the existing subdivision agreements include a required completion date for all work which the City does not wish to extend or revise as a result of providing any partial acceptances; and,

WHEREAS, the proposed policy for partial acceptance cannot be accommodated within the existing subdivision agreements without amending the agreements; and,

WHEREAS, the Public Works Director and City Engineer possess the necessary judgment, qualifications and experience to make a determination on behalf of the City for when it is appropriate to accept the major street improvements and to enter into an amendment to the subdivision agreement to allow for partial acceptance; and,

WHEREAS, it is necessary and in the public interest to provide strict parameters to define when the partial acceptance may be performed.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Fresno as follows:

The Public Works Director and City Engineer are both hereby delegated the authority to prepare and execute a single one-time amendment to any existing subdivision agreements for the purpose of providing partial acceptance of public improvements that are required by the subdivision agreement and to reduce the amount of the performance security associated with the work, subject to the following provisions:

1. All of the work required within the right-of-way of the major streets has been completed with the exception of any items that the Public Works Director or City Engineer determines to be physically impossible to construct due to factors entirely beyond the control of the developer.
2. The definition of "all of the work required within the right-of-way of the major streets" shall include all of the following items:
 - a. Curb and gutter
 - b. Sidewalks
 - c. Street lighting
 - d. Intersection safety lighting
 - e. Trail surfacing, planting and irrigation
 - f. Median island curbs
 - g. Median island maintenance band
 - h. Median island landscaping and irrigation
 - i. Paving
 - j. Striping
 - k. Signage
 - l. Street trees and irrigation
 - m. Landscape buffers, park strips or back-up treatment
 - n. Block wall or sound wall for the subdivision that faces the major street
 - o. Intersection improvements



- p. Sewers
 - q. Water mains
 - r. Fire hydrants
 - s. Storm drain pipelines and inlets
 - t. Asphalt concrete dikes
 - u. Drainage swales
 - v. Any temporary or permanent ponding basin work that is necessary to drain the major street roadways
 - w. Relocation and/or undergrounding of overhead electrical, telephone, cable and communication lines and the associated wood or metal poles and associated appurtenances
3. All of the work that is being considered for partial acceptance has been inspected, tested and is ready for the City to assume maintenance of the facility with no remaining punch-list items, remedies or corrections required.
4. The engineer of record for the developer of the subdivision shall have submitted, for review and approval by the City Engineer, three (3) complete copies of the stamped and approved permit set of improvement plans for the subdivision with the improvements that have been completed shown as clouded on the three sets. Accompanying the plan sets, the engineer of record shall have submitted, for review and approval by the City Engineer, an Engineer's Estimate of the cost to construct the remaining improvements that are required under the subdivision agreement that have not been completed at the time of the proposed partial acceptance. The remaining work shall be valued for purposes of the performance bond at 200 percent of the cost of prevailing wage labor, equipment and materials, of which 5 percent shall be in the form of a cash or certificate of deposit in the City's name. The developer shall obtain a new performance bond in the amount of 195 percent of the cost of constructing the remaining improvements and provide a certificate of deposit or cash the amount of 5 percent of the cost of constructing the remaining improvements. This new security shall be provided to the City prior to the Director of Public Works or City Engineer executing the corresponding amendment to the subdivision agreement. Only after the developer provides the new performance bond and cash or certificate of deposit and the amendment has been executed by all parties, may the developer cancel the original performance bond and request that the City return to it the original Certificate of Deposit or cash deposit.
5. The Public Works Director or City Engineer shall utilize his or her discretion in determining whether traffic signals and major street bridges must be included in the major street acceptance or if those facilities can be excluded from the requirements from the one-time partial acceptance for the particular subdivision based on traffic safety and congestion levels.
6. Where a subdivision is required to construct multiple major streets, the Public Works Director or City Engineer may exercise judgment and allow for the one-time partial acceptance to include one or more but not all of the major streets that are required for the subdivision to be accepted.



7. The Public Works Director or City Engineer shall utilize his or her discretion in determining for any required water well sites, sewer lift stations, treatment facilities, park sites or public safety buildings that have major street frontage, and are required to be constructed by the subdivision agreement but are non-adjacent to the major street frontage of the subdivision, as to whether the major street frontage for those facilities must be included in the major street acceptance or if those facilities can be excluded from the requirements from the one-time partial acceptance for the particular subdivision based on traffic safety and congestion levels.
8. The subdivider and Public Works Director or City Engineer may agree to include a portion of the interior streets of the subdivision in the partial acceptance, provided that all of the above-mentioned provisions for acceptance have been complied with, plus the following specific requirements for the interior local streets:
 - a. All work has been completed on the local streets with the exception of sidewalks, driveway approaches and setting of monumentation on any unconstructed lots.
 - b. The interior local streets shall have sidewalks constructed as necessary to provide an ADA-compliant path of travel from every home that has been constructed out to the major street entry points to the subdivision. If sidewalk gaps exist such that the ADA-compliant path of travel does not exist, then the interior of the subdivision shall not qualify for acceptance until the situation has been remedied through additional sidewalk construction.
9. The developer shall provide payment to the City for the full cost of City staff labor and materials associated with additional inspection, performance security reduction and amendments to the subdivision agreement, as set forth in the City of Fresno Master Fee Schedule.
10. Any amendment to subdivision agreement shall be reviewed and approved as to form by the City Attorney's Office. No more than one amendment to an existing subdivision agreement shall be allowed. Once the partial acceptance has occurred, no additional acceptances shall be made until the complete subdivision can receive final acceptance.
11. This policy does not apply to any partial reduction of the payment bond. The reduction of the payment bond shall continue to be addressed as required under Government Code, section 66499.7(h).
12. The City's partial acceptance of certain improvements for purposes of reducing the amount of the performance security shall not effect or modify the warranty period for subdivider installed improvements which runs for a period of 1 year after the City's final acceptance of the improvements.

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CLERK'S CERTIFICATION

STATE OF CALIFORNIA)
COUNTY OF FRESNO)
CITY OF FRESNO)

I, REBECCA E. KLISCH, City Clerk of the City of Fresno, certify that the foregoing Resolution was adopted by the Council of the City of Fresno, California, at a regular meeting held on the 6th day of May, 2008.

AYES: Calhoun, Dages, Duncan, Perea, Sterling, Westerlund, Xiong
NOES: None
ABSENT: None
ABSTAIN: None

Mayor Approval: May 13, 2008
Mayor Approval/No Return: N/A
Mayor Veto: N/A
Council Override Veto: N/A

REBECCA E. KLISCH
City Clerk

By Rebecca Klisch

APPROVED AS TO FORM

JAMES C. SANCHEZ
City Attorney

By John W. Fox
John W. Fox, Deputy

Date: 5/1/2008

May 7, 2008

Council Adoption: 5/6/08

Mayor Approval:

Mayor Veto:

Override Request:



TO: MAYOR ALAN AUTRY

RECEIVED

FROM: REBECCA E. KLISCH, CMC
City Clerk

2008 MAY 13 PM 3: 18

CITY CLERK, FRESNO CA

SUBJECT: TRANSMITTAL OF COUNCIL ACTION FOR APPROVAL OR VETO

At the Council meeting of 5/06/08, Council adopted the attached Resolution No. 2008-100 entitled **Auth amndmnt to agrmnt to accept major streets, trails, bridges, etc. re: completion of entire subdivision**, Item No. **9:30 a.m. A - 1**, by the following vote:

Ayes	:	Calhoun, Dages, Duncan, Perea, Sterling, Westerlund, Xiong
Noes	:	None
Absent	:	None
Abstain	:	None

Please indicate either your formal approval or veto by completing the following sections and executing and dating your action. Please file the completed memo with the Clerk's office on or before May 19, 2008. In computing the ten day period required by Charter, the first day has been excluded and the tenth day has been included unless the 10th day is a Saturday, Sunday, or holiday, in which case it has also been excluded. Failure to file this memo with the Clerk's office within the required time limit shall constitute approval of the ordinance, resolution or action, and it shall take effect without the Mayor's signed approval.

Thank you.

APPROVED:

VETOED for the following reasons: (Written objections are required by Charter; attach additional sheets if necessary.)


Alan Autry, Mayor

Date: 5/13/08

COUNCIL OVERRIDE ACTION.

Date: _____

Ayes	:	
Noes	:	
Absent	:	
Abstain	:	

Resolution No. 2008-100 (adopted 5/6/08 effective 5/13/08)

City Council Meeting - May 6, 2008

9:30 a.m. A-2:

Urban Growth Management (UGM) and impact fee reimbursement policy for eligible improvements constructed prior to final acceptance of the tract or parcel map and for eligible improvements constructed by developers under a Conditional Use Permit or Site Plan Conditions of Approval – Public Works Dept.

(See: Memos - Public Works)