

**ORDINANCE NO. 25556-06-2022**

**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:**

  
\_\_\_\_\_  
for Richard A. McCracken  
Sr. Assistant City Attorney

  
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Jannette S. Goodall (Jul 7, 2022 09:25 CDT)  
Jannette S. Goodall  
City Secretary

ADOPTED: June 14, 2022

EFFECTIVE: June 15, 2022





**§ 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 ~~the financial guarantee for a CFA~~ 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 ~~the a development bond, cash deposit or letter of credit financial guarantee~~ 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 ~~financial guarantee~~ 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 ~~financial guarantee~~ 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 ~~financial guarantee development bond, cash deposit, or letter of credit.~~
- (e) The second reduction in a ~~financial guarantee~~ 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 ~~financial guarantee~~ 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 ~~financial guarantee~~ development bond, cash deposit, or letter of credit if more than thirty calendar days have passed since the first reduction in the financial guarantee.

~~(g) The Developer must pay the CFA amendment fee set forth in section 2-321 of the City Code to the City before a reduction in a financial guarantee will be authorized by the City.~~

#### **§ 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.



City of Fort Worth, Texas

# 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

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## 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.

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## 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.

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## 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

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Jennifer Ezernack 2737