



GUIDELINES FOR POSTING PERFORMANCE AND MAINTENANCE AGREEMENTS/SURETIES FOR FINAL PLATS AND SITE PLANS

<http://www.franklintn.gov>

<http://www.franklintn.gov/government/planning-and-sustainability>

Since the launch of the City's new website in July 2014, web addresses noted in previous versions of this document have changed to those reflected in this revision and those dated July 2014 and after.

(May be revised without notice)

The effective date of the new *City of Franklin Zoning Ordinance* was July 1, 2008. The following guidelines include changes effective with the new Zoning Ordinance, along with amendments pertaining to this subject, Ordinances 2009-63, 2012-45 and 2013-03. The performance, maintenance and surety process underwent changes for all projects approved beginning with the July 24, 2008 Franklin Municipal Planning Commission (FMPC) meeting. Some changes in meeting types and dates also occurred for those projects previously approved. **The following is a brief summary of changes**, followed by specific information related to all stages of the performance and maintenance agreement process. For more information, please consult the sections which follow the bulleted segment.

An amendment regarding reductions available for all improvements, **excluding landscaping**, was approved by the Board of Mayor and Aldermen (BOMA) on January 12, 2010 (Ordinance 2009-63). See item 4 in this document for details.

Ordinance 2012-45, allowing for **some** residential subdivision streets to be final topped prior to 90% of the homes being constructed and having received a Certificate of Occupancy, was approved by the BOMA on October 23, 2012. Please see the City of Franklin Zoning Ordinance at <http://www.franklintn.gov/government/planning-and-sustainability/zoning-ordinance>, §6.3.4(2) for details, and **note there are specific conditions that must be met. Applicants must have prior approval of the Streets Department Director or their designee, before proceeding with application of the final topcoat.** When streets improvements are final topped and performance is released/maintenance established under Ordinance 2012-45, Lot Bonds/Contractors Security Deposit may be required, and the maintenance period will be longer than the typical one year.

IMPORTANT NOTE: AS-BUILTS

As-built Requirements and Checklists have been compiled and are available by clicking the following links:

DRAINAGE AS-BUILTS <http://www.franklintn.gov/home/showdocument?id=22404>

WATER AND SEWER AS-BUILTS: <http://www.franklintn.gov/home/showdocument?id=22644>

Please note that if your project has the requirement to install water, sewer and/or drainage improvements, once those improvements are complete, in addition to the project engineer signoff release request (see Item 4), as-builts shall also be submitted. Submit two full-size paper copies, along with a digital CAD and PDF. Do not combine improvements on the same sheets (example: water and sewer must be prepared and presented as separate as-builts). Since as-builts are required as a part of performance release/establish maintenance, the most efficient method to submit as-builts is at the same time as the project engineer's signoff release request. Submit as-builts and Action Request forms as follows:

- ❖ Two full-size paper copies of as-builts, along with a digital CAD and PDF.
 - **Drainage as-builts** shall be submitted to the Planning Department, along with the project engineer signoff (Action Request form) in order to submit for an agenda and achieve possible release of performance/establish maintenance (see Item 4 – Action Request form).
 - **Water and/or Sewer as-builts** (*prepare on separate sheets—do not combine water and sewer*) shall be submitted to the Water Management Department, ATTN: Water/Sewer Inspector. **The project engineer signoff (Action Request form) shall be submitted to the Planning Department in order to submit for an agenda**, and achieve possible release of performance/establish maintenance (see Item 4 – Action Request form).

- **Meeting dates and Applicable Deadlines**

There are two meeting types at which an improvement may be considered: Administrative Action or Franklin Municipal Planning Commission (FMPC). See the last page of this document for a schedule of meeting dates and deadlines. If you are viewing this document on the City's website, the aforementioned schedule can be found at the following link: <http://www.franklintn.gov/home/showdocument?id=22646>.

- **Administrative Action agenda**

The **Administrative Action** agenda occurs on the **third Friday** of each month, with the exception of November and December, which, due to the Thanksgiving and Christmas holidays, shall be on the second Friday. **The following project types will be considered as part of the Administrative Action agenda.** Please see the schedule on the last page of this document for meeting dates and deadlines.

 - **All final plat improvements, with the following exception:** Those final plat improvements with a Staff recommendation of Call shall be moved to that month's FMPC agenda.
 - **Site plan improvements where the performance agreement posting date** (date the fully executed performance agreement is received from the applicant in the Planning and Sustainability Department) **is less than three years from the date of the meeting, with the following exception:** Those site plan improvements with a Staff recommendation of Call shall be moved to that month's FMPC agenda, regardless of the performance agreement posting date.

Administrative Action agendas shall be posted on the City of Franklin website at <http://www.franklintn.gov/your-government/planning-and-sustainability/performance-agreements-surety-> under the caption of "Administrative Action Notices" by the

second Friday of each month, not later than 7:00 p.m., with the following exceptions: For the months of November and December, the agenda will be posted not later than the first Friday of the month by 7:00 p.m. For any year in which Good Friday falls on the third Friday of the month of April, the agenda shall be posted on the Thursday preceding the second Friday, for action on the third Thursday of the month.

- **Franklin Municipal Planning Commission agenda**

The monthly FMPC meeting is held on the fourth Thursday of each month, with the exception of November and December, which, due to the Thanksgiving and Christmas holidays, shall be the third Thursday. The following project types shall be considered as part of the FMPC agenda.

- **Site plan** improvements where the performance agreement posting date is more than three years from the date of the FMPC meeting, and those site plan improvements with a Staff recommendation of Call, regardless of the performance agreement posting date.
- **Final plat** improvements with a Staff recommendation of Call.

FMPC agendas shall be printed in the Williamson Herald on the Thursday preceding the monthly FMPC meeting date. The FMPC agenda will also be available on the City's website approximately one week prior to the FMPC meeting by visiting <http://www.franklintn.gov/government/planning-and-sustainability/planning-commission/planning-commission-agenda>, then clicking on the franklintn.legistar link.

Applicable monthly deadlines for FMPC meetings are the same as Administrative Action deadlines. Columns one and two of the schedule printed on the last page of this document represent dates which are the same as for FMPC meetings held in the same month as the Administrative Action month referenced in column five. (If you are viewing this document on the City's website, you may find the aforementioned schedule at the following link:

<http://www.franklintn.gov/home/showdocument?id=22646>.

- **Performance Agreements**

For those projects approved by the FMPC on July 24, 2008 or later, the Performance Agreement shall contain a recital the applicant agrees to have a registered professional engineer and/or registered landscape architect, depending on the type of improvements, involved in the construction phase of the project for the purpose of monitoring construction in order to determine conformity with approved plans and specifications of City of Franklin. All costs for the aforementioned professional services shall be borne by the applicant.

GENERAL GUIDELINES

Performance and maintenance agreements posted for **FINAL PLATS** can be reduced, released or extended by the appropriate City departments. Action is taken on agreements for final plats on the third Friday of each month, except the month of November and December (see above). An agenda is posted on the City of Franklin website no later than 7:00 p.m. on the second Friday of each month at the following link

<http://www.franklintn.gov/government/planning-and-sustainability/performance-agreements-surety> under the caption of “Administrative Action Notices.”

Performance and maintenance agreements posted for **SITE PLANS** may be reduced, released or extended by the appropriate City departments on the schedule listed above for final plats if the performance agreement posting date is less than three years prior to the date of the meeting. Subsequent action shall be taken by the FMPC. Applicants or their representative are encouraged to attend the FMPC meeting, even if they agree with the staff recommendation. The Planning Commission may defer or disapprove an application/request unless someone is present to represent it. The FMPC meets on the fourth Thursday of each month, at 7:00 p.m. in the City Hall Boardroom, with the exception of the month of November and December. Due to the Thanksgiving and Christmas holidays, the FMPC will meet on the third Thursday at 7:00 p.m.

Note: The FMPC has started taking a closer look at all performance and maintenance agreements that have required multiple extensions and are not progressing in a timely fashion. It is intended that improvements shall be completed within the initial period of time covered by the performance agreement, or with no more than one or two extensions, except in those cases with extenuating circumstances.

LANDSCAPING AGREEMENTS: The procedure described in this document also applies to performance and maintenance agreements for landscaping, with the exception that **no items regarding reducing or releasing performance and maintenance agreements for landscaping can be placed on any agenda for December, February and March, or July through September.** The FMPC has directed the Planning and Sustainability Department **not** to perform landscaping inspections during these months when the landscaping is dormant. Landscaping agreements shall not have expiration dates during the above months.

1. Once a final plat or site plan is approved, if a condition of approval was that a performance agreement/surety be posted, then the applicant shall contact Paula Kortas, City of Franklin Planning and Sustainability Department, 615-550-6736, concerning information needed for preparation of the performance agreement. After the necessary information has been provided, the agreement will be prepared and sent to the applicant. The agreement is a legal document, which binds the applicant to the City and states that the applicant will install the public improvements, and that if the applicant does not, then the City has the right to call the agreement.
2. The applicant shall have the performance agreement signed and notarized and return it to the Planning and Sustainability Department, along with the surety for the agreement (Letters of Credit will be sent to the City directly from the Bank). Irrevocable Standby Letters of credit and cashier’s checks are the **ONLY** surety accepted. See 2a for requirements related to letters of credit.
 - a. **LETTERS OF CREDIT:**
If a letter of credit will be used to secure the agreement, a cover letter will be sent to the applicant stating the information as it must appear on the letter of credit, such as beneficiary, amount, and any verbatim statements. According to *City of Franklin Zoning Ordinance*, all letters of credit are required to contain a

clause that states they are to be renewed automatically (sometimes referred to as evergreen). The letter of credit shall state that a minimum sixty (60) days notice shall be sent from the issuing bank to the City by a receipted means, should the bank elect not to renew the letter of credit. Also required is a presentation location within the physical limits of Williamson and/or Davidson County, Tennessee. The letter of credit must state that documents calling for payment of the letter of credit may be presented at a branch location in Williamson or Davidson County. If the issuing bank is not located within Williamson or Davidson County, Tennessee, it must have a reciprocal agreement with a bank located within Williamson and/or Davidson County, Tennessee, (often referred to as Advising or Confirming Bank) and the letter of credit must state that presentation of the documents calling for payment of the letter of credit may be made at that bank's location.

Alternatively, an amendment to the Zoning Ordinance was approved March 26, 2013, Ordinance 2013-03 (Section VI), allowing financial institutions the option to provide a means for facsimile presentation, under the following conditions:

- (1) Financial institution must operate a minimum of one branch or office open to the public, located in Williamson and/or Davidson County, Tennessee.
- (2) Presentation of draw documents by Beneficiary shall also be permitted via overnight courier service to the financial institution's department where issuance of letters of credit transpires.
- (3) Facsimile number(s) for presentation shall be printed in the letter of credit, with a statement that modifications to, or discontinuance of, facsimile numbers shall be provided to Beneficiary via amendment.
- (4) A means of backup shall be provided in the letter of credit, for an occasion when the facsimile number is inoperable for any reason.
 - (a) Backup shall include either a physical location address in Williamson or Davidson County, Tennessee, to be accessed only if facsimile number is inoperable for any reason; **or**,
 - (b) Financial institution shall print in the letter of credit that if for any reason the facsimile number noted in the letter of credit is inoperable at a time when Beneficiary is attempting to present draw documents, then draw documents shall be considered timely when financial institution is presented with a facsimile machine transmittal showing an attempted presentation by Beneficiary, along with satisfactory draw documents.

As stated above, all letters of credit are required to be automatically renewed, containing a clause that requires a minimum of sixty (60) days prior banker's notice, should the bank decide it does not intend to renew the letter of credit, delivered to the Planning and Sustainability Department by overnight courier (or other receipted delivery means such as certified mail that requires a recipient signature upon delivery).

b. **CASHIER'S CHECKS:**

If a cashier's check is used to secure the agreement, the cashier's check shall be made payable to the *City of Franklin, Tennessee*. The funds will be deposited into a NON-INTEREST BEARING escrow account. If the performance agreement is reduced at a later time, the City will reimburse the applicant for the difference between the original performance agreement amount and the reduced performance agreement amount. When the performance agreement is released and placed under a maintenance agreement, the City will reimburse the applicant for the difference between the performance agreement amount and the maintenance agreement amount, once the fully executed maintenance agreement is returned to the Planning and Sustainability Department. When the maintenance agreement is released, the City will reimburse the applicant for the maintenance agreement amount.

3. Once the applicant has complied with ALL CONDITIONS of approval for a **FINAL PLAT**, including the posting of agreements and surety, the appropriate City department directors will sign the final plat and the applicant shall have it recorded in the Williamson County Register's Office. Note that if the project is residential, the sureties for the site plan related to the final plat must also be posted prior to the final plat being signed. Once the final plat has been recorded, the Building and Neighborhood Services Department can issue building permits.

Once the applicant has complied with ALL CONDITIONS of approval for a **SITE PLAN**, including the posting of agreements and surety, the Building and Neighborhood Services Department can then issue a building permit.

4. The time length of a performance agreement is up to one year from the date of approval of the final plat or site plan. However, an applicant may request an inspection for the purpose of reducing or releasing a performance agreement as soon as the improvements are 50% complete (for a reduction) or 100% complete (for a release to maintenance). Landscaping improvements are eligible for a 25% reduction when at least 50% complete. All other improvements are eligible for a 50% reduction when at least 50% complete.

On January 12, 2010 the Board of Mayor and Aldermen approved a Zoning Ordinance amendment which increases the available one-time reduction for performance agreement improvements from 50%, to a maximum of 75%. **Please note that this amendment does not apply to landscaping related improvements.** Landscaping items

are still limited to a maximum 25% reduction when at least 50% of the material is installed and living.

Improvements are still limited to one reduction while in the performance phase. *The only exception to this one reduction rule is if an improvement has been previously reduced by half prior to this January 2010 amendment.* Applicants may apply for a further reduction to a maximum of 75% in this instance.

Applicants may still choose to apply for a 50% reduction when at least 50% complete or wait to apply for a reduction until 75% or more is complete, in order to obtain a larger reduction. If an applicant chooses to request a reduction when only 50% complete, that reduction will count as the one-time reduction allowable while in performance.

Action Request form: Requests for reduction or release must contain a statement or letter from the project engineer, with the engineer's seal, signature and date, that the improvements have been completed in accordance with the approved plans (or from the landscape architect, in the case of landscaping agreements) in order to be presented on a FMPC agenda or Administrative Action agenda for possible reduction or release of performance. The request can be in the form of a signed/sealed/dated letter from the project engineer or landscape architect, or a completed “**Action Request**” form, which may be printed from the City of Franklin’s website at the following link <http://www.franklintn.gov/home/showdocument?id=22082>. The deadline for a request of an earlier agenda date is the first day of the month preceding the meeting date (example: a request received by April 1 will be placed on May’s agenda). Action Request forms have been updated to accommodate the new 75% reduction request, by requesting additional information from the project engineer signing off on the improvement. The following items have been added:

- ***If requesting reduction, indicate amount complete: _____%***
- ***If requesting reduction and less than 90% complete, estimate remaining amount to complete this improvement: \$ _____***
- **Reductions shall not exceed 75%, or minimum maintenance amount.**

It is recommended that when the applicant is discussing the business relationship they will have with their engineer and/or landscape architect, they keep in mind they will need to maintain a professional relationship for purposes of submission of Action Request forms upon the completion of the improvement, as well as inspection during the construction phase (see next paragraph).

For those projects approved by the FMPC on July 24, 2008 or later, *The City of Franklin Zoning Ordinance* requires the applicant to have a registered professional engineer and/or registered landscape architect, depending on the type of improvements, involved in the construction phase of the project for the purpose of monitoring construction in order to determine conformity with approved plans and specifications of City of Franklin. All costs for the aforementioned professional services shall be borne by the applicant.

5. If the applicant does not request an earlier inspection, the applicant will notified via mail, approximately 60 days before the expiration that the performance agreement is about to expire. It is the applicant's responsibility to keep the Surety Coordinator informed of any address and/or phone number changes. The notification will include the date that the agreement will be considered by the appropriate City departments or by the FMPC, along with an Action Request form that is the be completed by the applicant and/or the applicant's project engineer/landscape architect. **It is important to return the Action Request form by the due date.**

If the public improvements have been 50% or more completed, the applicant may request that an inspection be performed for the purpose of reducing the performance agreement in an amount ranging from 50 – 75%. See Item 4 above for further information related to reductions. Performance agreements can be reduced **ONE TIME ONLY**. If the improvements have been fully completed, the applicant may request an inspection for the purpose of releasing the performance agreement to the mandatory one-year maintenance phase. If the improvements have not been completed, the applicant shall request an extension of the performance agreement. Depending on the circumstances, the extension may be granted, or the agreement may be called.

6. Once the improvements have been completed and have passed the performance inspection, the performance agreement will be released with the condition that a one-year maintenance agreement be established. Maintenance agreement amounts are generally established at 10% of the original performance agreement amount, or a minimum of \$2,500.00, whichever is greater, with the exception of landscaping. Maintenance agreement amounts for landscaping are approximately 25% of the original performance agreement amount, or a minimum of \$3,000.00, whichever is greater. Maintenance agreements must remain in place for the entire one-year time period and shall not be further reduced. The applicant will be notified via mail of the action taken by the appropriate departments through Administrative Action or the FMPC. If the performance agreement was released and the improvements were placed under maintenance, the applicant will be sent a maintenance agreement (similar to the performance agreement). The applicant shall have the maintenance agreement signed and notarized, and return it to the Planning and Sustainability Department. If the maintenance agreement will be secured by the same letter of credit that secured the performance agreement, instructions for amendments needed to the letter of credit will be included in a letter accompanying the maintenance agreement. If the performance agreement was secured with cash, a reimbursement check for the difference in the amount of the performance and maintenance agreement will be sent to the applicant when the fully executed maintenance agreement is returned.
7. Approximately 60 days prior to the expiration date of the maintenance agreement, the applicant will be notified via mail that the agreement is about to expire. This notification will include the date that the agreement will be considered by the appropriate City departments or the FMPC, and the date the applicant shall have the improvement ready for inspection. If the improvements have been properly maintained, the maintenance agreement will be released. If the improvements have not been maintained, the maintenance agreement will either be called or be extended for

up to one year. If a maintenance agreement is extended with a punchlist, the applicant may correct the deficiencies and contact the Surety Coordinator for placement on the next available agenda. It is not required that the maintenance agreement fulfill the entire extension, as the initial one year of maintenance has been satisfied. It is recommended, but not required, that the applicant have the improvement inspected to be sure it has been properly maintained prior to the City inspection date noted on the letter.

8. The applicant will be notified via mail of the action taken on the maintenance agreement. Once the maintenance agreement has been released, the applicant's obligation for that improvement is complete. If the maintenance agreement is secured with cash, the City will send the applicant a reimbursement check for the maintenance agreement amount.

Summary of links mentioned in this document:

City of Franklin website address:

<http://www.franklintn.gov>

Planning and Sustainability Department:

<http://www.franklintn.gov/government/planning-and-sustainability>

Action Request form:

<http://www.franklintn.gov/home/showdocument?id=22082>

Administrative Action agenda:

<http://www.franklintn.gov/government/planning-and-sustainability/performance-agreements-surety>

Franklin Municipal Planning Commission agenda:

<http://www.franklintn.gov/government/planning-and-sustainability/planning-commission/planning-commission-agenda>

Administrative Action Date and Deadlines Schedule

<http://www.franklintn.gov/home/showdocument?id=22646>

Ordinance 2012-45 (see §6.3.4(2) Zoning Ordinance)

<http://www.franklintn.gov/government/planning-and-sustainability/zoning-ordinance>

Drainage As-built Requirements and Checklist

<http://www.franklintn.gov/home/showdocument?id=22404>

Water and Sanitary Sewer As-built Requirements and Checklist

<http://www.franklintn.gov/home/showdocument?id=22644>