

ORDINANCE 2005-21
Passed May 4, 2005

AN ORDINANCE AMENDING CHAPTER 1115 AND SECTION 1105.10 OF THE ZONING CODE OF THE CITY OF POWELL SETTING FORTH NEW SPECIFICATION FOR ACCEPTANCE OF PUBLIC IMPROVEMENTS.

WHEREAS, Staff has recommended to the Planning and Zoning Commission that it is desirable to amend Chapter 1115 and Section 1105.10 of the Zoning Code of the City of Powell as outlined on the attachment hereto, and

WHEREAS, The Planning and Zoning Commission has reviewed the proposed amendments and held a public hearing on April 13, 2005, and has given Council recommendation of approval.

NOW THEREFORE BE IT ORDAINED BY THE MUNICIPALITY OF POWELL, DELAWARE COUNTY, OHIO AS FOLLOWS:

Section 1: That the attached Zoning Code amendments are hereby added to the Codified Ordinances of the Municipality of Powell as set forth on the attachment hereto which is incorporated herein by reference.

Section 2: That it is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of the Council and that all deliberations of the Council and any of the decision making bodies of the Municipality of Powell which resulted in such formal actions were in meetings open to the public in compliance with all legal requirements of the Municipality of Powell, Delaware County, Ohio.

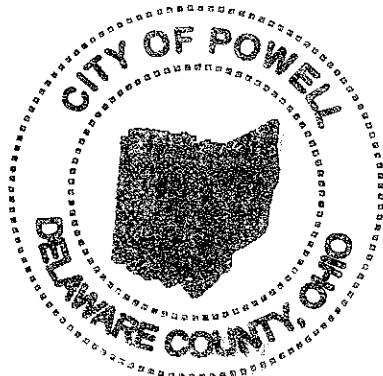
Section 3: That this Ordinance shall take effect at the earliest period allowed by law.

VOTE ON RULE SUSPENSION: Y___ N___

VOTE ON ORDINANCE 2005-21: Y 4 N 0

Dan Wiencek 5/17/05
Date
Dan Wiencek
Mayor

Dawn Nauman 4/18/05
Date
Dawn Nauman
Clerk of Council



This legislation has been posted in accordance with the City Charter on this date 4/18/05.
Dawn Nauman
Clerk of Council

CHAPTER 1115
Inspection Guarantees and Acceptance

- 1115.01 Purpose.
- 1115.02 Definitions.
- 1115.03 Inspection and recording site improvements.
- 1115.04 Construction Guarantee.
- 1115.05 Conditional acceptance.
- 1115.06 Maintenance Guarantee for improvements; ~~bond.~~
- 1115.07 Final Acceptance.
- 1115.99 Penalty.

CROSS REFERENCES

Engineer to approve plats; inspection of streets and acceptance - see Ohio R.C. 711.08, 711.09

Plat approval - see Ohio R.C. 711.09

1115.01 PURPOSE.

The purpose of this chapter is to establish the City inspection and acceptance procedures for any PUBLIC IMPROVEMENTS THAT WILL BECOME THE RESPONSIBILITY OF THE CITY. ~~construction within the City.~~

1115.02 DEFINITIONS.

The definitions of Chapter 1103 shall be used in this chapter unless the context of any section of this chapter specifically indicates that such definitions are not applicable.

1115.03 INSPECTION AND RECORDING SITE IMPROVEMENTS.

The materials, equipment and procedures used for the construction of all site improvements; including, BUT NOT NECESSARILY LIMITED TO, streets, sidewalks, storm sewers, and the portion of the sanitary sewers and waterlines which lay within THE public right-of-way, will be observed and tested. The location of these improvements shall be entered into the records of the City by the City Engineer. The cost of such field observation, testing and recording shall be paid by the Developer OR OWNER. The estimated cost of this shall be deposited with the City, AT, OR PRIOR TO, THE PRE-CONSTRUCTION MEETING prior to the beginning of construction. ~~or on a schedule approved by the City.~~ Upon WRITTEN application by the depositor TO THE CITY ENGINEER WITHIN SIX MONTHS FROM THE DATE OF FINAL ACCEPTANCE AS REQUIRED BY SECTION 1115.07, all unused monies so deposited shall be refunded to the depositor, ~~within six months from the date of final acceptance of all site improvements by the City.~~ If the depositor fails to make SUCH WRITTEN application for refund within ~~one year~~ SIX MONTHS of the project's Final Acceptance, the excess funds so deposited shall be forfeited to the City and credited to the General Fund.

1115.04 CONSTRUCTION GUARANTEE.

The Developer or Owner shall guarantee construction, as required in Section 1105.10(g) for the public improvements that will become the responsibility of the City, as required by the Delaware County Sewer District for public sanitary sewers AND as required by Del-Co Water Company for the waterlines.

1115.05 CONDITIONAL ACCEPTANCE.

Upon substantial completion of the construction as shown on the ~~drawings~~ APPROVED CONSTRUCTION PLANS AND DOCUMENTS AS REQUIRED BY SECTION 1109, AND AT THE WRITTEN REQUEST BY THE DEVELOPER OR OWNER TO THE CITY ENGINEER, the City ~~will~~ MAY GRANT Conditionally-acceptANCE, BY ADOPTED RESOLUTION OF CITY COUNCIL, OF the public construction that will become the responsibility of the City. This acceptance ~~will~~ SHALL be conditioned upon:

- (a) The posting of a Maintenance Guarantee AS REQUIRED IN SECTION 1115.06;
- (b) The submission of a MYLAR set AND COMPUTER FILES, WITH FORMAT AS REQUIRED BY THE CITY ENGINEER, of "as-built" drawings OF ALL PUBLIC IMPROVEMENTS THAT WILL BECOME THE RESPONSIBILITY OF THE CITY;
- (c) All major components of the public construction of the development being completed to the extent that does not present undue health, safety and welfare hazards to the citizens; ~~and~~
- (d) A guarantee being made that is satisfactory to the City ENGINEER AND LAW DIRECTOR for the completion of the unfinished work. This guarantee is in addition to the Maintenance Guarantee AS IDENTIFIED IN SECTION 1115.05 (a);
- (E) THE CITY SHALL NOT ISSUE ANY ZONING CERTIFICATES FOR BUILDING CONSTRUCTION RELATED TO THE DEVELOPMENT OF THE PUBLIC IMPROVEMENTS UNTIL SUCH TIME AS THE

CONDITIONAL ACCEPTANCE RESOLUTION REQUIRED BY THIS SECTION IS ADOPTED BY CITY COUNCIL. THE CITY MAY ISSUE ZONING CERTIFICATES FOR BUILDING CONSTRUCTION RELATED TO THE DEVELOPMENT FOLLOWING THE ADOPTION OF THE CONDITIONAL ACCEPTANCE RESOLUTION BY CITY COUNCIL AS REQUIRED BY THIS SECTION;

(F) THE DEVELOPER OR OWNER SHALL COMPLETE, WITHIN ONE YEAR FROM THE DATE OF APPROVAL OF THE CONDITIONAL ACCEPTANCE RESOLUTION BY CITY COUNCIL, ALL UNFINISHED WORK AND DEFICIENT ITEMS AS IDENTIFIED WITHIN THE CITY ENGINEER'S PUNCH LIST AT THE TIME OF CONDITIONAL ACCEPTANCE. PRIOR TO THE END OF THIS ONE YEAR PERIOD, THE DEVELOPER OR OWNER SHALL REQUEST, IN WRITING TO THE CITY ENGINEER, A FORMAL INSPECTION OF THE IMPROVEMENTS TO ENSURE THAT ALL UNFINISHED WORK AND DEFICIENT ITEMS HAVE BEEN COMPLETED BY THE END OF THE ONE YEAR PERIOD. SHALL THE DEVELOPER OR OWNER FAIL TO MEET THIS REQUIREMENT, THE CITY MAY NOT ISSUE ADDITIONAL ZONING CERTIFICATES FOR BUILDING CONSTRUCTION AND THE CITY MAY IMPOSE A FEE AS APPROVED BY CITY COUNCIL IN THE OFFICIAL FEE SCHEDULE. THE CITY MAY ALSO UTILIZE THE MAINTENANCE GUARANTEE TO COMPLETE ANY PORTION OF THE UNFINISHED WORK OR CITY ENGINEER'S PUNCH LIST OF DEFICIENT ITEMS.

1115.06 MAINTENANCE GUARANTEE FOR IMPROVEMENTS, ~~BOND~~.

(a) The DEVELOPER OR Owner shall guarantee all public improvements for a period of at least ~~one year~~ TWO YEARS from the date such improvements are RECEIVE CONDITIONAL ACCEPTANCE ~~conditionally accepted~~ by the City AS REQUIRED BY SECTION 1115.05, plus the time it takes to correct all defects and deficiencies found during the ~~one~~ TWO year period. This guarantee shall include, BUT NOT NECESSARILY BE LIMITED TO, any and all defects and deficiencies in workmanship, ~~and~~ materials, AND DAMAGE CAUSED BY OTHERS. The cost of all labor, materials, equipment and other incidentals required to maintain, repair and replace any or all of such improvements and to maintain them in good and proper condition, TO THE SATISFACTION OF THE CITY ENGINEER, ~~excluding ordinary wear and tear, but including, filling trenches and restoring lawns, sidewalks, yards, streets, sewers, pipe lines, etc.,~~ during the ~~one~~ TWO year guarantee period shall be assumed by such DEVELOPER OR Owner. In the event the DEVELOPER OR Owner fails to make such maintenance, repairs or replacements ~~within~~ PRIOR TO THE EXPIRATION OF THE MINIMUM TWO YEAR MAINTENANCE PERIOD, ~~a reasonable time after notice in writing by the City~~ or in the event of an emergency which may endanger life or property, the City may make or cause to be made, such repairs or replacements at the expense of such DEVELOPER OR Owner. In order to indemnify the City for the expense of any such repairs or replacements made by or at the direction of the City, a MAINTENANCE Guarantee shall be made by filing with the City evidence satisfactory to the City ENGINEER AND ~~Solicitor~~ LAW DIRECTOR of one of the following:

(1) A maintenance bond equal to ten percent (10%) of the ESTIMATED construction cost, AS APPROVED BY THE CITY ENGINEER, for the public improvements, THE MAINTENANCE BOND SHALL NOT EXPIRE UNTIL SUCH TIME AS THE PUBLIC IMPROVEMENTS RECEIVE FINAL ACCEPTANCE BY ADOPTION OF AN ORDINANCE BY THE CITY COUNCIL AS REQUIRED BY SECTION 1115.07.

(2) A certified check equal to ten percent (10%) of the estimated construction cost AS APPROVED BY THE CITY ENGINEER for public improvements, or

(3) Subject to the approval of the ~~Solicitor~~ LAW DIRECTOR, a Certificate of Deposit or an irrevocable Letter of Credit made out to the City, equal to ten percent of the estimated construction cost AS APPROVED BY THE CITY ENGINEER of the public improvements. THE CERTIFICATE OF DEPOSIT OR LETTER OF CREDIT SHALL NOT EXPIRE UNTIL SUCH TIME AS THE PUBLIC IMPROVEMENTS RECEIVE FINAL ACCEPTANCE BY ADOPTION OF AN ORDINANCE BY THE CITY COUNCIL AS REQUIRED BY SECTION 1115.07.

(b) AT THE WRITTEN REQUEST OF THE DEVELOPER OR OWNER TO THE CITY ENGINEER, the Maintenance Guarantee will be released upon Final Acceptance of the improvements by the City.

1115.07 FINAL ACCEPTANCE.

THE DEVELOPER OR OWNER SHALL REQUEST, IN WRITING TO THE CITY ENGINEER, FINAL ACCEPTANCE AND RELEASE OF THE MAINTENANCE GUARANTEE. Final Acceptance and release of the Maintenance Guarantee shall be given after all the public improvements have been satisfactorily maintained, all defects or deficiencies have been corrected and all expenses incurred by the City pursuant to the development have been paid in full.

1115.99 PENALTY.

(a) Any person who violates any provision of this chapter shall be served by the City with written notice stating the nature of the violation and providing a reasonable time limit for the satisfactory correction thereof. The offender shall, within the period of time stated in such notice, permanently cease all violations. Any person who continues any violation beyond the time limit provided for herein shall be fined not more than five hundred dollars (\$500.00) for each offense. A separate offense shall be deemed committed each day during or on which an offense occurs or continues.

(b) Any person who violates any of the provisions of this chapter shall become liable to the City of Powell for any expense, loss or damage occasioned by the City by reason of such violation.

Due to the changes above, there also need to be changes to Section 1105.10. They are as follows:

1105.10 OBLIGATIONS OF THE OWNER, CONSTRUCTION GUARANTEES, VIOLATIONS OF PROVISIONS.

(g) ~~Upon filing of the plat or easements for public improvements,~~ AT, OR PRIOR TO, THE PRE-CONSTRUCTION MEETING, PRIOR TO THE BEGINNING OF CONSTRUCTION OF THE PUBLIC IMPROVEMENTS, THE DEVELOPER OR OWNER SHALL GUARANTEE the construction of the public improvements ~~shall be guaranteed~~ by filing with the City evidence satisfactory to the City ENGINEER AND LAW DIRECTOR of one of the following:

(1) A performance bond equal to one hundred twenty percent (120%) of the estimated construction cost AS APPROVED BY THE CITY ENGINEER of the public improvements, with the provision that the bond proceeds shall be used to cover the cost of contractors, subcontractors, material men, laborers, and other costs to the City of Powell to complete the project upon default by the Owner. THE PERFORMANCE BOND SHALL NOT EXPIRE UNTIL SUCH TIME AS THE PUBLIC IMPROVEMENTS ARE COMPLETE AND RECEIVE CONDITIONAL ACCEPTANCE BY THE CITY AND AT SUCH TIME AS THE MAINTENANCE GUARANTEE IS POSTED; or

(2) A certified check equal to one hundred percent (100%) of the estimated construction cost of the public improvement; or

(3) Subject to the approval of the ~~Solicitor~~ LAW DIRECTOR, a Certificate of Deposit or an irrevocable Letter of Credit made out to the City, equal to one hundred percent (100%) of the estimated construction cost, AS APPROVED BY THE CITY ENGINEER, of the public improvements. THE CERTIFICATE OF DEPOSIT OR LETTER OF CREDIT SHALL NOT EXPIRE UNTIL SUCH TIME AS THE

PUBLIC IMPROVEMENTS ARE COMPLETE AND RECEIVE CONDITIONAL ACCEPTANCE BY THE CITY AND AT SUCH TIME AS THE MAINTENANCE GUARANTEE IS POSTED.