

Chapter 14.13

PUBLIC IMPROVEMENTS

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14.13.010 Application and authority.

Every application for a zoning change, special use permit, final plat, building permit, modification to an approved official development plan for a planned development district, or modification to an approved site plan shall be reviewed by the city to determine whether the applicant, the land which the applicant desires to develop, and other facts contained in or relating to the application, are in full compliance with the provisions of this chapter, the zoning ordinance, the subdivision ordinance, and all other applicable ordinances, rules and regulations of the city relating to zoning, special use permits, platting, construction, site plans, drainage, and public improvements. If the city determines that there is noncompliance with said provisions, the city shall so inform the applicant, and no further processing of the zoning change, special use permit, platting, building permit, or modification application shall occur until such time as the city determines that the application is in full compliance with said provisions. Whenever the term "applicant" is used in this chapter, it shall mean the "owner of land proposed to be developed and/or his authorized agent." Unless the context indicates otherwise, whenever the term "modification" is used in this chapter, it shall mean a modification to an approved official development plan for a planned development district and/or a modification of an approved site plan. (Ord. O-94-40 § 4, 1994; Ord. O-84-105 § 1 (part), 1984).

14.13.020 Public improvements.

A. Public Improvements Defined. "Public improvements" shall be defined as those rights-of-way, easements, access rights, and physical improvements which, upon formal acceptance by the city, shall become the responsibility of the city for ownership and/or maintenance and repair, unless otherwise provided, and shall include, but not by way of limitation, the following: curb and gutter, asphalt pavement, concrete pavement, streets of all types, survey monuments, pavement stripping, sidewalks, pedestrian/bike paths, traffic signals, street lights, highways, freeways, rights-of-way, easements, access rights, construction plans, medians, bridges, acceleration and deceleration lanes, culverts, storm drainage facilities including necessary structures, channels, water lines, sanitary sewer lines, and all other improvements, which upon acceptance by the city, are intended to be for the use of and enjoyment of the public.

B. Review. Applications for zoning changes, special use permits, final plats, building permits, and modifications shall be reviewed by the City Engineer in accordance with the provisions contained in this chapter to determine if the dedication, acquisition, installation, construction, or reconstruction of public improvements is necessary. The need for all public improvements shall be based upon a consideration of the following factors:

1. The need to insure that the health, safety and welfare of the public will be maintained;
 2. A determination as to whether public improvements are necessary to serve the area in which the development is to occur;
 3. Existing or potential development of the surrounding area;
 4. The zoning use involved.
- C. The City Council may by resolution adopt policies to provide guidelines on the need for public improvements.

D. Public Improvements Agreement. If the City Engineer determines that the applicant's zoning change, special use permit, final plat, building permit, or modification application creates the need for the dedication, acquisition, installation, construction, or reconstruction of public improvements, then, after such determination has been made, the applicant shall enter into a public improvements agreement prior to the city's approval of the zoning change, special use permit, final plat, building permit, or modification application. The public improvements agreement shall be in a form determined by the city, and shall provide for the dedication and/or construction of necessary public improvements by the applicant. In some instances the city may wish to postpone the actual execution of the public improvements agreement until further development of the property, in which case the city shall make it clear by resolution, ordinance or otherwise that the approval of the zoning change, special use permit, final plat, building permit, or modification application is conditioned upon the dedication and/or construction of the required public improvements.

1. Zoning Changes. Every application for a zoning change shall be reviewed by the City Engineer in accordance with the provisions of this chapter and the ordinances and regulations of the city to determine if public improvements are necessary as a condition of the approval of the zoning change.

2. Special Use Permit. Every application for a special use permit shall be reviewed by the City Engineer in accordance with the provisions of this chapter and the ordinances and regulations of the city to determine if public improvements are necessary as a condition of the approval of the special use permit.

3. Final Plat. Every application for a final plat shall be reviewed by the City Engineer in accordance with the provisions of this chapter and the ordinances and regulations of the city to determine if public improvements are necessary as a condition of the approval of a final plat. If the applicant is a party to an existing public improvements agreement for land which is being replatted, the City Engineer may in his discretion require an amendment to said agreement to provide for additional or other public improvements necessary to serve the land to which the new application for a final plat applies.

4. Building Permits. Every application for a building permit shall be reviewed by the City Engineer to determine if the applicant is already a party to a current and valid public improvements agreement providing for public improvements necessary to serve the land to which the application for a building permit applies.

a. If the applicant is a party to a current and valid public improvements agreement and it is determined that the agreement was executed less than two years prior to the date that the building permit application is filed and the applicant provides all collateral required by the agreement, then the Building Official shall issue the building permit if all other requirements as set forth in this code are met, and shall incorporate said public improvements agreement into said permit by reference. If, however, it is determined that the public improvements agreement was executed more than two years prior to the date that the application for a building permit is filed, the application shall be reviewed by the City Engineer to determine if additional improvements are necessary to serve the land to which the application for a building permit applies, in which case the applicant shall enter into a new or amended public improvements agreement prior to the issuance of a building permit.

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b. If the applicant is not a party to a current and valid public improvements agreement and the City Engineer determines that public improvements are made necessary by the proposed construction of the anticipated use thereof, the City Engineer shall so inform the Building Official, and no building permit shall be issued until the applicant has entered into a public improvements agreement for the dedication, acquisition, installation, construction, or reconstruction of said improvements as required by the provisions of this code.

5. Modifications. Every application requesting a modification to an approved official development plan for a mixed use district and every application requesting a modification of an approved site plan shall be reviewed by the City Engineer in accordance with the provisions of this chapter and the ordinances and regulations of the city to determine if the modification necessitates the need for new, additional or other public improvements.

6. This chapter recognizes that in some instances the specific requirements of this code as they relate to the terms and conditions of public improvements agreements cannot be imposed with strict precision given the varying factual circumstances of individual cases. Therefore, in those instances where it is necessary to make minor modifications, variances and/or waivers of specific public improvements requirements, the City Engineer may do so.

7. Every public improvements agreement shall be acknowledged and signed by the owner of the land proposed to be developed and/or his duly authorized agent. An agent, signing the public improvements agreement, must give adequate assurance to the city that he or she has the clear and explicit authority to act on behalf of the owner. (Ord. O-88-66 §§ 1, 2, 1988; Ord. O-88-19 § 1, 1988; Ord. O-84-105 § 1 (part), 1984).

14.13.030 Land uses.

The property use in every proposed development shall be reviewed by the City Engineer to determine if public improvements are necessary as defined in Section 14.13.020(B). If the proposed development makes the acquisition, installation, construction, or reconstruction of public improvements necessary, such improvements shall be acquired, installed, constructed or reconstructed in accordance with the following:

A. Policies adopted by City Council resolution;

B. All public improvements required must be acquired, installed, constructed or reconstructed immediately unless waived or deferred in accordance with policies adopted pursuant to Section 14.13.020(C);

C. If the City Engineer determines that only a portion of the necessary public improvements should be dedicated and/or constructed immediately, then the remainder shall be dedicated and/or constructed when additional building permits are issued or at a time determined appropriate by the City Engineer consistent with the policies described in Section 14.13.020(C);

D. The City Council shall retain the option of seeking creation of a special improvement district in accordance with the provisions of Section 10.1 of the City Charter and other applicable city ordinances and regulations. (Ord. O-88-66 § 3, 1988; Ord. O-84-105 § 1 (part), 1984).

14.13.040 Appeal procedure.

A. Initially the Director of the Department of Planning, Permits and Public Works, and subsequently Planning Commission, shall hear and decide appeals from any order, decision, or determination made by the City Engineer which relates to the requirements for public improvements in connection with the application for a zoning change, special use permit, final plat, or modification to an approved official development plan.

B. If an applicant applies for a building permit on land which will not be considered by the city for a zoning change, special use permit, final plat or modification of an official development plan and for which no public improvements agreement is in existence, the applicant shall have the right of appeal to the Director of the Department of Planning, Permits and Public Works either before signing a public improvements agreement or after signing a public improvements agreement. If the applicant chooses to appeal prior to signing a public improvements agreement, no building permit shall be issued until there has been a final determination on the appeal and a public improvement agreement, if applicable, has been signed by the applicant. If the applicant chooses to sign a public improvements agreement and obtain a building permit prior to appeal, the applicant shall have ten calendar days after signing said public improvements agreement to appeal in writing the improvements required by the City Engineer to the Director of the Department of Planning, Permits and Public Works.

C. An expeditious and informal appeal to the Director of the Department of Planning, Permits and Public Works is a prerequisite to an appeal to the Planning Commission. The Director of the Department of Planning, Permits and Public Works shall hear the appeal within twenty calendar days after receipt of a completed appeal application. The Director of the Department of Planning, Permits and Public Works shall make a written decision which shall be mailed to the applicant within fifteen calendar days of said hearing.

D. The Director of the Department of Planning, Permits and Public Works shall have the authority to defer on the basis of written city policy or waive all or part of the public improvements and/or modify the extent of public improvements consistent with maintaining the health, safety and welfare of the public and consistent with the Engineering Regulations, Construction Specifications and Design Standards.

The Director's decision shall be based on consideration of the following factors:

1. The cost of the public improvements relative to the cost of the private improvements; or
2. Whether there are comparable public improvements or the potential for such improvements in the adjacent or immediate area; or
3. The classification of the street where the public improvements will be located; the necessity for improvements on arterial and collector streets is often greater than the need for improvements on local streets; or
4. Whether there has been an erroneous application of the standards of Sections 14.13.020(B) or 14.13.030 to the development; or
5. Whether the strict application of this chapter will be in the interest of the public health, safety and welfare or achieve substantial justice.

E. Any appeal from the decision of the Director of the Department of Planning, Permits and Public Works shall be to the Planning Commission. A notice of appeal must be filed with the secretary of the Planning Commission within ten calendar days of receipt of the decision of the Director of the Department of Planning, Permits and Public Works. The Planning Commission shall hold a complete, new hearing within thirty calendar days of the filing of the notice of appeal. Those issues that have been adjudicated by the Director of the Department of Planning, Permits and Public Works and not appealed are final. The Planning Commission shall have the same authority and use the same factors to decide appeals as is set forth in subsection (D) of this section. Any appeal of the final decision of the Planning Commission shall be to the Jefferson County District Court.

F. Any appeal to the Planning Commission shall require payment of a fee prior to consideration of the appeal. The amount of this fee shall be established by City Council resolution.

G. The City Council shall not hear an application for a zoning change, final plat or modification until all administrative appeals, including appeal to the Planning Commission, have been exhausted or waived by the applicant and the applicant has subsequently signed a public improvements agreement.

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Application for a special use permit shall not be approved until all administrative appeals, including appeal to the Planning Commission, have been exhausted or waived by the applicant and the applicant has subsequently signed a public improvements agreement. (Ord. O-91-59 § 6 (part), 1991; Ord. O-88-19 § 2, 1988; Ord. O-85-126 § 1, 1985; Ord. O-84-105 § 1 (part), 1984).

14.13.050 Standards and conditions for construction of public improvements.

Whenever public improvements are required under this chapter, the following provisions shall apply:

A. The cost of constructing all public improvements shall be borne by the applicant, and the construction thereof shall be at the sole cost, risk, and expense of the applicant, unless city ordinances state otherwise;

B. Public improvements shall be constructed in full compliance with the applicable design and construction standards as adopted by the city. Even so, the applicant shall indemnify and hold the city harmless from all claims by any person based upon improper or negligent construction of said public improvements;

C. No public improvement construction shall be started until the city has approved the plans, specifications, and permit application as set forth in Chapter 12.04 of this code;

D. In the event the terms or enforceability of a public improvements agreement is litigated, the city shall be reimbursed for its reasonable attorneys' fees and costs by the applicant, provided the city is the prevailing party. (Ord. O-84-105 § 1 (part), 1984).

14.13.060 Acceptance of public improvements.

A. After completion of all improvements to be constructed pursuant to a public improvements agreement, the applicant shall request, by certified letter addressed to the City Engineer, that the City Engineer issue a certificate of acceptance to said applicant. At his discretion the City Engineer may, by written notice, require said request to be accompanied by a letter from a registered professional engineer stating that said improvements have been completed and installed in accordance with the public improvements agreement, the approved final engineering construction plans, and the applicable design standards of the city. The City Engineer may also require a submission of as-built drawings certified by said registered professional engineer.

B. The City Engineer shall, within thirty days after receipt of said written request, cause the improvements to be inspected. If the City Engineer determines that all improvements are completed without significant defects and that they comply with the provisions of any applicable engineering standards and public improvements agreement, the City Engineer shall issue the certificate of acceptance.

C. If the City Engineer determines that any improvements are not complete, or if they are complete, that they contain significant defects, the City Engineer shall inform the applicant, by certified mail, of the improvements requiring completion or repair, and shall not issue a certificate of acceptance until the specified improvements are completed or repaired. Upon receipt of this written notice, the incomplete or defective public improvements shall be completed or repaired within forty-five calendar days unless extended by the City Engineer. Requests for extension shall be by certified mail addressed to the City Engineer, and shall be made on the basis of inclement weather or other similar circumstances beyond the applicant's control.

D. All public improvements shall be completed by the applicant by a date to be determined by the City Engineer, which date shall be incorporated into the applicable public improvements agreement. If no certificate of acceptance has been issued prior to said date, the city may construct, complete, or repair any public improvements required under such agreement and may apply the collateral required by Section 14.13.080 to pay the costs of completion, correction, or repair, or may employ any other

lawful remedy to secure completion, correction, or repair of such improvements. Upon completion, correction or repair of such improvements, the City Engineer shall issue a certificate of acceptance thereof, provided the city has received the full amount of all funds necessary to pay for such completion, correction, or repair from the applicant or the applicant's collateral.

E. Within one year from the date of issuance of the certificate of acceptance, the applicant shall repair any defect discovered in any improvements for which a certificate of acceptance has been issued; provided that written notice of such defect has been provided to the applicant by the City Engineer. If any such defect is not repaired within forty-five days of notice thereof, the city may correct said defect and may apply the collateral required by Section 14.13.080 to pay the costs of such repairs, or may employ any other lawful remedy to secure correction and repair of such defect and to recover any costs incurred by the city in doing so.

F. Dedications of rights-of-way, easements, access rights, and all other interests in real property conveyed to the city by an applicant as part of the applicant's public improvement requirements shall be submitted to the City Manager or his designee. Acceptance by the City Manager or his designee shall constitute acceptance by the city. The face page of the conveyance instrument shall contain a reference to Ordinance No. O-83-108, and the appropriate tax schedule number to aid the County Assessor in removing the property from the county tax rolls. A sample acceptance format is as follows:

Ordinance	Log No.	Tax Schedule Accepted By
		No. City of Lakewood
		By:_____.

(Ord. O-84-105 § 1 (part), 1984).

14.13.070 Phased construction of public improvements.

The public improvements agreement may, if approved by the City Engineer, provide that the installation, construction, or reconstruction of public improvements shall be in specified phases. If construction in phases is approved, the provisions of this chapter shall apply to each phase as if it were a separate and distinct public improvements agreement. Any such phase shall be an integrated, self-contained project consisting of all public improvements necessary to serve the property to be developed as part of said phase, and phasing shall not be utilized to provide for construction of public improvements on a piecemeal basis. Each separate phase shall include, as a minimum, both sides of a street at least one block long, or equivalent development as determined by the City Engineer, with all attendant and related public improvements. (Ord. O-84-105 § 1 (part), 1984).

14.13.080 Collateral.

A. All collateral shall be for the benefit of the city, and shall indemnify the city for the cost of acquisition, installation, construction, or reconstruction of the required public improvements. Collateral shall be in the form of cash, surety bond, or irrevocable letter of credit, or a combination thereof, in a form approved by the City Attorney. Surety bonds shall be obtained from a financially responsible insurance company licensed in the State of Colorado and acceptable to the city. Irrevocable letters of credit shall be issued by a federally insured national or state banking institution or savings and loan having a capital and surplus of not less than ten million dollars or such other financial institution, including one with less capital and surplus, as may be acceptable to the city. Collateral shall be filed with the city when a building permit application is submitted to the city for land which is covered by a public improvements agreement or in those cases where a building permit application is not submitted, at a time determined appropriate by the City Engineer. However, under no circumstances will the posting of collateral by an applicant relieve the applicant of his responsibility to perform all obligations under the terms of the public improvements agreement. The exact amount of collateral to be required of an applicant shall be established by the City Engineer based on the following standards.

B. If the City Engineer's estimate of total cost for the acquisition, installation, construction, or reconstruction of public improvements exceeds ten thousand dollars, the applicant shall provide collateral to the city to guarantee the acquisition, installation, construction, or reconstruction of said public improvements in the amount of one hundred percent of said estimate. The exact percentage may be reduced from the normal one hundred percent requirement by the City Engineer based on the following standards:

1. If the public improvements are in place and dedications have been made prior to the filing of an application for a building permit for improvements constructed as part of a public improvements agreement, the city shall verify by inspection that the improvements in place are in satisfactory condition. If said improvements are in satisfactory condition, the collateral shall be a minimum of ten percent of the City Engineer's estimate of the total cost of public improvements. Said collateral shall be held to correct any defect in the materials or workmanship of the improvements which may subsequently be discovered and for which notice is given to the applicant within one year pursuant to the provisions of Section 14.13.060. If, however, upon inspection the improvements are found not to be in satisfactory condition and the city determines that repairs are necessary, additional collateral shall be required based upon the City Engineer's estimate of the costs of such needed repairs. It is not necessary that a certificate of acceptance be in effect in order for the applicant to be entitled to the collateral reductions provided in this chapter.

2. In those cases where public improvements have not been constructed and/or dedications have not been made prior to the filing of an application for a building permit, then the following standards shall apply:

- a. The first time an applicant enters into a public improvements agreement with the city, the collateral required for the public improvements shall be one hundred percent of the City Engineer's estimate of the total cost of the proposed public improvements.

- b. After the applicant has satisfactorily completed one public improvements agreement, including issuance of a certificate of acceptance, successful completion of the one-year warranty period, and return of all collateral by the city, the second time an applicant enters into a public improvements agreement with the city, the applicant may apply for a reduction of the collateral required. Upon review of the applicant's performance record on the initial project and approval of the City Engineer, the collateral required may be reduced to fifty percent of the City Engineer's estimate of the total cost of the proposed public improvements.

- c. After satisfactory completion of a second public improvements agreement by the applicant, including issuance of a certificate of acceptance, successful completion of the one-year warranty period and return of all collateral by the city, the applicant may apply for an additional reduction of the collateral required for all subsequent public improvement agreements. Upon review of the applicant's performance on the second project and approval of the City Engineer, the collateral required may be reduced to twenty-five percent of the City Engineer's estimate of the total cost of the proposed public improvements.

3. Notwithstanding the aforementioned provisions concerning possible collateral reductions, an applicant shall always be required to post collateral in the amount of one hundred percent of the estimated total cost of public improvements if the City Engineer determines that one of the following situations applies:

- a. The applicant fails to post the proper collateral for any public improvements after the required amount has been determined.

- b. The collateral posted by the applicant is inadequate and the applicant refuses to post additional collateral.

- c. It becomes necessary for the city to use the collateral posted by an applicant in order to complete or repair public improvements for which the collateral was initially posted.

d. The applicant fails to complete public improvements by the date specified in the public improvements agreement or by the date of any approved extensions.

4. If collateral requirements are increased to one hundred percent as a result of the City Engineer's determination that one of the situations in subsection (B)(3) of this section applies, the applicant will again be eligible for collateral reductions provided the public improvements are successfully completed, including issuance of a certificate of acceptance, successful completion of the one-year warranty period, and return of all collateral by the city, and upon review and approval of the applicant's performance record by the City Engineer.

5. Notwithstanding anything to the contrary contained in this section, any contractor performing work pursuant to a contract directly with the city shall adhere to the performance payment requirements set forth in the contract documents.

C. If the City Engineer's estimate of total cost for the acquisition, installation, construction, or reconstruction of public improvements is ten thousand dollars or less, no collateral shall be required, unless, at the time that the applicant requests a temporary certificate of occupancy for any building to be served by the improvements, acceptance of said improvements has not yet occurred, in which event, collateral in an amount equal to the greater of ten percent of the total costs of all public improvements to be constructed pursuant to a public improvements agreement or one hundred fifty percent of the estimated cost of such improvements remaining to be satisfactorily completed shall be provided before any temporary certificate of occupancy is issued for any structure to be served by such improvements. However, under no circumstances will collateral be accepted in lieu of acceptance of public improvements for purposes of a final certificate of occupancy.

D. Upon issuance of the certificate of acceptance, collateral in the amount of ten percent of the estimated total cost of the accepted improvements shall be provided or retained. Said collateral shall be applied to correct any defect in the materials and workmanship of the improvements constructed and installed for which notice and opportunity for correction has been given pursuant to Section 14.13.060. If no defect is discovered and notice thereof is given to the applicant within one year, all of said collateral shall be released.

E. If, at the expiration of one year from the date of issuance of the certificate of acceptance, the applicant has failed to correct any defect of which notice has been mailed to him, the city shall retain the collateral for forty-five additional days to allow time for correction of each such defect and for a claim to be made by the city against such collateral in the event that such defect has not been corrected within the time allowed by Section 14.13.060(E). At the end of such forty-five day period, the city shall release any collateral against which no written claim has been made by the city. (Ord. O-84-105 § 1 (part), 1984).

14.13.090 Certificate of occupancy.

A. No final certificate of occupancy shall be issued for any building constructed pursuant to a building permit unless a certificate of acceptance for all public improvements required as a condition of issuance of said permit has been issued by the City Engineer. At the discretion of the city, the applicant may obtain a temporary certificate of occupancy provided collateral has been posted pursuant to Section 14.13.080(C) in lieu of completion and acceptance of public improvements. However, no certificate of occupancy, temporary or final, shall be issued under any conditions for any building constructed pursuant to a building permit unless the following conditions are met:

1. Public improvements such as drainage improvements, driveways, parking areas, etc., have been constructed sufficient to ensure that the health, safety, and welfare of the public will be maintained;

2. All-weather access is provided and maintained.

B. Public improvements in place prior to building permit issuance that are damaged during construction shall be repaired by the applicant and accepted by the city prior to issuance of a certificate of occupancy. (Ord. O-84-105 § 1 (part), 1984).

14.13.100 Default of, or noncompliance with, public improvements agreement.

No building permit shall be issued to any applicant who is (1) a party to a public improvements agreement, or (2) a successor-in-interest of a party to such an agreement, if the City Engineer determines that the applicant or applicant's predecessor-in-interest is in any way in default or noncompliance with the agreement. Once a building permit has been issued to an applicant who is a party, or a successor-in-interest to a party, to a public improvements agreement, the continued performance of the agreement in accordance with its terms shall be a continuing condition precedent to the validity of said building permit, and the building official may immediately suspend said permit and all work being done thereunder upon any evidence satisfactory to the City Engineer of nonperformance, noncompliance, or breach of said public improvements agreement by said applicant. Withholding or suspension of building permits shall not be deemed to be an exclusive remedy for any breach of a public improvements agreement. (Ord. O-84-105 § 1 (part), 1984).