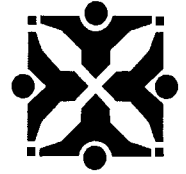


City of Columbia

701 East Broadway, Columbia, Missouri 65201



Agenda Item Number: REP 9-15

Department Source: Community Development - BSD

To: City Council

From: City Manager & Staff

Council Meeting Date: 1/20/2015

Re: Report - Surety bonds or letters of credit in the maintenance of erosion and sediment control devices

Documents Included With This Agenda Item

Council memo

Supporting documentation includes: 2011-2013 Erosion Control Reports

Executive Summary

The Environment and Energy Commission's report dated October 7, 2014 and presented at the October 20, 2014 Council meeting recommended that the City require a surety bond or letter of credit to "protect Columbia from abandoned or delayed development of sites." The report also recommended that staff develop an updated project/violation tracking system to improve enforcement and be more transparent. This memorandum will focus on the surety bond or letter of credit with a second memorandum to follow regarding tracking at a later date.

Discussion

Many communities require a surety bond, cash deposit, or letter of credit to ensure developer compliance with a variety of obligations such as public infrastructure construction, stormwater detention and water quality requirements, and erosion and sediment control compliance. Each have their own features, but perform the same basic function.

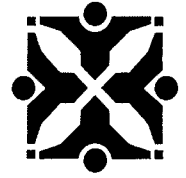
Surety Types

1. Bond – The money from a surety bond can be difficult for the City to obtain in a timely fashion since a third party surety company is guarantying that the developer will complete the project and therefore has an interest in this money as well. Cities often use a surety bond, or performance bond, to ensure public infrastructure construction since access to the money is often not needed quickly as the City still controls the issuance of building permits and/or the issuance of a Certificate of Occupancy. The City currently has the option to require a performance bond for public infrastructure construction via Section 25-57 of the City's Code of Ordinances but historically has allowed a performance contract in its place.

2. Cash Deposit - A cash deposit can be difficult for the developer to provide since it is upfront money that is deposited and held with the City when the developer's money outlay on a project is the greatest. Community Development uses a cash deposit for a variety of site related items such as yard and sidewalk installation on residential home construction and non-public safety items and

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landscaping on commercial projects. The contractor provides a cash deposit, fully refundable at project completion, and the City issues the Certificate of Occupancy. Cash deposits work well for items that have a relatively short time frame for completion.

3. Letter of Credit - A letter of credit provides City equal access to the money while not burdening the developer with a requirement that ties up funds that could otherwise be used to complete the development. The developer generally must only show a financial institution that he/she is credit-worthy, rather than being required to provide significant funding of the surety. Furthermore, a self-executing letter of credit provides additional advantages in administration and enforcement.

Therefore a self-executing letter of credit, with an option to provide a cash deposit, is the recommended mechanism to handle issues that require timely access to the money such as erosion and sediment control compliance should Council desire to pursue this mechanism further.

The City of Columbia frequently uses a letter of credit to ensure that developers complete stormwater detention and water quality requirements in new residential subdivisions. The letter of credit is based on a cost estimate provided by the contractor and reviewed by the City with twenty-five percent (25%) added to cover contingencies. This process is often advantageous to both the developer and the City. It provides the City the insurance it needs to accept the public infrastructure without the permanent best management practices (BMPs) in place and allows the contractor to place the permanent BMPs after the bulk of the residential homes have been constructed. This often allows them to use the area as a temporary sediment basin or other erosion and sediment control device during home construction and saves them the time and money associated with rework of the permanent BMPs following construction. At times it also reduces the need for temporary erosion and sediment control devices on each individual lot. The Law Department is available to assist the Community Development Department in creating a standard letter of credit form which would utilize these advantages.

One example of a letter of credit process for erosion and sediment control compliance that staff has knowledge of is one used by the City of Overland Park, Kansas. Overland Park requires that projects which disturb one acre or more of land provide a surety to the City in the form of a cash deposit or letter of credit. These funds are used to offset the costs of abatement of erosion and sediment caused by the land disturbance, including the removal of temporary BMPs. The surety amount is established and reviewed by the Director annually and is based on the acreage of the site disturbed. Overland Park requires a surety in the amount of \$3,000 plus \$1,500 per acre with a minimum of \$5,000 and a maximum of \$30,000. Staff would need to do more research to determine what amounts make sense for this area should Council wish to pursue this mechanism further. Amounts not used for abatement are returned to the permit holder after final inspection and approval to close the permit.

Very similar to Overland Park, the City of Austin, Texas requires a fiscal surety in conjunction with proposed development projects. However, Austin allows the amount of the guarantee to be calculated one of three ways:

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1. Based on unit cost determined by the City (Overland Park, KS method).
2. Based on current contract
3. Determined by a consulting engineer's certified estimate of costs.

Austin's Method #2 can only be used if the City of Austin is party to the current contract used to determine the posting amount. Austin then adds ten percent to that amount. Austin's Method #3 is essentially an engineer's opinion of probable costs based on recent work which is reviewed and approved by the City's Planning and Development Services Department.

The City of Woodstock, Georgia requires that a cost estimate for each phase of a development project is submitted with construction plans. This cost estimate is required to include erosion and sediment control among a variety of things that require sureties. Once the cost estimate is reviewed and approved the sureties are posted in the form of a letter of credit, bond, etc. The erosion and sediment control surety is for up to \$3,000 per acre of disturbance as determined by the department. The surety is released when the state approves the permittee Notice of Termination. The State of Missouri issues a similar notice to Missouri contractors upon completion of a project.

Currently staff issues notices of violation when erosion and sediment control is out of compliance. Failure to correct the violations in a timely manner results in the matter being forwarded to the City Prosecutor for handling. If a letter of credit process was put in place staff would still issue notices of violation but would use the money from the letter of credit and a term and supply contractor to correct deficiencies. Staff would also recommend an owner authorization form be required prior to permit issuance to specifically allow the term and supply contractor access to the site as an agent of the City should the need arise. The step-by-step process would be similar to the following:

1. During the plan review process the plan review engineer would calculate the amount of the letter of credit based on the disturbed area proposed and the City's established cost per acre set by the Director on a yearly basis.
2. Prior to permit issuance the letter of credit would be required to be submitted, reviewed, and approved. The owner authorization form would be required at this time as well.
3. Site inspectors would conduct erosion and sediment control inspections on a weekly basis as they do today issuing a notice of violation as needed. Depending on the severity of the violation the developer would be given two or three notices to make the necessary corrections. An example of a three notice violation could include a site with internal control measures in need of maintenance that still have functioning perimeter controls in place.
4. The final notice of violation would be clearly labeled as such and include a specific date for correction. Once that date had passed with no resolution staff would contact the City's term and supply contractor to schedule the necessary corrections. Staff would include a minimum turn around provision in the term and supply contract in the range of 24 to 48 hours.

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5. The term and supply contractor would complete the work and bill the City accordingly. Staff would review the invoice and, if found acceptable, draw down the developer's letter of credit in that amount.

Staff recommends that the process, if pursued further, include the ability for the Director to waive the requirement when projects have building construction activities in conjunction with land disturbance activities provided that the following limited conditions are met:

1. The City has accepted an application for a building permit for construction of a building on the same lot. The land disturbance permit may include work on property contiguous with the building lot, provided all property is under the same ownership; and
2. All buildings and property will remain under a single ownership until closure of the land disturbance permit. If requested by the City the applicant must submit a written certification verifying this condition; and
3. Applications for all building permits and land disturbance permits are made by the same party.

When a surety is waived, enforcement action for erosion and sediment control violations may be taken against the building permit holder. A waiver process for these identified limited circumstances is appropriate because the City maintains sufficient enforcement to ensure completion of projects in these situations.

Staff generally has had success in obtaining developer/contractor compliance with erosion and sediment control requirements using the notice of violation process. Attached is the end of the year Erosion Control Reports from 2011 to 2013. These reports show the number of sites and inspections (one per week) each month and the number of first, second, and third notice of violations (NOVs) issued each month. These reports are summarized below for simplicity as follows:

Year	Total Inspections	1st NOV	2nd NOV	3rd NOV
2011	3,992	42	11	11
2012	3,108	30	2	3
2013	3,584	15	4	1

The table below indicates the number of violations which were passed on to the City Prosecutor for handling in that same period and the specific City ordinance found in violation:

Ordinance Number	Year		
	2011	2012	2013
Section 12A-34	0	1	1
Section 12A-66	0	0	1
Section 12A-70	4	1	1
Section 12A-88	0	0	0
Section 12A-90	0	0	0

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Section 24-9	3	1	1
Total	7	3	4

A letter of credit process would have been beneficial during the recent economic downturn which left the City with a number of “inactive” sites. In cases where a building permit has been issued the threat of suspended inspections and/or the inability to obtain a Certificate of Occupancy is almost always enforcement enough to ensure compliance.

Fiscal Impact

Short-Term Impact: None associated with this report.

Long-Term Impact: Staff anticipates adoption of an ordinance to require additional administrative tasks for an Engineering Technician outside of their current field inspection duties equivalent to approximately 0.2FTEs.

Vision, Strategic & Comprehensive Plan Impact

Vision Impact: Development, Economic Development, Environment

Strategic Plan Impact: Economic Development, Health, Safety and Wellbeing

Comprehensive Plan Impact: Environmental Management, Economic Development

Suggested Council Action

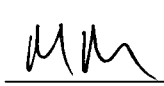
Staff requests acceptance of the report and direction to draft an ordinance for review and approval by Council, if desired. The process of drafting an ordinance should include informal notice to affected parties. The suggested location of the proposed ordinance is Chapter 12A – Land Preservation, Article II – Land Disturbance Permit Requirements.

Legislative History

None.



Department Approved



City Manager Approved



SUPPORTING DOCUMENTS INCLUDED WITH THIS AGENDA ITEM ARE AS FOLLOWS:

2011-2013 Erosion Control Reports

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Community Development
Site Inspectors

2011 Erosion Control Report

COMMERCIAL SITES	# of Sites	# of Insp	1st NOV	2nd NOV	3rd NOV
	37	148	0	0	0
January	42	168	2	1	0
February	43	172	0	3	0
March	45	180	1	0	0
April	43	172	0	0	0
May	44	176	3	0	0
June	51	204	4	1	0
July	51	204	2	1	1
August	57	228	3	2	3
September	52	208	2	0	2
October	56	224	3	0	1
November	57	228	1	0	1
December		2,312	21	8	8
YTD Totals	48	193	1.67	0.89	0.44
YTD Average					
RESIDENTIAL SITES	# of Sites	# of Insp	1st NOV	2nd NOV	3rd NOV
	38	152	0	0	0
January	40	160	2	0	0
February	39	156	3	0	0
March	37	148	0	0	0
April	39	156	0	0	0
May	39	156	0	0	0
June	40	160	3	0	1
July	41	164	4	0	1
August	43	172	4	1	1
September	30	120	2	1	0
October	14	56	2	1	0
November	20	80	1	0	0
December		1,680	21	3	3
YTD Totals	35	158	1.78	0.11	0.33
YTD Average					

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2012 Erosion Control Report

COMMERCIAL SITES	# of Sites	# of Insp	1st NOV	2nd NOV	3rd NOV
January	60	240	2	0	1
February	51	204	1	0	1
March	62	248	0	0	0
April	65	260	0	0	0
May	53	212	0	0	0
June	51	204	6	0	0
July	48	192	8	1	0
August	41	164	1	0	0
September	37	148	0	0	0
October	48	192	3	0	0
November	35	140	0	0	0
December	42	168	1	0	0
YTD Totals		2,372	22	1	2
MTD Average	49	198	1.833333	0.083333	0.166667

DEVELOPMENT SITES	# of Sites	# of Insp	1st NOV	2nd NOV	3rd NOV
January	15	60	0	0	0
February	27	108	0	0	0
March	17	68	0	0	0
April	18	72	5	0	0
May	15	60	0	0	0
June	13	52	0	0	0
July	13	52	1	0	0
August	11	44	0	1	1
September	14	56	2	0	0
October	14	56	0	0	0
November	13	52	0	0	0
December	14	56	0	0	0
YTD Totals		736	8	1	1
MTD Average	15	61	0.666667	0.083333	0.083333

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2013 Erosion Control Report

COMMERCIAL SITES	# of Sites	# of Insp	1st NOV	2nd NOV	3rd NOV
January	46	184	4	0	0
February	43	172	1	0	0
March	53	212	2	0	0
April	52	208	1	1	0
May	54	216	0	1	1
June	66	264	0	0	0
July	69	276	0	0	0
August	69	276	1	0	0
September	65	260	0	0	0
October	65	260	0	0	0
November	55	220	0	0	0
December	57	228	0	0	0
YTD Totals		2,776	9	2	1
MTD Average	58	231	0.75	0.166667	0.083333

DEVELOPMENT SITES	# of Sites	# of Insp	1st NOV	2nd NOV	3rd NOV
January	12	48	2	0	0
February	12	48	0	0	0
March	19	76	1	0	0
April	18	72	0	0	0
May	19	76	0	1	0
June	21	84	3	1	0
July	22	88	0	0	0
August	18	72	0	0	0
September	18	72	0	0	0
October	16	64	0	0	0
November	13	52	0	0	0
December	14	56	0	0	0
YTD Totals		808	6	2	0
MTD Average	17	67	0.5	0.166667	0