

ORDINANCE NO. 2017-03-621

CITY OF TONTITOWN, WASHINGTON COUNTY, ARKANSAS

AN ORDINANCE AMENDING SECTION 152.031 MAINTENANCE GUARANTEE OF CHAPTER 152: DEVELOPMENT AND SUBDIVISION REGULATIONS OF THE TONTITOWN MUNICIPAL CODE IN ITS ENTIRETY IN ORDER TO CLARIFY AND AMEND MAINTENANCE GUARANTEE REQUIREMENTS OF THE CITY OF TONTITOWN AND DECLARING AN EMERGENCY

WHEREAS, on or about September 3, 2013, the City Council of Tontitown adopted Ordinance No. 2013-09-440 to clarify and amend requirements for maintenance guarantee for development and subdivision regulations within the city and said Ordinance No. 2013-09-440, as it has been amended from time to time and as was thereafter codified within in Chapter 152: DEVELOPMENT AND SUBDIVISION REGULATIONS in the Tontitown Municipal Code; and

WHEREAS, the City Council of the City of Tontitown now finds it to be in the best interest of the citizens of the City of Tontitown to amend Ordinance No. 2013-09-440 and the Tontitown Municipal Code Section 152.031 MAINTENANCE GUARANTEE in its entirety to clarify and amend maintenance guarantee requirements for development and subdivision regulations; and

WHEREAS, the Tontitown Planning Commission has reviewed the revisions of Section 152.031 MAINTENANCE GUARANTEE and recommends to the City Council that these revisions be approved; and

WHEREAS, having fully reviewed the proposed amendment, the Tontitown City Council has determined that 152.031 MAINTENANCE GUARANTEE of Chapter 152: DEVELOPMENT AND SUBDIVISION REGULATIONS, of the Tontitown Municipal Code should be revised and restated in its entirety as incorporated herein below.

NOW THEREFORE, BE IT ENACTED AND ORDAINED, by the City Council of the City of Tontitown, as follows:


Section 1. Section 152.031 MAINTENANCE GUARANTEE of Chapter 152: DEVELOPMENT AND SUBDIVISION REGULATIONS, of the Tontitown Municipal Code is hereby revised, in its entirety, and as attached hereto as Exhibit "A".

Section 2. In the event that any section, paragraph, subdivision, clause, phrase, or other provision or portion of this Ordinance shall be adjudged invalid or unconstitutional, the same shall not affect the validity of this Ordinance as a whole, or any part or provision, other than the part so decided to be invalid or unconstitutional, and the remaining provisions of this Ordinance shall be construed as if such invalid, unenforceable or unconstitutional provision or provisions had never been contained herein.

Section 3. Declaration of Emergency. It is hereby found and determined that Section 152.031 MAINTENANCE GUARANTEE of Chapter 152: DEVELOPMENT AND SUBDIVISION REGULATIONS, of the Tontitown Municipal Code should be immediately amended in its entirety in clarify and amend maintenance guarantee requirements for development and subdivision regulations within the City of Tontitown. Therefore, an emergency is declared to exist, and this act, being immediately necessary for the preservation and protection of the public peace, health, safety and welfare of the City and its citizens, shall become effective on the date of its passage and approval by the Mayor. If the Ordinance is neither approved nor vetoed by the Mayor, it shall become effective on the expiration of the period of time during which the Mayor may veto this Ordinance. If the Ordinance is vetoed by the Mayor and the veto is overridden by the City Council, it shall become effective on the date the City Council overrides the veto.

PASSED AND APPROVED this 7th day of March 2017.

APPROVED:



Paul Colvin, Jr., Mayor

ATTEST:



Rhonda Ardemagni, City Recorder-Treasurer

§ 152.031 MAINTENANCE GUARANTEE.

No less than three (3) year's maintenance by the developer shall be assured prior to the filing of a plat. One of the following methods, dependent upon the method utilized, in § 152.031, must be followed:

(A) *Certificate of completion of improvements.* If a certificate of completion of improvements is submitted prior to filing of the final plat, a maintenance bond or letter of credit must also be submitted to the city prior to the filing of the final plat. The maintenance bond, cash deposit or letter of credit must meet the following conditions:

(1) It must be in an amount of 50% of the value of the donated assets. The value of the donated assets shall be as estimated by the engineer-of-record and agreed upon by the Planning Commission.

(2) It must be irrevocable and shall list the city as sole beneficiary.

(3) It must be in a form approved by the City Attorney.

(4) It must run for no less than three (3) years.

(5) At the end of three (3) years, if the improvements have not been adequately maintained, as determined by the city staff after consultation with the city's engineer, the city shall be entitled to payment upon making demand for payment under the terms of the maintenance bond, cash deposit or letter of credit. The city shall be entitled to use all of the money secured by the maintenance bond, cash deposit or letter of credit to assure the proper maintenance of the improvement.

(6) The subdivider shall not be entitled to any excess monies until the maintenance of the improvements in the subdivision has been satisfactorily completed.

(B) *Performance bond.*

(1) If a performance bond is posted to assure completion of the improvements, that performance bond must also include provisions that automatically convert it to a maintenance bond upon completion of the improvements or on the date the performance bond lapses, whichever comes first.

(2) Such maintenance bond shall meet all the conditions in certificate of completion of improvements listed in division (A) above.

(C) *Cash deposit.*

(1) If a cashier's check is provided to assure completion of the improvements, that cashier's check shall be cashed upon completion of the improvements or three (3) years from submittal, whichever comes first.

(2) Upon completion of the improvements, a sum in the amount of 50% of the value of donated assets shall be held by the city for a period of three (3) years to assure proper maintenance. Any amount above this sum shall be returned to the provider of the cashier's check.

(3) At the end of three (3) years, this sum shall be used to perform needed maintenance. Any amount not needed for proper maintenance, as determined by city staff, after consultation with the city's engineer, will be returned to the provider of the cashier's check.

(D) *Irrevocable letter of credit.*

(1) If an irrevocable performance letter of credit is posted to assure completion of the improvements, that letter of credit shall include provisions that automatically convert it to an irrevocable maintenance letter of credit upon completion of the improvements or on the date the performance letter of credit lapses, whichever comes first.

(2) Such maintenance letter of credit shall meet all conditions in certificate of completion of improvements, division (A) above.

(3) When the city staff has received notification that one of the heretofore described mechanisms assuring completion of the improvements have been executed, the Planning Commission may certify final plat approval.

(Ord. 2013-04-417, passed 4-2-13; Am. Ord. 2013-09-440, § 152.300.09, passed 9-3-13)