

### ***15.1 PURPOSE AND INTENT***

The purpose of these requirements is to establish an orderly process to develop land within the jurisdiction of the City of Belmont consistent with standard development practices and terminology. It is the intent of this Chapter to provide a clear and comprehensible development process that is fair and equitable to all interests including the petitioners, affected neighbors, City staff and related agencies, the planning board, and the city council.

It is also the intent of this Chapter to ensure that land, parcels, and lots are appropriately subdivided so that their use and development complies with all applicable requirements of this Code and to ensure that compliance is in a manner generally harmonious with surrounding properties and without the endangerment of the health, safety, and general welfare of existing, prospective, or future owners, users, surrounding and adjoining properties, and the public. This Chapter provides for adequate and efficient provision of facilities and/or infrastructure, and the dedication of land, rights-of-way, and easements, so as not to burden the fiscal resources of the City. These provisions include the construction of buildings and utilities, streets and sidewalks, landscaping, recreational open spaces, and other provisions required for the public good of the City of Belmont.

The Belmont city council shall adopt from time to time, a schedule of fees and review schedule for application and processing as specified in this ordinance.

This process, as established, provides the applicant an opportunity to submit a Schematic Design for review and approval by the City prior to the submission of Construction Documents. This Schematic Design shall be the guiding document in the review of the Construction Documents for final approval and permitting.

### ***15.2 APPLICABILITY***

The Provisions of this Section shall be applicable to all Minor Subdivisions, Site Plans, Major Development Plans, and Vested Rights Applications. In general, this review process shall be used for all development other than individual detached homes (as permitted) and their accessory structures on a single lot. The planning Director or designee may waive the required Development Review Process only in the following cases when he determines that the submission of a Development Plan in accordance with this Chapter would serve no useful purpose:

- A. Accessory Structures for all building types; or
- B. Any enlargement of a principal building by less than twenty percent (20%) of its existing size provided such enlargement will not result in site or landscaping improvements or the expansion of parking areas; or
- C. A change in principal use where such change would not result in a change in lot coverage, off-street parking access or other external site characteristics.

For the purposes of this Chapter, the following definitions shall apply:

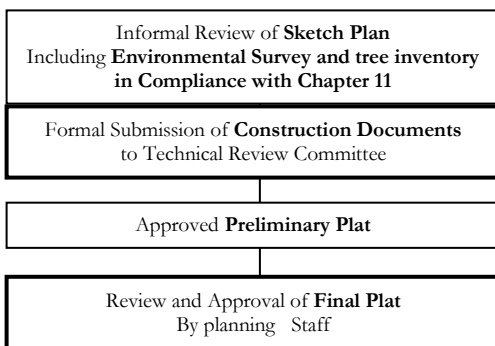
**Site Plan:** Development Plan for individual building or buildings not exceeding 30,000 square feet in gross floor area on previously platted lots

**Minor Subdivision:** Development Plan involving the subdivision of land into seven (7) residential lots or fewer, or up to three (3) non-residential lots.

**Major Development Plan:** Development Plan involving any of the following categories: the subdivision of land into eight (8) or more lots; individual building(s) exceeding 30,000 square feet in gross floor area; or, the subdivision of land into four (4) or more non-residential lots.

**A sign notifying the public of these development types and including special use permit and conventional zoning map amendments, shall be posted in conjunction with the initial application.** The applicant will utilize the city’s sign template and shall be responsible for the cost of production and installation. Final design of the sign shall be reviewed and approved by the planning department prior to installation. The number and location of signs shall be determined by the planning department based on the street frontages of the development.

**15.3 MINOR SUBDIVISION REVIEW PROCESS**



Minor Subdivisions will be approved administratively by the planning department in compliance with the process outlined in the flow chart provided in this section and the LDC.

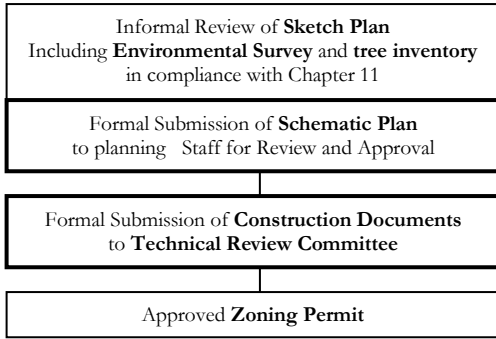
The Applicant may submit a Sketch Plan for informal review by the planning department. Upon a determination of both completeness and general conformity with this Code, the planning department will notify the applicant to proceed to the next step.

The Applicant shall then submit the Construction Documents along with an Environmental Survey for review by the Technical Review Committee (TRC). The TRC may require that the Application be circulated to the relevant City, County, and State agencies and officials for comment(s) as to the proposed development’s conformance to all applicable standards and requirements and whether approval is recommended.

Once the TRC deems the Construction Documents to be complete in information provided and in compliance with all provisions of this Code, it may be approved and a Preliminary Plat may be issued within 60 days. Final Plats will be reviewed by the planning department and approved administratively.

***No grading or infrastructure construction work may commence prior to approval of the Preliminary Plat.***

**15.4 SITE PLAN REVIEW PROCESS**



Site Plans will be approved administratively by the planning department in compliance with the process outlined in the flow chart provided in this section and with the LDC.

The Applicant shall submit a Sketch Plan along with an Environmental Survey to the planning department for a non-binding review. Upon determination of completeness and general conformity with this Code, the planning department will authorize the Applicant to submit the Schematic Design for formal review.

The planning department will review and make comment on the Schematic Design. When the planning department determines that the application is complete and complies with the Code it shall be approved. If the Schematic Design is denied, the reasons for denial shall be stated in writing and the applicant may resubmit the Development for further review.

Following approval of the Schematic Design by the planning department, the Applicant shall submit the Construction Documents for review by the Technical Review Committee. The TRC may require that the Application be circulated to the relevant City, County, and State agencies and officials for comment(s) as to the proposed development’s conformance to all applicable standards and requirements and whether approval is recommended.

Once the TRC deems the Construction Documents to be complete in information provided and in compliance with all provisions of this Code, it may be approved and a Zoning Permit may be issued.

***No grading or infrastructure construction work may commence prior to issuance of a Zoning Permit.***

15.5 MAJOR DEVELOPMENT PLANS



Major Development Plans will be reviewed by the planning board and approved by the city council.

The Applicant shall follow the process flow chart provided in this section. A sketch plan along with an Environmental Survey to the planning department shall be submitted for a non-binding review. Upon determination of completeness and general conformity with this Code, the planning department will authorize the applicant to conduct a neighborhood meeting. Formal submittal of the Schematic Plan to the planning department shall be accompanied by community meeting minutes.

The planning department will review and make comment on the Schematic Plan. When the planning department determines that the application is complete and complies with the Code it shall be forwarded to the planning board. The planning department shall provide a written notice to owners of properties adjacent to land under consideration for the Major Development Plan at least 10 days, but not more than 25 days, prior to the planning and Zoning board meeting at which the Major Development Plan is under consideration. A sign shall also be posted on property under consideration for a Major Development Plan at

least 10 days, but not more than 25 days, prior to the planning and zoning board meeting. The planning board shall have 40 days from the date of their first review to recommend that the Schematic Design be approved, approved with conditions, or denied.

Following the planning board review, the Schematic Design shall be submitted to the city council for their review and approval. The planning department shall provide a written notice to owners of properties adjacent to land under consideration for the Major Development Plan at least 10 days, but not more than 25 days, prior to the city council meeting at which the Major Development Plan is under consideration. A sign shall also be posted on property under consideration for a Major Development Plan at least 10 days, but not more than 25 days, prior to the city council meeting. The city council shall have 90 days from the date of their first review to approve, approve with conditions, or deny the Schematic Design. If they deny the Schematic Design, they shall state their reason(s) for denial in writing and permit the applicant to resubmit the Development for further review.

Following denial by the city council, the Applicant may file a new Application and associated fee. Unless the city council explicitly states conditions that must be met prior to the resubmission of an Application, the Applicant shall not submit a new Application for the same property within one (1) year of the date of denial by the city council unless the Application is significantly different from the previously denied Application. All Applications shall be resubmitted for full review unless the Application is resubmitted to address conditions set forth by the city council.

Approval of a Major Development Plan shall constitute final city council approval for all phases of the development except for any required approval of Construction Documents.

Following approval of the Schematic Design by the city council, the Applicant shall submit the Construction Documents for review by the Technical Review Committee. The TRC may require that the Application be circulated to the relevant City, County, and State agencies and officials for comment(s) as to the proposed development’s conformance to all applicable standards and requirements and whether approval is recommended.

Once the TRC deems the Construction Documents to be complete in information provided and in compliance with all provisions of this Ordinance, it may be approved and a Preliminary Plat may be issued. This phase does not confer any approvals for individual site plans.

***No grading or infrastructure construction work may commence prior to approval of the Preliminary Plat.***

**15.6 CONDITIONAL DISTRICTS**



A Conditional District is a Rezoning combined with a Major Development Plan. It will be reviewed by the planning board and approved or denied by the city council.

**1 Procedure:** The procedure for approval of the Master Plan shall follow the procedure outlined in the table to the left and in Section 20.2, Changes and Amendments to the Land Development Code & Zoning Map (Rezoning). A Sketch Plan along with an Environmental Survey to the planning department shall be submitted for a non-binding review. Upon determination of completeness and general conformity with this Code, the planning department will authorize the applicant to conduct a neighborhood meeting.

Formal submittal of the Schematic Plan to the planning department shall be accompanied by neighborhood meeting minutes. Staff shall authorize the applicant to conduct the required second neighborhood meeting upon approval of the schematic plan. Minutes from the second neighborhood meeting shall be submitted to city staff prior to being scheduled for the planning board meeting.

The planning board shall review and send a recommendation to the city council. The city council shall decide on the project.

Following approval of the Conditional District rezoning and the Schematic Plan by the city council, the applicant shall submit Construction Documents to the Technical Review Committee for approval. The Construction Documents shall implement the approved Schematic Plan with any changes, additions and conditions required and approved by the city council.

**2 Final Approval by Stages:** If so, reflected on the Master Plan, the city council may allow the staging of final development. Each phase of development shall adhere to all applicable provisions and standards of this section and the applicable CD Master Plan.

**3 Decisions:** Decisions by the city council shall be by majority vote. In considering an application for the establishment of a Conditional District, the planning board may recommend, and the city council may attach reasonable and appropriate conditions on the location, nature, and extent of the proposed use and its related design. The applicant will have a reasonable opportunity to consider and respond to any additional requirements proposed by either the planning board or the city council prior to final action.

**4 Qualifications of Applicant:** Conditional District classification shall only be considered upon the request of the owners of all the property to be included. A CD shall consist of land under unified control which may be planned and developed as a single development or as an approved programmed series of development phases by multiple developers. "Unified control" means that all land to be included within a CD shall be owned or otherwise under the legal control of the person or legal entity which has applied for a Conditional District. Such person or entity shall be legally capable of providing a commitment to the city that the CD development will comply with all documents, plans, standards and conditions ultimately approved by the city.

**5 Standards of District to be Met:** Within an approved Conditional District, no use shall be permitted except those permitted in the underlying district and pursuant to the conditions imposed on the Conditional District in the approval of the rezoning. The city council may impose additional reasonable and appropriate conditions or safeguards to serve the purpose and intent of this Section, and to preserve public welfare and justice. In addition to the Schematic Plan, the applicant shall provide the exact land use classifications proposed for the Conditional District. Such use classifications may be selected from any of the uses, whether permitted, by right or conditional, allowed in the general zoning district upon which the Conditional District is based. Uses not otherwise permitted within the general zoning district shall not be permitted within the Conditional District.

**6 Substantial Changes:** Any substantial change to a Master Plan that results in a net increase to the number of lots or a change in building size, location or appearance, or a change in parking or traffic patterns shall be reviewed by the planning board and approved or denied by the city council as an amended Conditional District. The following changes to a Conditional District Schematic Plan shall require approval by the city council:

- Land area being added or removed from the Conditional District.
- Modification of special performance criteria, design standards, or other requirements specified by the enacting ordinance.
- A change in land use or development type beyond that permitted by the approved Master Plan.
- When there is introduction of a new vehicular access point to an existing street, road or thoroughfare not previously designated for access.
- When there is an increase in the total number of residential dwelling units originally authorized by the approved Master Plan.
- When the total floor area of a commercial or industrial classification is increased more than ten percent beyond the total floor area last approved by city council.

All other changes to a CD Master Plan or subsequent Final Plan shall be considered for approval by the planning Director. However, if in the judgment of the planning director, the requested changes alter the basic development concept of the CD, the planning director may require concurrent approval by the city council.

**7 Rescission of Conditional Districts:** Unless the city council has approved a Conditional District which either is specifically exempt from any time constraints or has some other specified time period for implementation, the applicant must secure a valid building permit within a twelve (12) month period from date of approval of the conditional district. In addition, if the project for which a conditional district was approved is not complete and a valid building permit is not in place at the end of said twelve month period, the planning Director shall notify the applicant of either such finding, and within sixty (60) days of said notification, the planning department shall make a recommendation concerning the rescission of the conditional district to the city council. The city council may then rescind the conditional district or extend the life of the conditional district for a specified period of time.

**15.7 EFFECT OF APPROVAL OF THE PRELIMINARY PLAT**

Only after receiving Preliminary Plat approval for a Minor Subdivision or Major Development Plan as prescribed by this Chapter and other written approval and necessary permits from the appropriate regulating agencies, shall the developer begin grading, soil erosion, and infrastructure construction on the development.

Approved preliminary plats are valid for 1 year from the date of approval by the City of Belmont. Reasonable and necessary extensions may be granted at the city council’s sole discretion if a written request by the developer is made to the city council forty-five (45) days prior to the 1-year anniversary of preliminary plat approval. Upon expiration of approval prior to final plat approval and recordation, a new application for subdivision will be required in accordance with the process before development can recommence.

Approval of a preliminary plat constituting an individual phase of a multi-phase project, which has not been entirely approved, does not constitute approval by the City of any remaining phases. For approved preliminary plats consisting of multiple phases, only the phase that is to be

developed for sale immediately shall be submitted for final plat approval.

Any substantial change to a Major Development Plan that results in a net increase to the number of units or heated floor area by more than 5% shall be reviewed by the planning board and approved or denied by the city council as an amended Schematic Design.

All required infrastructure improvements for the preliminary plat shall be in place within 1 year of preliminary plat approval. If circumstances beyond the control of the developer do not allow for the completion of the required work within the 1 year period or the size of the phase is such that 1 year is insufficient time to complete all required work, then the developer may file a written request for an extension with city council no later than forty-five (45) days prior to the 1 year anniversary of preliminary plat approval by the City as provided above. If infrastructure work is not completed within 1 year and/or no extension request is filed with city council and approved, preliminary plat approval becomes null and void on the day of the one (1)-year anniversary and a new application will be required.

**15.7 REVIEW AND APPROVAL OF FINAL PLAT**

The developer shall initiate the final subdivision plat approval process by submitting the Final Plat and copies of any required improvement guarantees to the planning department. The planning Director or designee will then have thirty (30) calendar days to approve or deny the Final Plat. During the review period, the planning Director or designee will confirm the accuracy of the Final Plat. If substantial errors are found, including inconsistencies with the approved preliminary plat, the plat shall not be approved and the review period suspended until the applicant has corrected such errors. A list of the needed corrections shall be provided to the applicant. Once complete, the Final Plat shall be approved or denied by the planning Director or designee within thirty (30) calendar days of the date of final completed submission.

The Final Plat shall constitute all portions of the approved preliminary plat. No Final Plat shall be approved unless and until the developer has installed in that area all improvements required by

this ordinance or has posted any required improvement guarantees as prescribed by this Ordinance in Section 15.12.

Any conditions placed by the City on the approval of the Final Plat shall be addressed by the developer within forty-five (45) days. Failure of the developer to meet the forty-five (45)-day response period shall cause the conditional approval of the City to be null and void.

Approved Final Plats must be filed by the applicant for recording with the Register of Deeds of Gaston County within thirty (30) days of the date of approval by the planning Director or designee; otherwise, such approval shall be null and void. After recordation, the developer shall provide twenty (20) copies of the registered plat to the City for distribution to the various state and local government agencies and public utilities along with one (1) certified mylar copy for permanent file in the planning department.

**15.8 RESUBDIVISION PROCEDURES**

For any replatting or resubdivision of land, the same procedures, rules, and regulations shall apply as prescribed herein for an original subdivision.

Resubdivision of lots on already approved and recorded plats can occur subject to the following requirements:

- A. No lot or tract of land shall be created or sold that is smaller than the minimum size as required by this Ordinance for the District in which the subdivision is located.
- B. Drainage, easements, or rights-of-way shall not be changed.
- C. Street alignment and block sizes shall not be changed.
- D. The property line between the back of lots shall not be changed to cause the rear setback of any lot to become non-conforming.
- E. The rear portion of lots shall not be subdivided from the front part except for lots with frontage on two streets (double frontage lots).
- F. The character of the area shall be maintained.



**15.9 PENALTIES FOR TRANSFERRING LOTS IN UNAPPROVED SUBDIVISIONS:**

Any person who, being the owner or agent of the owner of any land located within the jurisdiction of City of Belmont, thereafter subdivides his land in violation of this ordinance or transfers or sells land by reference to, exhibition of, or any other use of a plat showing a subdivision of the land before the plat has been properly approved under this ordinance and recorded in the office of the register of deeds, shall be guilty of a misdemeanor.

The description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring land shall not exempt the transaction from this penalty. The City of Belmont may bring an action for injunction of any illegal subdivision, transfer, conveyance, or sale of land, and the court shall, upon appropriate findings, issue an injunction and order requiring the offending party to comply with this ordinance.

**15.10 PROCEDURES FOR APPROVAL OF SPECIAL USE PERMITS (SUP)****1. General Procedures:**

The consideration of a special use permit shall be processed by city planning staff and conducted as an evidentiary hearing by the city council. During the public hearing, all parties presenting testimony and evidence shall be duly sworn. Testimony both in favor and against special use permit application shall be presented and will be considered towards formulating the Findings-of-Fact prescribed in this section.

**2. Approval Requirements:**

The evaluation and approval of special use permit shall be based upon the sworn testimony and evidence presented at the hearing relevant to the following Findings of Fact, each of which must be found in the affirmative by the city council in order to approve a special use permit:

- A. The use meets all required principles and specifications of the Code and any adopted land use plans; and,
- B. The proposed use, if developed according to the plan submitted and approved, will be visually and functionally compatible to the surrounding area; and,
- C. The use will not materially endanger the public health or safety and will not substantially injure the value of adjoining property if located where proposed.

In approving an application for a special use permit, the city council may attach fair and reasonable ad hoc conditions which tend to support the required Findings of Fact as listed herein. The applicant shall have up to 60 calendar days to consider and respond to any additional requirements prior to approval or denial by the city council. The applicant shall provide written consent to conditions on approval. The city council may not require the landowner to waive a vested right as a condition of the special use permit approval.

The burden of proof of producing evidence to support these findings (and to overcome any challenges that approval of the plan would be contrary to one or more of these findings) shall rest entirely with the applicant or landowner.

### 3. Public Notification

The City of Belmont shall give notice of all special use permit public hearings. Said notice shall become a part of the record of the proceedings of the city council. Notice shall be given in the following manner:

- A. Notice shall be sent by the City by first class mail to the applicant and to the owners of all parcels of land abutting the parcel of land that is subject to the hearing. Said notice shall be deposited in the mail at least ten (10) but not more than twenty-five (25) days prior to the date of the public hearing;
- B. A notice of the public hearing shall be prominently displayed by the City on the site that is subject to the hearing or on an adjacent street right-of-way. Said notice shall be posted at least ten (10) but not more than twenty-five (25) days prior to the date of the public hearing; and,
- C. Notice shall also be posted by the City in a conspicuous location in the City Hall at least ten (10) days prior to the date of the public hearing.

**15.11 VESTED RIGHTS REQUIREMENTS****1. General Procedures**

Pursuant to G.S.160D-102 and notwithstanding any other provision or amendment thereto, a landowner may apply for approval of a site-specific development plan as defined in the statute that shall entitle said landowner to develop property in accordance with said plan.

All requests for Vested Rights shall be accompanied by a Schematic Plan in accordance with the provisions of this Chapter. A request to extend Vested Rights to a previously approved Development Plan shall be reviewed and approved by the city council after notice and public hearing.

**2. city council Action**

The city council shall determine whether or not to accord a vested right after the review and consideration of the planning board. The city council may not require the landowner to waive his vested right as a condition of development approval. The city council may approve the vested rights for a period greater than two (2) years where it is found that due to (i) the sizing and phasing of the development; or (ii) the level of investment; or (iii) the need for the development; or (iv) economic cycles; or (v) market conditions, building permits for all phases of the development cannot be secured within two years, provided the total period does not exceed five (5) years from the date of plan approval of the site

**3. Effect of Approval Of Vesting**

The effect of the city council approving a vested plan shall be to vest such site plan for a period of two (2) years to five (5) years as approved by the city council from the date of approval.

A vested right shall confer upon the landowner the right to undertake and complete the development and use of said property under the terms and conditions of the approved site-specific development plan as provided for in this Section. Failure to abide by the terms and conditions placed upon such approval will result in the forfeiture of the vested right previously accorded.

A vested right, once established as herein provided, shall preclude any zoning action by the City which would change, alter, impair, prevent, diminish or otherwise delay the development or use of the property as set forth in the approved site specific development plan except under the following conditions where such rights are terminated and revoked:

- A. The affected landowner provides written consent to the City of his desire to terminate the vested right; or,
- B. The City determines after having advertised and held a public hearing, that natural or man-made hazards exist on or in the immediate vicinity of the property which pose a serious threat to the public health, safety and welfare if the project were to proceed as indicated in the plan; or,
- C. Compensation is made by the City to the landowner for all costs, expenses, and other losses incurred including, but not limited to, all fees paid in consideration of financing, and all architectural, planning, marketing, legal, and any other consultant's fees incurred after approval together with interest thereon at the legal rate until paid; or,

- D. The City determines, after having advertised and held a public hearing, that the landowner or his representative intentionally supplied inaccurate information or made material misrepresentations which made a difference in the approval by the city council of the plan; or,
- E. Upon the enactment or promulgation of a State or Federal law or regulations which precludes development as contemplated in plan. In such case the City may (after having advertised and conducted a public hearing) modify the affected provisions upon a finding that this change in State or Federal law has a fundamental effect on the plan.

Once a vested right is granted to a particular plan, nothing in this section shall preclude the City from conducting subsequent reviews and approvals to ensure compliance with the terms and conditions of the original approval, provided such reviews and approvals are consistent with the original approval.

The establishment of a vested right on a piece of property for a site-specific development plan shall not preclude the City from establishing and enforcing on the property any additional regulations (adopted during the time the vested right was in effect) which are general in nature and applicable to all property subject to the regulations of this Ordinance.

**4. Construction Document Process for Vested Site-Specific Plans**

Preliminary Plats for Minor Subdivisions with previously vested site-specific plans shall be reviewed for compliance and consistency and subsequently approved by the planning Director or designee in accordance with the provisions of Section 15.3 of this Ordinance, providing the proposed Preliminary Plat for the Minor Subdivision does not deviate from, and is subdivided in accordance with the previously approved site specific plan.

Preliminary Plats for Major Development Plans with previously vested site-specific plans shall be reviewed for compliance and consistency and approved by the planning Director or designee, providing the proposed Preliminary Plat for Major Subdivision does not deviate from, and is subdivided in accordance with the previously approved site specific plan.

**5. Revocation or Expiration of A Vested Right**

The vested right, resulting from the approval of a site-specific development plan, may be revoked by the city council if the city council determines that the landowner has failed to comply with the terms and conditions of the approval or with any other applicable portion of this Code. The vested right shall otherwise expire at the end of the approval period established by the planning board.

A building permit issued by the Gaston County Building Inspector pursuant to G.S. 160D-403 may not expire or be revoked because of the running of time on a piece of property while a plan has been approved and the vested right period has not otherwise expired.

**15.12 IMPROVEMENT GUARANTEES**

In lieu of meeting the requirement for the completion, installation and dedication of any and all public infrastructure improvements (e.g., water, sewer, streets, sidewalks, storm drainage, trees, supplemental buffer plantings, street lights, etc.) prior to final plat approval for subdivisions or Certificate of Occupancy for Site Plans, the City of Belmont or its authorized agent may enter into a written agreement with the developer whereby the developer shall agree to complete all required improvements. Once said agreement is signed by both parties and the financial security required herein is provided, the final plat or Certificate of Occupancy may be approved by the planning Director or designee or authorized agent, if all other requirements of this ordinance are met. To secure this agreement, the developer shall provide either one, or a combination of the following guarantees equal to 1.25 times the entire cost of the improvements secured:

**1. Surety Performance Bond(s):**

The developer shall obtain a performance bond(s) from a surety bonding company authorized to do business in North Carolina and approved by the city council or its designee. The bond shall be payable to the City of Belmont (or its authorized agent) and shall be in an amount equal to 1.25 times the entire cost, as estimated by the developer and verified by the City Engineer, of installing all required improvements. The duration of the bond(s) shall be until such time as the improvements are accepted by the City. Any expenses associated with the cost verification by the City shall be paid entirely by the developer.

**2. Cash or Equivalent Security:**

The developer shall deposit cash, an irrevocable letter of credit or other instrument readily convertible into cash at face value, either with the City (or its authorized agent) or in escrow with a financial institution designated as an official depository of the City. The amount of deposit shall be equal to 1.25 times the entire cost, as estimated by the developer, and verified by the County, of installing all required improvements.

If cash or other instrument is deposited in escrow with a financial institution as provided above, then the developer shall file with the City of Belmont (or its authorized agent) an agreement between the financial institution and himself guaranteeing the following:

- a) That said escrow amount will be held in trust until released by the City of Belmont and may not be used or pledged by the developer in any other transaction during the term of the escrow; and
- b) That in case of a failure on the part of the developer to complete said improvements, the financial institution shall, upon notification of the City to the financial institution of an estimate of the amount needed to complete the improvements, immediately pay to the City the funds estimated to complete the improvements, up to the full balance of the escrow account, or deliver to the City any other instruments fully endorsed or otherwise made payable in full to the City.

**3. Default**

Upon default, meaning failure on the part of the developer to complete the required improvements in the time required by this ordinance or as spelled out in the performance bond or escrow agreement, then the surety, or financial institution holding the escrow account, shall, if requested by the City, pay all or any portion of the bond or escrow fund to the City of Belmont up to the amount needed to complete the improvements based on an estimate by the City. Upon payment, the City, in its discretion, may expend such portion of said funds, as it deems necessary to complete all or any portion of the required improvements. The City shall return to the developer any funds not spent in completing the improvements.

**4. Release of Guarantee Security**

The City may release a portion of any security posted as the improvements are completed and recommended for approval by the City Manager. Within 30 days after receiving the City Manager's recommendation, the City of Belmont shall approve or disapprove said improvements. When the City of Belmont approves said improvements, it shall immediately release the portion of the security posted which covers the cost of the improvements approved by the City.

**5. Payment in Lieu: Sidewalks**

As an alternative to the construction of sidewalks, the City of Belmont may, at its discretion, accept a payment made to the City in lieu of sidewalk construction. The City shall use such payment only for the construction of sidewalks within the same general area of the new development, ~~with the City of Belmont.~~

The amount of the payment shall be determined by the Public Works Director of the City of Belmont. The amount of the payment shall be based upon the length of the sidewalk as required for the project times its width as required by the Land Development Code times the unit cost currently paid by the City of Belmont for sidewalk construction.

Payment in lieu of sidewalk construction shall be approved as part of the Schematic Plan. All payments made in lieu of construction shall be made at the time of Construction Document approval. Failure to submit the required fee will delay approval of such submissions until payment is rendered.

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