

ORDINANCE NO. 2625

AN ORDINANCE OF THE CITY OF CHULA VISTA AMENDING CHAPTER 18.16 OF THE CHULA VISTA MUNICIPAL CODE IN ORDER TO ALLOW FOR THE POSTING BY DEVELOPERS OF ALTERNATIVE FORMS OF SECURITY FOR PUBLIC OR PRIVATE IMPROVEMENTS REQUIRING COMPLETION GUARANTIES IN FAVOR OF THE CITY AND MAKING MINOR TECHNICAL CORRECTIONS

WHEREAS, the City Council has determined that accepting alternative forms of security for the completion of public and private improvements within the City, under certain limited circumstances, is in the best interest of the City by reducing development costs for private developers; and,

WHEREAS, the City desires to amend Chapter 18.16 of the Chula Vista Municipal Code in order (1) to provide for the acceptance of such security, (2) to establish the terms and conditions for such acceptance, and (3) to make other minor technical corrections thereto;

NOW, THEREFORE, the City Council of the City of Chula Vista does ordain as follows:

SECTION I: Sections 18.16.150 and 18.16.220 of Chapter 18.16 of the Chula Vista Municipal Code are hereby amended to read as follows:

**Sec. 18.16.150 City council determination authority--Requirements to be met.**

- A. In the event that all improvements required or conditions imposed as conditions of approval under the provisions of this chapter or by law are not completed before the filing of the final map, the council shall enter into an agreement for the installation of improvements with the subdivider. In such case, when the agreement and bond, deposit, instrument of credit or alternative form of security have been approved by the city attorney as to form and by the director of public works as to sufficiency, the council may consider the final map. All signatures except those of the city clerk, city attorney, title company, clerk of the board of supervisors and the county recorder shall be affixed to the title sheet at least eight days prior to council consideration of the final map. The abstract of title certificate may be executed at any time prior to council consideration of the final map. The bond and agreement provided for in the preceding section shall be filed with the city clerk within sixty days from date of approval and acceptance of the final map. If compliance is not so had, then the council approval shall be automatically void and a final map must be resubmitted to the city council.
- B. The council shall approve said map if it is determined to be in conformity with the requirements of this chapter and the conditions of approval of the tentative map. If it is not in conformity, it shall be disapproved, and the council shall advise the subdivider of its disapproval and the reason or reasons therefor. The city council shall take action as provided herein within ten days or at its next meeting following the submittal of the report by the director of public works unless the time for taking action shall have been extended by mutual consent of the city council and the subdivider.

**Sec. 18.16.220 Construction prerequisites--Security arrangements--Generally.**

The subdivider shall file surety to guarantee completion of improvements with the improvement agreement as follows:

A. **Bonds.** All bonds shall be executed by a surety company authorized to transact a surety business in California, and shall be approved as to form by the City Attorney, and shall include:

1. A faithful performance bond in an amount deemed sufficient by the Director of Public Works to cover up to fifty percent (50%) of the total cost of all required on-site and adjacent off-site improvements including twenty-five percent (25%) of grading and slope planting expenses as applicable.
2. A labor and material bond in a like amount.
3. A monumentation bond in an amount stipulated by the subdivider's engineer to cover the cost of placing lot corners and other related monuments.

B. **Cash Deposits.** In lieu of the faithful performance and labor and material bonds, the subdivider may submit cash deposits under the conditions hereinafter described. Total cash deposit surety shall contain:

1. A faithful performance cash deposit in an amount deemed sufficient by the Director of Public Works to cover fifty percent (50%) of the total cost of all required on-site and adjacent off-site improvements including twenty-five percent (25%) of grading and slope planting expenses as applicable.
2. A labor and material cash deposit in a like amount.
3. A monumentation cash deposit in an amount stipulated by the subdivider's engineer to cover the cost of placing lot corners and other related monuments. Upon approval by the City Engineer of the required monument setting work, and upon subdivider's request, such cash deposit may be released as payment directly to the engineer or surveyor performing such work.

Disbursements from cash deposits shall be made in accordance with separate agreement between the subdivider and the city. The Required Bookkeeping Fee(s) shall be submitted with each such bond. Disbursements from a cash deposit filed with an approved escrow agency shall be made in accordance with separate agreement between the subdivider and the City. Disbursements from a cash deposit in any instance shall not be permitted unless and until authorized in writing by both the subdivider and the Director of Public Works.

C. **Instruments of Credit.** In lieu of the faithful performance and labor and material bonds or cash deposits, the subdivider may submit instruments of credit under the conditions hereinafter described. Such instruments of credit shall be issued by a financial institution subject to regulation by the state or federal government in a form and content as approved by the City Attorney, and shall pledge that the funds necessary to meet the performance are on deposit and guaranteed for payment and agree that the funds designated by the instrument shall become trust funds for the purposes set forth in the instrument. An instrument of credit shall be accompanied by a current statement of assets and a resolution of the Board of Directors of the responsible organization authorizing the issuance and the amount of the letter. An instrument of credit shall be accompanied

by a statement setting forth the date upon which the responsible organization was established. Instruments of credit shall provide surety as follows:

1. A faithful performance instrument of credit in an amount deemed sufficient by the Director of Public Works to cover fifty percent (50%) of the total cost of all required on-site and adjacent off-site improvements including twenty-five percent (25%) of grading and slope planting expenses as applicable.
  2. A labor and material instrument of credit in a like amount.
  3. A monumentation instrument of credit in an amount stipulated by the subdivider's engineer to cover the cost of placing lot corners and other related monuments.
- D. Other. Subject to the prior approval of City Council, in its sole discretion, in lieu of a surety bond, cash deposit or instrument of credit, alternative forms of security may be acceptable provided that: (1) in the determination of the City Engineer, the costs of completing the improvements being secured for a project do not exceed \$5,000,000; (2) in the determination of the Finance Director, the proposed security is backed by a guaranty and/or pledged assets with a net value equal to at least 50 times the estimated cost of the improvements being secured; and (3) in the determination of the City Attorney, there exists adequate remedies to access such security in the event that the party obligated to construct such improvements defaults on such obligation. The form of such security and the terms and conditions upon which such security may be accepted are subject to the approval of the City Attorney and the City Engineer. Such conditions shall include, at a minimum (a) the right of the City to require that conventional replacement security be submitted for any uncompleted secured improvements at the time a certificate of occupancy is issued for the project; and (b) developer's agreement to pay the City's attorneys fees and costs if the City must enforce its remedies under the alternative security arrangement.
- E. Endorsement of Certificates. The City Clerk and City Attorney shall not endorse or sign their respective certificates contained on the final map unless and until improvement security as hereinabove specified has been posted.
- F. Applicability to Parcel Maps. The improvement security requirements stipulated above are applicable to any parcel map for which the installation of any public improvements or grading is a condition of approval.

SECTION II: Sections 18.16.230, 18.16.240 and 18.16.250 of Chapter 18.16 of the Chula Vista Municipal Code are hereby deleted in their entirety:

SECTION III: Section 18.16.340 is hereby added to Chapter 18.16 of the Chula Vista Municipal Code to read as follows:

**Sec. 18.16.340 Improvement Security Required By Reason of Other than Subdivision of Land—Applicability of this Chapter.**

To the extent consistent with other applicable provisions of this Code, and all other applicable laws or regulations, the standards for performance, security obligations, and other requirements set forth in this Chapter with respect to subdivision improvements shall also apply, under circumstances approved by the

City Attorney and the City Engineer, to any and all other work or improvements constructed within the City requiring completion guaranties in favor of the City.

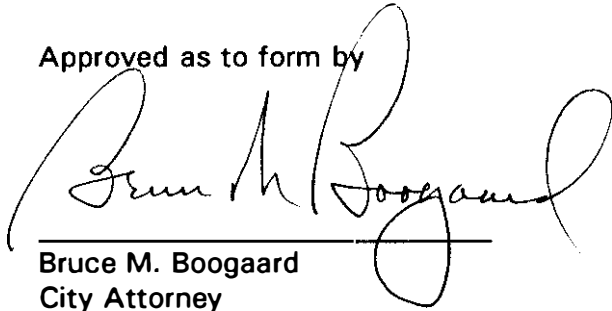
SECTION IV: This ordinance shall take effect and be in full force and effect thirty (30) days after its second reading and adoption.

Presented by

Approved as to form by



Chris Salomone  
Chris Salomone  
Community Development Director



Bruce M. Boogaard  
Bruce M. Boogaard  
City Attorney


PASSED, APPROVED and ADOPTED by the City Council of the City of Chula Vista, California, this 14th day of February, 1995, by the following vote:

AYES: Councilmembers: Fox, Moot, Padilla, Rindone, Horton

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ABSTAIN: Councilmembers: None

  
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Shirley Horton, Mayor

ATTEST:

  
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Beverly A. Authelet, City Clerk

STATE OF CALIFORNIA )  
COUNTY OF SAN DIEGO ) ss.  
CITY OF CHULA VISTA )

I, Beverly A. Authelet, City Clerk of the City of Chula Vista, California, do hereby certify that the foregoing Ordinance No. 2625 had its first reading on February 7, 1995, and its second reading and adoption at a regular meeting of said City Council on the 14th day of February, 1995.

Executed this 14th day of February, 1995.

  
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Beverly A. Authelet, City Clerk