

*Ordinance Summary published in the Legal Record on \_\_\_\_\_ and the full text of the Ordinance made available at [www.desotoks.us](http://www.desotoks.us) for a minimum of 1 week from the date of publication*

### **Ordinance No. 2486 Summary**

On March 5, 2020, the City of De Soto, Kansas, adopted Ordinance No. 2486, amending Article 7 of the City Subdivision Regulations to update requirements for public improvements. A complete copy of this ordinance may be obtained or viewed free of charge at the Office of the City Clerk at City Hall, 32905 West 84<sup>th</sup> Street, De Soto, Kansas or at [www.desotoks.us](http://www.desotoks.us). This summary is certified by Patrick G. Reavey, De Soto City Attorney pursuant to K.S.A. 12-3001, et seq.

### **ORDINANCE NO. 2486**

#### **AN ORDINANCE ADOPTING THE PLANNING COMMISSION'S RECOMMENDATION TO REVISE ARTICLE 7 OF THE DE SOTO SUBDIVISION REGULATIONS (INCORPORATED AS APPENDIX D TO THE DE SOTO CITY CODE VIA SECTION 16-301 OF ARTICLE 3 OF CHAPTER XVI) TO UPDATE REQUIREMENTS FOR PUBLIC IMPROVEMENTS**

**WHEREAS**, the City Planning Commission has recommended that the Governing Body amend the City's Subdivision Regulations to address new requirements for public improvements; and

**WHEREAS**, all newspaper notifications were performed and a public hearing was properly held before the City Planning Commission as to the requested text amendment; and

**WHEREAS**, after review of the proposed text amendment, the Planning Commission recommended that said amendment be made part of the Zoning Regulations.

**NOW THEREFORE**, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF DE SOTO, KANSAS:

**Section 1.** That Article 7 of the City's Subdivision Regulations (incorporated as Appendix D to the De Soto City Code via Section 16-301 of Article 3 of Chapter XVI) is hereby amended to read as set forth below:

#### **ARTICLE 7. IMPROVEMENT PROCEDURES**

##### **Section 7.01 Improvement Completion and Improvement Agreement.**

A. Completion of Improvements. Before building permits are issued for any lot within a subdivision, all applicants shall be required to complete, in accordance with the approved construction drawings and to the satisfaction of the City Engineer, all the street, sanitary and other public improvements, including lot improvements on the individual lots of the subdivision, as

required in these regulations, specified in the Final Plat and as approved by the Planning Commission, and to dedicate those public improvements to the City of De Soto, free and clear of all liens and encumbrances on the dedicated property and public improvements. Notwithstanding the foregoing, there may be certain improvements that the City Engineer determines should be constructed and/or installed after a building permit is issued (hereafter "Delayed Improvements").

B. Subdivision Improvement Plans, Bonds, Notice to Proceed.

1. Improvement Plans. The applicant, at his sole expense, shall cause to have detailed construction drawings prepared for all necessary public improvements, as required by the preliminary and final plats. All drawings shall be prepared and stamped by a licensed engineer. The City Engineer shall have authority to review and approve said construction plans for conformance to these regulations and generally accepted engineering standards. All public improvement plans shall include an approval signature block on the cover sheet for the City Engineer.
2. Bonds: The applicant shall submit to the City performance and maintenance bonds, in the amount of 100% of the costs of construction for all public improvements. The form of the bonds shall be as approved by the City Engineer. Maintenance bonds shall be for a period of two years and shall warrant that all required public improvements will be free from defect for a period of two (2) years following the acceptance by the City Engineer of the last completed public improvement.

C. Delayed Improvements. When it is determined to be in the best interest of the city that certain public improvements not be constructed and/or installed until after the issuance of a building permit, the City Engineer may exercise discretion to authorize Delayed Improvements subject to the following:

1. If the Delayed Improvement adjoins or is part of a lot or parcel that is the subject of a City issued building permit, no final certificate of occupancy will be issued until the Delayed Improvement is complete and accepted by the City.
2. Delayed Improvements will only be permitted if developer, as part of the City's approval of the Final Plat, authorizes the City to install Delayed Improvements (which have been delayed for 5 or more years from the approval date of the Final Plat) and, subject to a 60-day notice period for the owner to pay, assess the costs associated with the same to the lot or parcel associated with the Delayed Improvement. Said developer authorization must extend to all land within the Final Plat and will be recorded so as to bind any future titleholders.
3. Notice to Proceed. Upon completion of the items outlined in Sections 7.01.B.1-2, the City Engineer shall issue a Notice to Proceed to construct the public improvements within the subdivision. No construction shall take place before the Notice to Proceed is issued.

D. Costs of Improvements. All required improvements shall be made by the developer, at its expense, without reimbursement by the local government.

E. Governmental Agencies. Governmental agencies, to which these contract and security provisions apply, may file, in lieu of the contract and security, a certified resolution or ordinance

from officers or agencies authorized to act on their behalf, agreeing to comply with the provisions of this Article.

F. Failure to Complete Improvement. In those cases where a security has been posted and required public improvements have not been installed within the validity period of the Final Plat, the Governing Body may then: (1) declare the development to be in default and require that all the improvements be installed regardless of the extent of the building development at the time the development is declared to be in default; (2) suspend Final Plat approval until the improvements are completed and record a document to that effect for the purpose of public notice; (3) obtain funds under the security and complete improvements itself or through a third party; (4) assign its right to receive funds under the security to any third party, including a subsequent owner of the subdivision for which improvements were not constructed, in whole or in part, in exchange for that subsequent owner's promise to complete improvements in the subdivision; and/or (5) exercise any other rights available under the law.

G. Acceptance of Dedication Offers. Acceptance of formal offers of dedication of streets, public areas, easements, and parks shall be by vote of the Governing Body. The approval of a subdivision plat by the Planning Commission, whether Preliminary or Final, shall not be deemed to constitute or imply the acceptance by the municipality of any street, easement, or park shown on the plat.

## **Section 7.02 Deferral of Required Improvements.**

A. The Governing Body may defer public improvements, subject to appropriate conditions, when in its judgment, such improvements are not requisite in the interests of the public health, safety, and general welfare, or that are inappropriate because of the inadequacy or non-existence of connecting facilities. Any determination to defer the provision of any public improvement must be made on the record and the reasons for the deferral or waiver also shall be expressly made on the record.

B. Whenever it is deemed necessary by the Governing Body to defer the construction of any improvement required under these regulations because of incompatible grades, future planning, inadequate or nonexistent connecting facilities, or for other reasons, the subdivider shall pay his share of the costs of the future improvements to the City prior to signing of the final subdivision plat by the Mayor. As an alternative the Governing Body may accept a separate improvement agreement secured by a letter of credit guaranteeing completion of the deferred improvements as specified by the Governing Body.

C. In addition to providing financial assurance for the future completion of deferred improvements, the subdivider shall submit a covenant of non-opposition to the future construction of the deferred improvements. Such covenant shall run with the land and bind all successors, heirs, and assignees of the subdivider.

## **Section 7.03 Inspection and Acceptance of Improvements.**

A. General Procedure and Fees. All improvements constructed or erected shall be subject to inspection by the City Engineer or the Office of Community Development. The cost attributable to all inspections shall be charged to and paid by the subdivider. Fees shall be due and payable upon demand of the City and no building permits or certificates of occupancy shall be issued until

all fees are paid. The subdivider shall give at least forty-eight (48) hours written notification to the inspector prior to the performance of any work.

B. Inspection Procedure. After proper notice is received, the City Inspector shall conduct an on-site inspection to determine that the work compiles with the approved construction drawings and specifications. If the inspector determines that such work does not comply with the approved construction drawings and specifications, said inspector shall so notify the subdivider, and may require the subdivider to terminate all further work until necessary steps are taken to correct any defect, deficiency, or deviation to the satisfaction of said inspector. Upon the correction of such defect, deficiency, or deviation, the subdivider shall notify the inspector for a re-inspection.

C. Final Inspection. Upon completion of all improvements within the area covered by the Final Plat, the subdivider shall notify the City Inspector who shall thereupon conduct a final inspection of all improvements installed.

D. As-Built Drawings. Before acceptance of any public improvement project, the applicant shall provide the City Inspector with one original set on mylar, one copy of the original set, and an electronic copy of the as-built drawings. Electronic copies shall be in a format compatible with the City's designated software.

The drawings must include results of a post-construction survey. The post-construction survey shall include, but shall not be limited to, the following:

1. Elevation of all structures, including sanitary sewer manholes, storm sewer inlets, pipe inverts, and structure top elevations;
2. Final adjusted stationing of all structures, including but not limited to valves, hydrants, and blow-off assemblies; and
3. Final adjusted contours as featured in the grading and drainage plans.

The as-built drawings must include a signed Engineer's Certification stating that the drawings are as-built and conform to construction records and post-construction survey information.

E. Formal Acceptance and Release or Reduction of Security.

1. Certificate of Satisfactory Completion. The City will not accept dedication of required improvements, nor release or reduce the amount of any security posted by the subdivider until the City Engineer has submitted a certificate stating that all required improvements have been satisfactorily completed and until (1) the applicant's engineer or surveyor has certified to the City Engineer, through submission of a detailed "as-built" drawing as required by Section 6.03.D, that the layout of the line and grade of all public improvements is in accordance with construction drawings for the subdivision, and (2) a title insurance policy has been furnished to and approved by City indicating that the improvements have been completed, are ready for dedication to the local government, and are free and clear of any and all liens and encumbrances.

Upon such approval and recommendation by the City Engineer, the City shall thereafter accept the improvements for dedication.

2. Reduction of Escrowed Funds and Security. The amount of the escrow shall be reduced upon actual acceptance of the dedication of public improvements and then only to the ratio that the cost of the public improvement for which dedication was accepted bears to the total cost of public improvements for the subdivision. In no event shall a cash escrow be reduced below twenty-five per cent (25%) of the principal amount. Funds held in the escrow account shall not be released to the subdivider, in whole or in part, except upon express written instructions of the Governing Body. At the end of the maintenance and warranty periods, all escrowed funds, if any, shall be released to the subdivider.

#### **Section 7.04 Maintenance of Improvements.**

A. The developer shall be required to maintain all required public improvements on the individual subdivided lots and provide for snow removal on streets and sidewalks until acceptance of the improvements by the Governing Body. If there are any certificates of occupancy on a street not dedicated to the City, the City may, on twelve (12) hours-notice, plow the street or effect emergency repairs and charge those costs to the developer. Following the acceptance of the dedication of any public improvement, the Governing Body may, in its sole discretion require the subdivider to maintain the improvement for a period of one (1) year from the date of acceptance.

#### **Section 7.05 Issuance of Building Permits and Certificates of Occupancy.**

A. Building Permits. Unless the required improvements have been installed and accepted by the Governing Body, or guaranteed or delayed according to Section 7.01, no building permits shall be issued for that lot or tract.

B. Occupancy Permits. No occupancy permit shall be issued until all improvements have been installed and accepted by the Governing Body.

#### **Section 7.06 Temporary Occupancy / Escrow Deposits for Improvements.**

A. Acceptance of Escrow Funds. Whenever, by reason of a period of inclement weather or the season of the year, any improvements required by the subdivision regulations cannot be performed, the Building Inspector may issue a certificate of occupancy, provided there is no danger to health, safety, or general welfare upon accepting a cash escrow deposit in an amount equal to one hundred fifty percent (150%) of the estimated cost of completion of the lot improvements. The subdivision improvement agreement and security covering the lot improvements shall remain in full force and effect.

B. Procedures on Escrow Fund. All required improvements for which escrow monies have been accepted by the Building Inspector at the time of issuance of a certificate of occupancy shall be installed by the subdivider as soon as weather permits and in no case more than a period of nine (9) months from the date of deposit and issuance of the certificate of occupancy. If the improvements have not been properly installed at the end of the time period, the Building Inspector shall give two (2) weeks written notice to the developer requiring it to install the improvements, and if they are not then installed properly, the Building Inspector may request the Governing Body to proceed to contract out the work for the installation of the necessary improvements in a sum not to exceed the amount of the escrow deposit. At the time of the issuance of the certificate of occupancy for which escrow monies are being deposited with the

Building Inspector, the developer shall obtain and file with the Building Inspector, prior to obtaining the certificate of occupancy, a notarized statement from the purchaser or purchasers of the premises authorizing the Building Inspector to install the improvements at the end of the nine (9) month period if the improvements have not been duly installed by the subdivider.

**Section 2.** City Staff is authorized to revise other portions of the City Code or Subdivision Regulations to be consistent with the above text amendments.

**Section 3.** This ordinance shall take effect and be enforced from and after its publication once in the official city newspaper.

**PASSED** by a 2/3 majority of the Governing Body of the City of De Soto, Kansas on the 5th day of March 2020 by the Governing Body.

(Seal)

\_\_\_\_\_  
Rick Walker, Mayor

ATTEST:

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Lana R. McPherson, MMC, City Clerk

APPROVED AS TO FORM:

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Patrick G. Reavey, City Attorney