

First Regular Session of the 121st General Assembly (2019)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2018 Regular and Special Session of the General Assembly.

HOUSE ENROLLED ACT No. 1128

AN ACT to amend the Indiana Code concerning local government.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 36-7-4-709, AS AMENDED BY P.L.135-2017, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 709. (a) Secondary approval under section 710 of this chapter may be granted to a plat for a subdivision in which the improvements and installations have not been completed as required by the subdivision control ordinance, if:

(1) the applicant provides a bond, or other proof of financial responsibility as prescribed by the legislative body in the subdivision control ordinance, that:

(A) is an amount determined by the plan commission or plat committee to be sufficient to complete the improvements and installations in compliance with the ordinance; and

(B) provides surety satisfactory to the plan commission or plat committee; or

(2) with respect to the installation or extension of water, sewer, or other utility service:

(A) the applicant shows by written evidence that it has entered into a contract with the political subdivision or utility providing the service; and

(B) the plan commission or plat committee determines based on written evidence that the contract provides satisfactory assurance that the service will be installed or extended in

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compliance with the subdivision control ordinance.

(b) Any money received from a bond or otherwise shall be used only for making the improvements and installations for which the bond or other proof of financial responsibility was provided. This money may be used for these purposes without appropriation. The improvement or installation must conform to the standards provided for such improvements or installations by the municipality in which it is located, as well as the subdivision control ordinance.

(c) The plan commission shall, by rule, prescribe the procedure for determining whether all improvements and installations have been constructed and completed as required by the subdivision control ordinance. The rule must designate the person or persons responsible for making the determination.

(d) As used in this section, "land developer" has the meaning set forth in IC 6-1.1-4-12(a).

(e) As used in this section, "under development" means a situation with respect to land in which a primary plat has been filed and approved and work has commenced to make substantive physical improvements to the land, excluding any work performed for the purpose of preparing the land.

(f) Notwithstanding subsection (a), a local unit may not adopt or enforce an ordinance, rule, or other policy requiring a land developer of Class 1 or Class 2 structures to do any of the following:

(1) Obtain a performance bond or other surety before the date on which the land developer records an approved secondary plat. However, a local unit may require the land developer to obtain a performance bond or other surety before an approved secondary plat is recorded if the area under development is:

(A) within the existing public right-of-way; or

(B) related to erosion control.

(2) Obtain a maintenance bond that has an effective period greater than three (3) years.

(g) After a secondary plat is approved, a local unit may require, as a condition precedent to recording the secondary plat, that the land developer obtain a performance bond or other surety for any incomplete or unfinished streets, sanitary piping, storm water piping systems, water mains, sidewalks and ornamental landscaping in common areas, and erosion control that:

(1) are:

(A) in the approved development; or

(B) required to service the approved development; and

(2) are included within:

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- (A) the legal description of the recorded plat; or
 - (B) a section in the legal description of the recorded plat; identified in the land developer's secondary plat filing.
- (h) Any ordinance, rule, or policy requiring a land developer to obtain a performance bond or other surety under subsection (g) must include a provision for:
- (1) the release of a performance bond or other surety upon completion to the satisfaction of the local unit of the subject matter upon which the performance bond or other surety was obtained; and
 - (2) the partial release of the performance bond or other surety on an annual or on a more frequent basis in accordance with a partial release schedule agreed to in a signed writing by:
 - (A) the local unit, or the local unit's designated official or body; and
 - (B) the land developer or the land developer's designated agent;before or during development.
- (i) A performance bond or other surety requirement under subsection (f)(1) or subsection (g):
- (1) must be based on a value provided for in an engineer's estimate or an actual contract amount, if available, to complete:
 - (A) the portion of the area or improvement of the project; or
 - (B) the designated section in the project;being bonded;
 - (2) may be based on an amount in excess of the full value of the engineer's estimate or actual contract amount, as appropriate, provided that any excess amount is based upon a reasonable adjustment for the estimated cost of inflation of materials and labor encompassed within the subject matter of the performance bond or other surety; and
 - (3) may not include any land that is not under development at the time the bond or other surety is required, such as sections of adjacent or contiguous land that remain undeveloped, except to the extent that the land not then under development is used to access the site or provide utilities or other necessary services to the land that is under development.
- (j) A local unit may not require, as a condition precedent to granting, issuing, or approving for any Class 1 or Class 2 structures:**
- (1) a building permit;**
 - (2) an improvement location permit; or**



**(3) a structural building permit;
the completion of the subject matter upon which the performance bond or other surety was obtained under subsection (g).**

(k) This subsection applies to a local unit's grant, issuance, or approval of a certificate of occupancy. A local unit may not require, as a condition precedent to granting, issuing, or approving a certificate of occupancy for any Class 1 or Class 2 structure, the completion of the subject matter upon which the performance bond or other surety was obtained under subsection (g), unless required under:

- (1) IC 22-12;**
- (2) IC 22-13;**
- (3) IC 22-15; or**
- (4) another law;**

to meet a local unit's basic needs for public health and safety.

SECTION 2. IC 36-7-4-1109, AS AMENDED BY P.L.211-2017, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 1109. (a) As used in this section, "local governmental agency" includes any agency, officer, board, or commission of a local unit of government that may issue:

- (1) a permit; or
- (2) an approval of a land use or an approval for the construction of a development, a building, or another structure.

(b) As used in this section, "permit" means any of the following:

- (1) An improvement location permit.
- (2) A building permit.
- (3) A certificate of occupancy.
- (4) Approval of a site-specific development plan.
- (5) Approval of a primary or secondary plat.
- (6) Approval of a contingent use, conditional use, special exception or special use.
- (7) Approval of a planned unit development.

(c) If a person files a complete application as required by the effective ordinances or rules of a local unit of government or a local governmental agency for a permit with the appropriate local governmental agency, the granting of the permit, and the granting of any secondary, additional, or related permits or approvals required from the same local governmental agency with respect to the general subject matter of the application for the first permit, are governed for at least three (3) years after the person applies for the permit by the statutes, ordinances, rules, development standards, and regulations in effect and applicable to the property when the application is filed, even

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if before the issuance of the permit or while the permit approval process is pending, or before the issuance of any secondary, additional, or related permits or approvals or while the secondary, additional, or related permit or approval process is pending, the statutes, ordinances, rules, development standards, or regulations governing the granting of the permit or approval are changed by the general assembly or the applicable local legislative body or regulatory body, regardless of whether such changes in the statutes, ordinances, rules, development standards, or regulations are part of a zoning ordinance, a subdivision control ordinance, or a statute, ordinance, or regulation that is based on the general police powers of the local unit of government. However, this subsection does not apply if the development or other activity to which the permit relates is not completed within ten (10) years after the development or activity is commenced.

(d) Subsection (e) applies if:

(1) either:

(A) a local governmental agency issues to a person a permit or grants a person approval for the construction of a development, a building, or another structure; or

(B) a permit or approval is not required from the local governmental agency for the construction of the development, building, or structure;

(2) before beginning the construction of the development, building, or structure, the person must obtain a permit or approval for the construction of the development, building, or structure from a state governmental agency; and

(3) the person has applied for the permit or requested the approval for the construction of the development, building, or structure from the state governmental agency within ninety (90) days of issuance of the permit by the local governmental agency.

(e) Subject to subsection (f), if the conditions of subsection (d) are satisfied:

(1) a permit or approval issued or granted to a person by the local governmental agency for the construction of the development, building, or structure; or

(2) the person's right to construct the development, building, or structure without a permit or approval from the local governmental agency;

is governed for at least three (3) years after the person applies for the permit by the statutes, ordinances, rules, development standards, regulations, and approvals in effect and applicable to the property when the person applies for the permit or requests approval from the state

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governmental agency for the construction of the development, building, or structure, even if before the commencement of the construction or while the permit application or approval request is pending with the state governmental agency the statutes governing the granting of the permit or approval from the local governmental agency are changed by the general assembly or the ordinances, rules, development standards, or regulations of the local unit of government or the local governmental agency are changed by the applicable local legislative body or regulatory body, regardless of whether such changes in the statutes, ordinances, rules, development standards, or regulations are part of a zoning ordinance, a subdivision control ordinance, or a statute, ordinance, or regulation that is based on the general police powers of the local unit of government. However, this subsection does not apply if the development or other activity to which the permit or approval request relates is not completed within ten (10) years after the development or activity is commenced.

(f) Subsection (d) does not apply to property when it is demonstrated by the local or state governmental agency that the construction of the development, building, or structure would cause imminent peril to life or property.

(g) This section does not apply to building codes under IC 22-13.

(h) The following provision is considered to be included in any regulation adopted under section 601(d)(2)(B) of this chapter that sets forth requirements for signs:

"The owner of any sign that is otherwise allowed by this regulation may substitute noncommercial copy in place of any other commercial or noncommercial copy. This substitution of copy may be made without the issuance of any additional permit by a local government agency. The purpose of this provision is to prevent any inadvertent favoring of commercial speech over noncommercial speech, or the favoring of any particular noncommercial message over any other noncommercial message. This provision prevails over any more specific provision in this regulation to the contrary."

(i) Notwithstanding any other law, a local governmental agency must, not later than twelve (12) business days after a person has filed a complete application for a permit for which approval is ministerial under IC 36-7-4-402 or an improvement location permit issued under the 800 series of this chapter and meets all conditions required under this chapter and any other statute, issue the permit to the person.



Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Governor of the State of Indiana

Date: _____ Time: _____

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