



## CITY of NOVI CITY COUNCIL

**Agenda Item E**  
**August 9, 2010**

**SUBJECT:** Approval of Ordinance No. 10-32.01, an ordinance to amend Chapter 31, "Streets, Sidewalks, and Other Public Places", Article II, "Street Improvement," of the Novi Code of Ordinances, in order to add a new section, Section 31-20, entitled "Acceptance of Certain Streets," to include standards and a procedure for acceptance of streets not governed by other code provisions. **SECOND READING**

**SUBMITTING DEPARTMENT:** Department of Public Services, Engineering Division *BTC*

**CITY MANAGER APPROVAL:** *[Signature]* *CR*

**BACKGROUND INFORMATION:**

Staff has identified a number of residential developments that have been under construction for many years (some dating back over 10 years) in which the streets and utilities have not yet been offered for acceptance, usually because the development is not completely built out. Because of their age, these developments are not covered by Chapter 26.5, which sets forth a street and utility acceptance procedure and timeline for developments that commenced after its adoption in or around 2005. The standard in Chapter 26.5 requires dedication of the streets proposed as public within a development within 4 years of the issuance of the initial permit or when 90% of the building permits for the homes have been issued, whichever occurs first. Otherwise, a completion agreement or other remedies are required.

Acceptance of the streets in these relatively older developments is governed primarily by the City's Utility and Street Acceptance Policy from 1997 (attached). However, that policy does not contain a clear mechanism for dealing with streets that have remained unfinished (e.g., no final lift of asphalt) for a lengthy period of time, and further does not contain assurances of the structural quality of the roads if they are accepted before full completion of all homes within the development. Construction of the streets in Asbury Park; Wilshire Abbey; Orchard Hills West; Liberty Park (Declaration Drive and Single Family Phase 1 only); portions of Tollgate Ravines, Brownstones at the Vistas, and Meadowbrook Townhomes (Brownstone Drive, Holmes Road, Hemingway Drive, Cummings Place and Twain Place only); Tollgate Woods Phase II; Island Lake of Novi Phase 5B; and West Park Place were all commenced under the 1997 policy.

The City would like to see the streets in these older developments turned over as public roads, since it is now clear that actual completion of all homes within these developments could take years—with the roads continuing to deteriorate and not getting the maintenance contemplated for public streets within the City. The residents who live in these developments have had streets without a final leveling course of pavement as the most obvious detriment and the associated issues involving rideability and drainage. There are often also issues with woodland trees, landscaping, and other required features

caused by lack of completion. All of these streets will eventually have to become public streets, but the 1997 policy, while leaving the end date for construction open, may not have been written with such a lengthy period of closure in mind.

The utilities in several of the developments that were commenced under the 1997 policy have yet to be turned over to the City. The acceptance of these utilities will occur as part of the process to accept the streets. The sidewalks within the developments are constructed with each of the individual home sites, except for the sidewalks adjacent to common areas which are usually constructed prior to acceptance. These sidewalk segments are added to the punchlist and must be completed before acceptance will occur.

The proposed new section deals with the limited issue of how to guarantee the structural integrity of these streets *after* acceptance and while the development continues to build out. The proposed ordinance applies some of the same requirements from Chapter 26.5 to the streets constructed under the 1997 policy, by requiring warranty deeds and maintenance bonds when the streets are proposed for acceptance. Additionally, if the streets in these developments are required or requested before 90% of the certificates of occupancy have been issued, a site restoration guarantee to assure the physical integrity of the roads could be required. The proposed site restoration guarantee is consistent with the requirements of Chapter 26.5.

**SUBJECT:** Approval of Ordinance No. 10-32.01, an ordinance to amend Chapter 31, "Streets, Sidewalks, and Other Public Places", Article II, "Street Improvement," of the Novi Code of Ordinances, in order to add a new section, Section 31-20, entitled "Acceptance of Certain Streets," to include standards and a procedure for acceptance of streets not governed by other code provisions. **SECOND READING**

	1	2	Y	N
Mayor Landry				
Mayor Pro Tem Gatt				
Council Member Crawford				
Council Member Fischer				

	1	2	Y	N
Council Member Margolis				
Council Member Mutch				
Council Member Staudt				

**STATE OF MICHIGAN**  
**COUNTY OF OAKLAND**  
**CITY OF NOVI**  
**ORDINANCE NO. 10-32.01**

**AN ORDINANCE TO AMEND CHAPTER 31, "STREETS, SIDEWALKS, AND OTHER PUBLIC PLACES", ARTICLE II, "STREET IMPROVEMENT," OF THE NOVI CODE OF ORDINANCES, IN ORDER TO ADD A NEW SECTION, "SECTION 31-20, ENTITLED "ACCEPTANCE OF CERTAIN STREETS," TO INCLUDE STANDARDS AND A PROCEDURE FOR ACCEPTANCE OF STREETS NOT GOVERNED BY OTHER CODE PROVISIONS.**

**THE CITY OF NOVI ORDAINS:**

**PART I.**

Chapter 31, "Streets, Sidewalks, and Other Public Places," Article II, "Street Improvement," is hereby amended to add Section 31-20, entitled "Acceptance of Certain Streets," which will read in its entirety:

**Sec. 31-20. Acceptance of Certain Streets**

For streets the acceptance of which is not governed by Chapter 26.5, the following signed acceptance documents must be submitted to the city engineer before acceptance:

1. Warranty deed or other appropriate conveyance document as determined by the City for each street conveying the improvements to the city. For acceptance of condominium streets, an amendment to the master deed may also be required.
2. Title policy for the purpose of verifying that the parties signing the deed and bill of sale documents have the legal authority to do so. All parties of interest shown on the title policy (including mortgage holders) shall either sign the deed documents themselves or provide appropriate provide appropriate discharge or consent documents as determined by the City.

3. Contractor's sworn statement listing those parties and stating that all labor and material expenses incurred in connection with the subject construction improvements have been paid.
4. A maintenance bond equal to twenty-five (25) percent of the cost of the construction of the streets to be accepted, in a form acceptable to the city attorney's office. The maintenance bond must be in effect for a period of two (2) years from the date of formal acceptance by city council.

Acceptance of the streets that are to be public shall be accomplished by resolution of city council as and when determined by the city, in its sole discretion, to be appropriate pursuant to the requirements and provisions of this chapter and other applicable provisions or sections of this Code. If acceptance is required or requested before ninety (90) percent of the certificates of occupancy (including temporary certificates) have been issued, the Council may require a site restoration guarantee for the purposes set forth in section 26.5-34(a), and to guarantee the physical integrity of the roads to be accepted in light of continuing construction activity.

The amount of the guarantee shall be established by the city engineer in an amount to be determined on the basis of the number of buildings remaining to be constructed, an estimate of time for completion and expected acceptance of the remaining site improvements, and other factors specific to the development at issue. The guarantee described in this Section shall be in addition to the guarantees posted in connection with an individual building permit under Section 26.5-34(d), which shall apply to all building permits for construction on properties abutting public streets within the City.

## **Part II.**

**Savings Clause.** The amendment of the Novi Code of Ordinances set forth in this Ordinance does not affect or impair any act done, offense committed, or right accruing, accrued, or acquired or liability, penalty, forfeiture or punishment, pending or incurred prior to the amendment of the Novi Code of Ordinances set forth in this Ordinance.

## **PART III.**

**Severability.** Should any section, subdivision, clause, or phrase of this Ordinance be declared by the courts to be invalid, the validity of the Ordinance as a whole, or in part, shall not be affected other than the part invalidated.

## **PART IV.**

**Effective Date: Publication.** The provisions of this Ordinance shall become effective fifteen (15) days after its adoption and shall be published within 15 days of its adoption by publication of a brief notice in a newspaper circulated in the City, stating the date of enactment and the effective date of the ordinance, a brief statement as to the subject matter of this Ordinance and such other facts as the Clerk shall deem pertinent, and that a copy of the Ordinance is available for public use and inspection at the office of the City Clerk.

MADE, PASSED, AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF NOVI, OAKLAND COUNTY, MICHIGAN, ON THE \_\_\_ DAY OF \_\_\_\_\_, 2010.

\_\_\_\_\_  
DAVID B. LANDRY – MAYOR

\_\_\_\_\_  
MARYANNE CORNELIUS – CITY CLERK

Ayes:  
Nays:  
Abstentions:  
Absent:

**CERTIFICATION OF ADOPTION**

I hereby certify that the foregoing is a true and complete copy of an Ordinance passed at a \_\_\_\_\_ meeting of the Novi City Council, held on the \_\_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
MARYANNE CORNELIUS – CITY CLERK

Adopted:  
Published:  
Effective:

1456546

**RESOLUTION**

City of Novi  
County of Oakland, Michigan

Minutes of a regular Meeting of the City Council of the City of Novi,  
County of Oakland, Michigan, held in the City Hall in said City on January 27, 1997, at  
7:30 o'clock P.M. Prevailling Eastern Time.

PRESENT: Councilmembers McLellen, Crawford, Clark, Kramer, Mitzel,  
Mitch, Schmid

ABSENT: Councilmembers NONE

The following preamble and Resolution were offered by Councilmember Crawford  
and supported by Councilmember Clark

WHEREAS, Section 3.06.4 of Ordinance No. 77-45, as amended, the City  
of Novi Subdivision Ordinance, authorizes the City Council to establish by resolution a  
policy for the acceptance of improvements within a subdivision;

WHEREAS, Section 2407.3 of the City of Novi Zoning Ordinance requires  
site condominiums to meet the same substantive requirements as platted subdivisions,  
notwithstanding varying procedural requirements; and

WHEREAS, the City Council has reviewed the attached "City of Novi Utility  
and Street Acceptance Policy - Subdivisions and Site Condominiums", and has determined  
the same to be an appropriate policy for such purposes.

NOW, THEREFORE, BE IT RESOLVED that the City Council hereby adopts

the attached "City of Novi Utility and Street Acceptance Policy - Subdivisions and Site Condominiums".

AYES: Councilmembers McLallen, Crawford, Clark, Kramer, Mitzel,  
Mutch, Schmid

NAYES: Councilmembers NONE

RESOLUTION DECLARED ADOPTED.

*Tonni Bartholomew*  
TONNI BARTHOLOMEW, CITY CLERK

**CERTIFICATION**

I hereby certify that the foregoing is a true and complete copy of a Resolution adopted by the City Council of the City of Novi at a REGULAR meeting held this 27 day of January, 1997.

*Tonni Bartholomew*  
TONNI BARTHOLOMEW, CITY CLERK

**CITY OF NOVI  
UTILITY AND STREET ACCEPTANCE POLICY  
FOR SUBDIVISIONS AND SITE CONDOMINIUMS**

**Purpose**

This policy shall establish requirements and procedures governing the formal acceptance of public utilities and streets that have been constructed by developers within platted subdivisions and site condominiums and are intended to be maintained and operated by the City of Novi for the benefit of the public.

Public utilities and streets, as used herein, for subdivisions shall include streets, sanitary sewer systems, water distribution systems and storm sewer systems. Site condominiums shall include sanitary sewer systems, water distribution systems, and may include storm sewer systems and streets where proposed to be dedicated as public. All public facilities shall be owned and operated by the City of Novi.

**Intent**

It is the intent of this policy to require 100% completion of all construction improvements for platted subdivisions and site condominiums within the City of Novi prior to the "formal acceptance of public utilities and streets".

Construction improvements, as used herein, shall include all public utilities and streets, grading, soil erosion and sedimentation control measures, and all other physical improvements, impacting the maintenance of streets and utilities by the City, required by subdivision platting or condominium site plan approval.

**Acceptance Procedure**

- I. Upon substantial completion of each individual phase of the development process;
  - a. Utilities - Sanitary Sewers, Water Mains and Storm Sewers where applicable;
  - b. Street Paving and traffic control signs;
  - c. Grading and Stabilization - R.O.W. grading, detention/retention basins, soil erosion and sedimentation control measures in place, although growth of vegetation may not have yet occurred due to weather conditions;

and upon written request by the Developer, the City's municipal consulting engineers will issue a letter to the Department of Public Services with copies to the developer stating such has been achieved. "Substantial Completion" is defined as the point at which work has been judged satisfactorily completed, such that singular



improvements could be utilized by the general public, if so desired.

ii. Upon substantial completion of all above individual phases of the development process, described above, the City's municipal consulting engineer, if satisfied of same, will issue a certificate of overall substantial completion to which, if necessary, will be attached a Master punch list of items to be completed by the developer, including developer-placed sidewalks and bike paths, within sixty (60) calendar days or such other time period as stated within the certificate. At the time of certificate of overall substantial completion, the Building Department is authorized to issue building permits contingent upon receipt of appropriate financial guarantees for uncompleted site work reflecting worth valuation with a multiplier of 1.5 for up to two (2) years, as itemized in the aforementioned punch list. At the end of the sixty (60) day or other stated time period, or prior to that, the City's municipal consulting engineers will forward a letter to the Director of Public Services ascertaining whether all punch list items have been completed. Should said items remain uncompleted, weather excluding, the Building Department may decline to issue further building permits and/or put a "hold" on inspections. For the purpose of this section, substantial completion is defined as the stage at which work completed by the developer is sufficient to be used by any end-user (health, safety and welfare of the public being protected). The Building Department is also authorized to issue building permits for models pursuant to City Ordinances.

iii. Upon 100% completion of all construction improvements as required by the approved subdivision plat, condominium site plan, engineering construction plans, and as further required by the City of Novi Design and Construction Standards, Novi Subdivision Ordinance, Zoning Ordinance, Soil Erosion Ordinance, and Michigan State Plat Act, the Developer may submit a written request for "Formal Acceptance of Public Utilities & Streets" to the Department of Public Services.

Upon receipt of this written request, the City's consulting engineers will be instructed to schedule a final "walk-through" inspection in accordance with the guidelines for final site inspections. Upon the Developer's compliance with all inspection comments, the City's engineers shall prepare a written recommendation requesting "Formal Acceptance of Public Streets and Utilities" by City Council and shall forward it, together with all required Acceptance Documentation, to the City Attorney for review. Once reviewed and determined acceptable, the City Attorney shall forward acceptance documents to the Department of Public Services for scheduling before the City Council. Should two (2) years elapse from the date of recording a plat or condominium site plan without the developer having completed the project 100%, the Director of Public Services may suspend any further issuance of building permits and/or adjust any financial guarantees to represent a valuation of uncompleted site work with a multiplier of 3.0 and pursue the completion of the project as may be in the best interest of the community.

ATTN: RETH KODLA

6/25/04

Attached to the engineers recommendation of "Formal Acceptance of Public Streets and Utilities" shall be the following Developer-provided documents:

1. A "Maintenance Bond" acceptable to the City, posted with the City by the Developer or his contractors, for all public utilities and streets. Said bond shall have a term of two years following formal acceptance for use by the City of streets and utilities, and each bond shall be in an amount of not less than twenty-five percent (25%) of the construction cost. The Developer shall submit evidence acceptable to the City for verification of the construction cost.
2. An executed Bill of Sale, and easements as required for site condominiums, from the Developer to the City, for a nominal monetary sum, conveying the improvements from the Developer.
3. All Waivers of Lien from the Developer and his contractors along with sworn statement from the Developer stating that all labor and material expenses incurred in connection with the subject construction improvements have been paid.

Variance

In case of practical hardship (such as inclement weather conditions), and in cases where approval of installing the top lift of asphalt at a later date is reasonable, as determined by the Department of Public Services, and upon written request by the Developer, an administrative waiver to the requirements of this policy may be granted at the sole discretion of the Director of Public Services or designee. Upon granting of a waiver, the Department of Public Services may require the posting of a financial guarantee in the form of cash or irrevocable bank letter of credit, at the election of the Developer and acceptable to the City's Attorneys, that shall guarantee compliance by the Developer with any conditions of the waiver.

Promulgation of Guidelines, Procedures, Criteria/Forms

The Director of Public Services is hereby authorized to promulgate any guidelines, procedures, criteria, instructions, forms or other documentation deemed necessary to implement this policy.