

DR 78-35 - Possible Amendment to  
the City Zoning Ordinance - Filing  
of Performance Guarantees.

# ACTION

COMMITTEE	DATE
M.A.P.C. <i>Deny.</i>	<i>12-21-78</i>
B.C.C./B.C.O.C. <i>Returned to MAPC</i>	<i>1-16-79</i>
M.A.P.C. <i>Approved</i>	<i>2-15-79</i>
B.C.C. <i>Referred 3 weeks</i>	<i>3-13-79</i>
B.C.C. <i>Approved with appeal to B.C.C.</i>	<i>4-3-79</i>

*Closed*

89518 (Published in the Daily Record  
April 20, 1979)

ORDINANCE NO. 36-047

AN ORDINANCE AMENDING THE PROVISIONS OF SECTION 28.04.220 OF THE CODE OF THE CITY OF WICHITA, KANSAS; PERTAINING TO THE ISSUANCE OF BUILDING PERMITS AND CERTIFICATES OF OCCUPANCY AND COMPLIANCE, AND THE FILING OF PERFORMANCE GUARANTEES, AND REPEALING THE ORIGINAL OF SAID SECTION 28.04.220 OF THE CODE OF THE CITY OF WICHITA, KANSAS.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 28.04.220 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"28.04.220 Building permits; certificates of occupancy and compliance; performance guarantees to assure compliance; waiver or extension.

A. The existing use and occupancy of premises shall not be changed nor shall any building be hereafter erected, enlarged, converted or altered until a building permit has been issued by the Central Inspection Superintendent stating that the proposed use of such land or building or premises complies with the provisions of this Chapter.

B. A certificate of occupancy and compliance shall be applied for coincident with the application for a building permit and shall be issued within ten days after the erection or alteration of such building or premises shall have been completed in conformity with the provisions of these regulations. A record of all certificates shall be kept on file in the office of the Central Inspection Superintendent and copies shall be furnished on request to any person having a proprietary or tenant interest in the building permit; for all other certificates or for copies of any original certificate, there shall be a charge of one dollar for each copy thereof.

C. A building permit shall not be issued until the owner of the premises shall have filed in the office of the Superintendent of Central Inspection a letter of agreement for the completion of all on site improvements prior to any occupancy of the premises.

D. When extenuating circumstances not under the control of the owner occur, the owner may request that a temporary occupancy permit be issued. Such circumstances may include, but not

be limited to, extreme weather conditions preventing completion of on site improvements, delay of installation or incomplete public improvements that could possibly cause damage or removal of on site improvements, or other similar circumstances that could be deemed to interfere with the completion of all required improvements.

A request for a temporary occupancy permit shall be accompanied by a performance guarantee and a schedule for completion of all required improvements to the site. A written grant of the right of entry on the premises by the City or its designee for the purpose of completing the improvements shall be executed by the owner at the time of and in conjunction with the filing of the performance guarantee. The performance guarantee may consist of a corporate surety bond, a bank letter of credit, cashier's check, escrow account or other like security in an amount to be fixed by the Superintendent of Central Inspection.

The amount of such guarantee or security shall be based upon the estimated cost of improvements as evidenced by bonafide bids or contracts, to be guaranteed and may include contingency factors for inflation and cost overruns in an amount equal to twenty-five percent (25%) above the estimated cost. The guarantee, if in a form other than cash or its equivalent, shall be subject to the approval of the Director of Law and conditioned upon the actual completion of such work within the specified time period.

If the required improvements shall not have been installed in accordance with the performance guarantee, the obligor and surety, if any, shall be liable thereon to the City for the cost of the improvements not installed. In addition to all equitable remedies to enforce such guarantee, the proceeds of the security or guarantee may be claimed and used by the City to secure completion of the improvements.

E. The specified time period allowed for installation of the improvements for which the performance guarantee has been provided may be waived or extended by the Board of City Commissioners by resolution upon an application and showing that unusual circumstances, beyond the control of the owner of the premises, continues to prevent completion of the improvements. Such application shall be accompanied by a current abstractors certificate listing the names, mailing address and ZIP codes of the owners of all adjacent property

within 200 feet of the application area. The hearing shall not be scheduled before the Board of City Commissioners until ten days after receipt of the application and the current abstractors ownership list by the Superintendent of Central Inspection in order to allow sufficient time to notify all adjacent property owners. The amount of any performance guarantee may be reduced by the Board of City Commissioners when portions of the improvements have been completed. The resolution granting the waiver or extension may direct the issuance of the certificate of occupancy subject to the provisions or conditions of the resolution including the modification of the performance guarantee."

The original section 23.04.220 of the Code of the City of Wichita, Kansas, is hereby repealed.

This ordinance shall be included in the Code of the City of Wichita, Kansas, and shall be effective upon its passage and publication once in the official city paper.

ADOPTED at Wichita, Kansas, this 17th day of April, 1979.

TONY CASADO, Mayor

Attest: (Seal) DONALD C. GISICK, City Clerk

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE AMENDING THE PROVISIONS OF SECTION 28.04.220 OF THE CODE OF THE CITY OF WICHITA, KANSAS: PERTAINING TO THE ISSUANCE OF BUILDING PERMITS AND CERTIFICATES OF OCCUPANCY AND COMPLIANCE, AND THE FILING OF PERFORMANCE GUARANTEES, AND REPEALING THE ORIGINAL OF SAID SECTION 28.04.220 OF THE CODE OF THE CITY OF WICHITA, KANSAS.

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The original section 28.04.220 of the Code of the City of Wichita, Kansas, is hereby repealed.

This ordinance shall be included in the Code of the City of Wichita, Kansas, and shall be effective upon its passage and publication once in the official city paper.

ADOPTED at Wichita, Kansas, this \_\_\_\_\_ day of \_\_\_\_\_, 1979.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
Donald Gisick, City Clerk

Approved as to form:

\_\_\_\_\_  
John Dekker, Director of Law

ORDINANCE NO. \_\_\_\_\_

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The original section 28.04.220 of the Code of the City of Wichita, Kansas, is hereby repealed.

This ordinance shall be included in the Code of the City of Wichita, Kansas, and shall be effective upon its passage and publication once in the official city paper.

ADOPTED at Wichita, Kansas, this \_\_\_\_\_ day of \_\_\_\_\_, 1979.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
Donald Gisick, City Clerk

Approved as to form:

\_\_\_\_\_  
John Dekker, Director of Law

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by resolution upon an application and showing that unusual cir-  
cumstances, beyond the control of the owner of the premises, con-  
tinues to prevent completion of the improvements. <sup>insert</sup> The amount of  
any performance guarantee may be reduced by the Board of <sup>City</sup> ~~Zoning~~  
<sup>Commissioners</sup> ~~appears~~ when portions of the improvements have been completed.  
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This ordinance shall be included in the Code of the City  
of Wichita, Kansas, and shall be effective upon its passage and  
publication once in the official city paper.

ADOPTED at Wichita, Kansas, this \_\_\_\_\_ day of \_\_\_\_\_,  
1979.

\_\_\_\_\_  
Mayor

ammmmm.

X insert.

Such application shall be accompanied by  
a current abstractors certificate listing the  
names, mailing addresses and zip codes of the  
owners of all adjacent property within 200  
feet of the application area. The hearing shall  
not be scheduled before the Board of City  
Commissioners until ten days after receipt of  
the application and the current abstractors  
ownership list by the Superintendent of  
Central Inspection in order to allow sufficient  
time to notify all adjacent property owners.

WICHITA-SEDGWICK COUNTY

DATE

METROPOLITAN AREA PLANNING DEPARTMENT

March 5, 1979

TO E. H. Denton, City Manager  
FROM Robert A. Lakin, Director of Planning  
SUBJECT DR 78-35 - Possible amendment to the Zoning Ordinance  
Re: Performance guarantees for landscaping and screening.

Attached hereto is a delineated copy of an amendment to the zoning ordinance. Please place this item on the agenda of March 13, 1979 for consideration by the City Commission.

BACKGROUND

On October 24, 1978, the City Commission instructed the staff to review the ordinance requirements and recommend revisions to:

- (1) Provide that landscaping and screening requirements be guaranteed prior to the issuance of building permits;
- (2) Provide that landscaping and screening be installed prior to issuance of an occupancy permit;
- (3) Provide for a waiver process; and
- (4) Include performance and penalty provisions to assure compliance.

In review of the existing regulations with representatives of the Planning Department and Central Inspection, the Department of Law drafted a proposed revision to the zoning ordinance. This amendment was advertised and a public hearing before the Planning Commission was held on December 21, 1978. Copies of the minutes of that meeting are attached including the material discussed.

After considerable discussion, the Planning Commission did not recommend the amendment for adoption, but instead recommended that a procedure for enforcement of the ordinance be developed, which could include the withholding of occupancy permits. It was also suggested that possibly a procedure be developed to withhold permits to those that have failed to comply; the possible revocation of contractors licenses; or the revocation of utility hookups or other procedures designed around the withdrawal of "privileges" as opposed to penalties or punitive measures.

Page Two  
E. H. Denton, City Manager  
March 5, 1979

When this matter was referred to the City Commission for their consideration at the meeting of January 16, 1979, it was moved that the proposed amendment be returned to the Planning Commission for reconsideration. Included in the motion was a statement for need of the revision in order to enforce the landscaping requirements, and also the Planning Commission was requested to consider the comments made by the Superintendent of Central Inspection.

The main concern expressed by Mr. Feldner in his memo of December 14, 1978 was the voluminous amount of paperwork and accounting that would be required if guarantees on all sites were required to be filed prior to the issuance of building permits. The draft of the amendment that was prepared for consideration by the Planning Commission at their meeting of February 15, 1979 eliminated this major concern by not requiring guarantees prior to the issuance of a building permit.

It was pointed out by Mr. Feldner at the meeting that in the majority of projects, the contractor that takes out the permit for the building is not responsible for the installation of the screening and landscaping, and to take action to revoke the contractor's license for an inadequacy of the owner to comply would not be feasible. He also indicated that the proposal as presented would help in the matter of completion of the landscaping and screening since the owner will have to agree to complete the requirements before a permit is issued.

SUMMARY

The attached possible amendment to the zoning ordinance will make the following changes in the ordinance:

1. Require that the owner file a letter of agreement, for completion of all on site improvements prior to any occupancy of the premises, before a building permit is issued.
2. It will permit the owner to request a temporary occupancy permit from the Superintendent of Central Inspection when it can be shown that extenuating circumstances have prevented completion of on site improvements. This may be done administratively by the Superintendent of Central Inspection with

Page Three  
E. H. Denton, City Manager  
March 5, 1979

any financial guarantees, other than cash or its equivalent, subject to approval by the Director of Law.

3. Any appeals of the reasonableness or determination by the Superintendent of Central Inspection on the amount of guarantee, the time table for completion, or further extensions are to be referred to the Board of Zoning Appeals for their consideration and action.

On a vote of 7 in favor and 2 opposed, the Planning Commission has forwarded the amendment to the City Commission with a recommendation for adoption. Copies of the Planning Commission minutes of February 15, 1979 are attached.

RECOMMENDED ACTION:

1. Concur in the recommendation of the Planning Commission and place the ordinance on first reading.
2. Make any changes in the ordinance deemed to be in the best interest of the public and place the ordinance on first reading.

  
Robert A. Lakin  
Director of Planning

RAL:GEL:el  
Attachments

cc: John Dekker, Director of Law  
Don Anderson, Director of Housing & Economic Development  
Robert B. Feldner, Superintendent of Central Inspection  
Wichita Area Builders Ass'n., 730 N. Main, Suite 1, 67203  
Wichita Board of Realtors, 717 N. Emporia, 67214

Deletions marked-through  
Additions underlined

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE AMENDING THE PROVISIONS OF SECTION 22.04.220 OF THE CODE OF THE CITY OF WICHITA, KANSAS: PERTAINING TO THE ISSUANCE OF BUILDING PERMITS AND CERTIFICATES OF OCCUPANCY AND COMPLIANCE, AND THE FILING OF PERFORMANCE GUARANTEES, AND REPEALING THE ORIGINAL OF SAID SECTION 28.04.220 OF THE CODE OF THE CITY OF WICHITA, KANSAS.

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The original section 28.04.220 of the Code of the City of Wichita, Kansas, is hereby repealed.

This ordinance shall be included in the Code of the City of Wichita, Kansas, and shall be effective upon its passage and publication once in the official city paper.

ADOPTED at Wichita, Kansas, this \_\_\_\_\_ day of \_\_\_\_\_, 1979.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
Donald Gisick, City Clerk

Approved as to form:

\_\_\_\_\_  
John Dekker, Director of Law

WICHITA-SEDGWICK COUNTY

DATE

METROPOLITAN AREA PLANNING DEPARTMENT

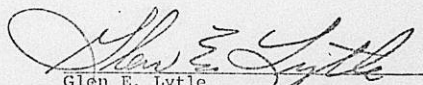
February 9, 1979

TO Wichita-Sedgwick County Metropolitan Area Planning Commission  
FROM Glen E. Lytle, Special Assistant for Zoning  
SUBJECT DR 78-35 - Possible Amendment to the City Zoning Ordinance -  
Re: Performance Guarantees for Landscaping and Screening

Attached hereto are copies of material that was considered by the Planning Commission on December 21, 1978, along with the minutes of that meeting.

On a motion to approve the amendment, the Planning Commission voted 3 in favor and 4 against the adoption of the proposed amendment. This matter was forwarded to the City Commission for their consideration on January 16, 1979. After considerable discussion, Shanahan moved that the proposed amendment be returned to the Planning Commission for reconsideration, as there is need for revision in order to enforce the landscaping requirements, and further ask that the comments of the Superintendent of Central Inspection be considered. Motion carried 5-0.

We are working with Central Inspection in the revision and development of procedures to accomplish the request of the City Commission. Copies of any further changes will be furnished to you at the meeting.

  
Glen E. Lytle  
Special Assistant for Zoning

GEL:bbc  
Attachments

cc: Robert A. Lakin, Director of Planning  
Don Anderson, Director of Economic Development  
Robert B. Feldner, Superintendent of Central Inspection  
John Dekker, Director of Law  
H. R. Kuhn, Assistant City Attorney  
Dave Furnas, C.P.O. Coordinator  
Wichita Area Builders Ass'n., 730 N. Main 67203  
Wichita Board of Realtors, 717 N. Emporia 67214

EXCERPT FROM PLANNING COMMISSION MINUTES OF FEBRUARY 15, 1979:

12. Case No. DR 78-35 - Possible Amendment to City Zoning Ordinance - Re: Filing of Performance Guarantees.

ROBERT A. LAKIN, stated that this was an item that was previously discussed pertaining to the filing of performance guarantees prior to the issuance of building permits in order to guarantee the screening and landscape improvements. The Planning Commission voted to recommend to the City Commission that the amendments not be adopted as submitted. At the City Commission meeting some feelings were expressed that they did want to adopt something, and part of that stems from the continued frustration that the City Commission experiences in having the job done. He said the staff was instructed to look at some alternatives in terms of dealing with contractors licenses, being able to revoke those as a privilege versus the right for a building permit, and to look at utility hookups. The building contractor for most of the buildings are not responsible for the total project. They obtain a permit to build the building, and are not responsible for putting in the off-street parking, screening or the electric and plumbing. To revoke the license of one contractor appears to be an unuseable device for staff because they are still not getting the person responsible for the job necessarily. An alternate for that would be to change the permit requirement, making it a dual permit where the owner of the land does take out the permit. Utilities were looked at, and felt more problems would occur, for instance, in inclement weather when the utilities are shut down, it could cause severe damage to structures. He said that there was one utility, however, that the City does control, and that is water.

LAKIN said that Central Inspection says that it is almost impossible for them to enforce the occupancy permit. He said that all sorts of alternatives were looked at, and we could not find very many alternatives to offer.

BAYOUTH asked Robert Feldner, Superintendent of Central Inspection, out of all the builders and contractors in the City of Wichita, was there any way to be 100 percent. He did not feel all of the contractors should be punished for one person that did not comply.

FELDNER said that he would tend to agree with Mr. Bayouth, if anyone had ever been involved in a building project, it was evident that a building was really not finished until many months or years after the structure was occupied.

SAVINA asked if it would require additional staff to enforce this ordinance the way it is proposed now.

FELDNER stated no. They have been operating in a very similar way in the past few months. The bonds are received and reviewed by the Law Department. The Administrative Division then accepts the bonds at the time they issue the permit. He did not believe it would be a situation that would require additional staff.

SAVINA asked if in Mr. Feldner's opinion did he think this was inflationary.

FELDNER said that the way the ordinance is written, they would only be requiring bonds for those people who had not complied at the time of request for occupancy. The original concept as he understood it was to require a bond on every permit that had any requirement for screening and landscaping, which in his opinion, would have been time consuming and probably would have required more staff.

CHAIRMAN GREIDER asked if Central Inspection was requiring some bonds now.

FELDNER said yes. GREIDER asked if there was a need for this ordinance if they are already requiring a bond. FELDNER said that it was the City Commission's request that this be explored and put into writing in the ordinance, and right now its just a matter of policy.

BELL asked if someone occupied a premise without an occupancy permit, was it a criminal activity. FELDNER said that it was a misdemeanor.

BARRIER said that speaking of the number of staff hours that Central Inspection spends in enforcement, it would seem to her that those hours would be well spent if the City was going to be strict in its enforcement, and if they were consistent in enforcement for a length of time, then she felt just like any other disciplinary action, it would be accepted and people would recognize the fact that they are going to have to comply. She asked Mr. Feldner what he thought of the signed agreement for completion of all on-site improvements prior to occupancy of the premises.

FELDNER felt this agreement would be helpful in most instances. The contractor takes out the permit and Central Inspection issues a list of requirements to be complied with, and the owner in 90 percent of the time never sees what the actual requirements are.

BARRIER asked if this would stand up in a court of law.

BELL responded that when you say something will or will not stand up in court, you are on shaky ground because it depends on the precise facts in the given case. He said that you cannot do anything that is 100 percent, airtight, iron-clad when you get to court.

LAKIN commented that one of the things that is perceived to be one of the problems in enforcement and in going to court, is identifying responsibility. He said that one of the first defenses that is usually brought up against the City, is that the contractor didn't know or was not informed in time.

GLEN LYTLE, Special Assistant for Zoning, stated that the amendment that was previously considered by the Planning Commission on December 21, 1978 meeting required a performance guarantee to be filed, prior to the issuance of a building permit, on all properties where landscaping and screening is required. On a motion to recommend adoption, the Planning Commission voted 3 in favor, and 4 against. The amendment was forwarded to the City Commission for their consideration at the meeting of January 16, 1979.

LYTLE said that when the City Commission referred this matter back to the Planning Commission, they stated as part of the motion that consideration should be given to the comments of the Superintendent of Central Inspection. As you note by his memo of December 14, 1978, the major concern expressed was that the amendment would require guarantees on all sites prior to the issuance of a building permit, thereby creating a voluminous amount of paperwork in keeping track of the guarantees.

LYTLE continued that the redraft presented to the Planning Commission today takes into consideration this concern and will not require any financial guarantees prior to the issuance of a building permit, but only require a letter of agreement, by the owner, that all on-site improvements will be completed prior to any occupancy of the premises. It will then further permit the Superintendent of Central Inspection to issue a temporary certificate of occupancy without the completion of all on-site improvements when the owner requests same, due to extenuating circumstances not under the control of the owner thereby preventing completion.

LYTLE concluded that this amendment will not penalize owners or contractors who willfully comply with the regulations. It will, however, permit the administration of the regulations by requiring guarantees for the installation of on-site improvements similar to the present policy without having to appeal to the City Commission.

BAYOUTH said he did not see why a person should be required to put up a bond because he has not landscaped, for instance if the ground was frozen and he could not landscape. He felt he should be given until Spring without the bond. He asked if this could not be handled administratively.

LYTLE said that the way its being handled now is that the guarantees are being required administratively. This amendment was prepared at the request of the City Commission that some method be devised to assure that these improvements are going to be completed.

MAY stated that the case Mr. Bayouth was bringing up as far as she was concerned is the perfect case of why we should have this. An occupancy permit is issued because it is December and trees cannot be planted, and that is the very example the City has dealt with in the past and lost.

LYTLE said that if an occupancy permit is issued without compliance then it is extremely difficult to go back at a later date and ask for compliance unless they are applying for an additional permit to make changes or adding to an existing property.

COLE stated the questions are answered in the compromise of Mr. Bayouth's concern about the contractor having a chance to do what they say they are going to do, and only if they don't comply then they have to put up a bond. He felt this was a good compromise.

MOTION: That the Planning Commission recommend to the City Commission that the compromise amendment be approved. Cole moved, May seconded.

BAYOUTH commented that he did not see where anything had been gained. He thought it was unfair to a person to landscape without the weather being in his favor, and he did not think he should have to pay the cost of a bond or anything else because it was not his fault. He felt that more cost was being created to the developer and more business for the attorney.

VOTE ON THE MOTION: It carried with a vote of 7 in favor (Cole, May, Greider, Barrier, Taylor, Bell and Hennessy), and 2 opposed (Bayouth and Savina). Jones was absent.

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WICHITA-SEDGWICK COUNTY

DATE  
December 14, 1978

METROPOLITAN AREA PLANNING DEPARTMENT

TO Wichita-Sedgwick County Metropolitan Area Planning Commission

FROM Robert A. Lakin, Director of Planning

SUBJECT DR 78-35 - Possible Amendment to the Zoning Ordinance  
Re: Performance guarantees to assure compliance

Attached hereto is a delineated copy of a possible amendment to the City of Wichita zoning ordinance that has been advertised for public hearing at the December 21, 1978 Planning Commission meeting.

BACKGROUND:

Over the past several years, requirements for the landscaping and screening of commercial and industrial developments have been a condition of the zoning ordinance in order to provide some protection to adjacent properties. This has particularly been a condition of commercial community unit plans.

There has been an increasing concern expressed by neighborhoods adjacent to such development when screening and landscaping has not been provided in accordance with the approved plans. When deficiencies have recently been brought to the attention of the City Commission, it was felt that a revision to the procedures should be considered to assure that the owner or developer would install the improvements prior to the occupancy of the development. It was also recognized that there will be times when it will not be possible to complete all requirements by the time the tenants are ready to occupy a structure and therefore, a required satisfactory financial guarantee is being considered.

On October 24, 1978, the City Commission instructed the staff to review the present ordinance requirements and recommend revisions to:

- (1) Provide the landscaping and screening requirements be guaranteed prior to the issuance of building permits;
- (2) Provide that landscaping and screening be installed prior to issuance of an occupancy permit;
- (3) Provide for a waiver process; and
- (4) Include performance and penalty provisions to assure compliance.

The Department of Law prepared a draft of a possible ordinance and returned the same to the City Commission for their information

Wichita-Sedgwick County Metropolitan Area Planning Commission  
Page 2 - December 14, 1978

at the meeting of November 21, 1978. The proposed ordinance change would be a provision of the zoning ordinance and as required by law, it must be advertised and a public hearing held by the Planning Commission for a recommendation to the governing body. Without discussion, the City Commission referred the possible amendment to the NAPC for hearing and recommendation.

SUMMARY:

This possible amendment to Section 28.04.220 of the zoning ordinance includes the following changes:

1. Requires that the owner furnish a guarantee that landscaping, screening and other on-site improvements will be made in accordance with approved plans, such guarantee to be in an amount to be determined by the Superintendent of Central Inspection, with a contingency factor of 25% for inflation and cost overruns. The guarantee if in any form other than cash or its equivalent, shall be subject to the approval of the Director of Law.
- (2) It will require that all improvements be made to the property prior to the issuance of an occupancy permit.
- (3) It establishes a waiver procedure for extending the time for completion of improvements upon the showing of unusual circumstances beyond the control of the owner of the premises.

There has been no change recommended in the penalty provisions as they are presently in the ordinance as Sections 28.04.240 and 1.04.060 which sets a maximum penalty of \$500.00 for each violation with each day being a separate offense. The penalty is set by the courts and is in accordance with the state statutes.

  
Robert A. Lakin, Director of Planning

RAL:bbc  
cc: Don Anderson, Director of Economic Development  
Robert B. Feldner, Superintendent of Central Inspection  
John Bokor, Director of Law  
H. R. Kuhn, Assistant City Attorney  
Dave Furnas, C.P.O. Coordinator  
Wichita Area Builders Assn., 739 N. Main, 67203  
Wichita Board of Realtors, 626 N. Broadway, 67214

November 28, 1978  
DR-78-35

Deletions marked-through  
Additions underlined

Possible Amendment to the  
City of Wichita Zoning Ordinance Scheduled for  
Public Hearing Before the MAPC-Thursdays, December 21, 1978

Recommended that Section 28.04.220 be amended to read as follows:

28.04.220 Building permits; certificates of occupancy and compliance; performance guarantees to assure compliance; waiver or extension.

A. The existing use and occupancy of premises shall not be changed nor shall any building be hereafter erected, enlarged, converted or altered until a building permit has been issued by the central inspection superintendent stating that the proposed use of such land or building or premises complies with the provisions of this Chapter.

B. A certificate of occupancy and compliance shall be applied for coincident with the application for a building permit and shall be issued within ten days after the erection or alteration of such building or premises shall have been completed, in conformity with the provisions of these regulations. A record of all certificates shall be kept on file in the office of the central inspection superintendent and copies shall be furnished on request to any person having a proprietary or tenant interest in the building permit; for all other certificates or for copies of any original certificate, there shall be a charge of one dollar for each copy thereof.

C. A building permit shall not be issued until the owner of the premises shall have filed in the office of the central inspection superintendent an adequate performance guarantee that landscaping, screening, and other on-site improvements will be made in accordance with the plans previously submitted and approved. The performance guarantee may consist of a corporate surety bond, a bank letter of credit, cashier's check, escrow account or other like security in an amount to be fixed by the superintendent of central inspection.

The amount of such guarantee or security shall be based upon the estimated cost of improvements, as evidenced by bona fide bids or contracts, to be guaranteed and may include contingency factors for inflation and cost overruns in an amount equal to twenty-five percent (25%) of the estimated cost. The guarantee, if in a form other than cash or its equivalent, shall be subject to the approval of the director of law and conditioned upon the actual completion of such work within a specified time period and prior to the issuance of the certificate of occupancy and compliance.

If the required improvements shall not have been installed in accordance with the performance guarantee, the obligor and surety, if any, shall be liable thereon to the City for the cost of the improvements not installed. In addition to all equitable remedies to enforce such guarantee, the proceeds of the security or guarantee may be claimed and used by the City to secure completion of the improvements. A written grant of the right of entry on the premises by the City or its designee for the purpose of completing the improvements shall be executed by the owner of the time of and in conjunction with the filing of the performance guarantee.

D. The amount of any performance guarantee may be reduced by the governing body by resolution when portions of the improvements have been completed. The specified time period allowed for installation of the improvements for which the performance guarantee has been provided may be waived or extended by the governing body by resolution upon an application and showing of unusual circumstances beyond the control of the owner of the premises. The order granting the waiver or extension may direct the issuance of the certificate of occupancy and compliance subject to the provisions or conditions of said order.

EXCERPT FROM PLANNING COMMISSION MINUTES OF DECEMBER 21, 1978:

25. Case No. DR 78-35 - Possible Amendment to the City Zoning Ordinance - Filing of Performance Guarantees.

GLEN LYTLE, Special Assistant to Zoning, stated that this was a proposed amendment to the zoning ordinance which would provide for a performance guarantee to insure that onsite improvements would be completed prior to the occupancy of a building. He said that recent cases have been pointed out to the City Commission of failure of the owners or developers to fully comply with the requirements of landscaping and screening on several projects. At the October 24, 1978 City Commission meeting, the Commissioners instructed the staff to review the present ordinance requirements and recommend revisions to:

- (1) Provide the landscaping and screening requirements be guaranteed prior to the issuance of building permits;
- (2) Provide that landscaping and screening be installed prior to issuance of an occupancy permit;
- (3) Provide for a waiver process; and
- (4) Include performance and penalty provisions to assure compliance.

LYTLE said that this draft of the possible amendment was prepared by the Department of Law and includes the following changes:

- (1) Requires that the owner furnish a guarantee that landscaping, screening and other on-site improvements will be made in accordance with approved plans, such guarantee to be in an amount to be determined by the Superintendent of Central Inspection, with a contingency factor of 25% for inflation and cost overruns. The guarantee if in any form other than cash or its equivalent, shall be subject to the approval of the Director of Law.
- (2) It will require that all improvements be made to the property prior to the issuance of an occupancy permit.
- (3) It establishes a waiver procedure for extending the time for completion of improvements upon the showing of unusual circumstances beyond the control of the owner of the premises.

LYTLE continued that there was no change or recommendation for change in the penalty provisions because this was part of the enabling legislation that the maximum penalty is established by State Statute, and also it is up to the discretion of the judge in each case should it go to court. He said that comments received from the Superintendent of Central Inspection indicated that the wording of the ordinance would require that financial guarantees be required on all sites upon which these improvements are required. LYTLE said that the instructions to the Director of Law did not differentiate and that a development not in a Community Unit Plan could conceivably require a large amount of screening and landscaping and thus a concern for needed guarantees and enforcement. The Superintendent of Central Inspection has indicated his concern that the amendments not only would be a lot of paper work in order to keep track of the guarantees, but is another procedure that the builders and developers are going to have to comply with prior to the issuance of a building permit. Another concern expressed by the Superintendent of Central Inspection was the issuance of an occupancy permit if the owner complied only with the zoning ordinance. The Department of Law indicated that since

this was provision of the zoning ordinance, it should refer only to this code. The other concern of the Superintendent was the experience he had with corporate surety bonds. He indicated that they have some litigation going at the present time.

LYTLE stated that the reason all of the various guarantees are included in the ordinance was that the attorney felt that use of the same language that is in the Kansas State Statute is what should be in the ordinance.

BELL stated that he was in sympathy with the basic intent behind this. He questioned the wording of "landscaping, screening, and other onsite improvements will be made in accordance with the plans previously submitted and approved". He felt this was vague. He felt it was drawn by someone that was not familiar with the processes the Planning Commission goes through in getting up to that point, because frequently there were not plans submitted and approved, there are suggestions, commitments, and all kinds of things, yet there are still screening requirements. He felt this should be made more specific.

LYTLE interpreted it as plans submitted prior to the issuance of a building permit, and there are plans submitted, and screening and landscaping shown on these plans.

LAKIN stated that there were landscape plans that he signs and/or with the Superintendent of Central Inspection (primarily BZA cases and CUP's). There are other ordinance provisions that say just build a wall. No plans are submitted on a wall, just plans on landscaping. LAKIN suggested that wording be included in the amendment about "in accordance with plans previously submitted and approved, and for other ordinance requirements".

BELL stated that where there is a landscaping area that was required to be kept on portions of the land, it would be questionable under broad general language whether that was the kind of plan requested. His other question was the sentence that read: "The improvements shall be executed by the owner of the time of and in conjunction with the filing of the Performance guarantee". He asked if there was some language omitted. (It was pointed out that it was a typographical error and should be --- "owner at the time of ---").

COLE commented that Mr. Bell's point was well taken, if all of the things are not put in that the Commission wants to comply, then there is always the escape clause for people not to comply.

MAY speaking about Mr. Feldner's memorandum, concerning the overload which would be imposed upon his Department if this ordinance is imposed on things beyond CUP's, and BZA's, she reminded the Commission that there have been many cases that were just zoning cases where screening fences were never constructed to protect residential property, and she wanted to indicate her desire that the ordinance apply to all sites in which improvements are proposed.

BAYOUTH said that he did not approve of cash guarantees in that it works a hardship on an individual.

SAVINA said that he was opposed to anything of this nature. He felt that it was a frustrated example of a frustrated ordinance, and a frustrated Department that cannot carry out its inspections properly. He said the certificate of occupancy is the key to the whole thing, and if Central Inspection operated as it should operate, then they would not need a cash guarantee. He felt that this sort of thing would cause an inflationary impact on the City, and they would have to have more staff to take care of the cash operation, people will have a lot of money tied up, and it would take months and months to get their money back after the certificate is issued. It was just not proper and right to do this kind of thing just because one or two developers have not lived up to their agreement.

COLE said that he had some sympathy for what Mr. Savina said because he had also some real concern with Central Inspection that they have not been doing their job in the past, and he has complained about it. He said that even when they do their job, more tools are needed to handle those persons who deliberately try to comply to the least extent they possibly can.

MOTION: That the Planning Commission recommend to the City Commission that the proposed amendment be approved with staff's corrections, and take into account Mr. Bell's comments. Cole moved, May seconded.

VOTE ON THE MOTION: Motion failed with a vote of 3 in favor (Cole, May and Taylor), and 4 opposed (Bell, Bayouth Greider and Savina). Barrier, Hennessy and Jones were absent.

LAKIN said that he had not been personally convinced that the occupancy permit could not be properly withheld from the people. The building permits are taken out by owners and/or licensed contractors, and it seemed to him, if they did not comply to the rules, then the licenses to operate should be taken away from them. The economic pressures to open otherwise completed buildings should force to completion of walls and/or bonding of landscaping where out of reason.

Considerable discussion continued on the occupancy permit.

BELL commented that when you get in court and talk about licensing, you are talking about a privilege to do something, and its often not interpreted with all of the equities in favor of the person who is being brought on the carpet.

MOTION: To have staff prepare a procedure for enforcement by Central Inspection Division by the use of the occupancy permit and also to consider some procedure of compliance by withholding permits; or the possible revocation of the contractors' license for failing to comply with conditions of a permit; or the revocation of utility hookups or other procedures designed around the withdrawal of "privileges" (such as licenses) as opposed to penalties or punitive measures. Bell moved, Cole seconded.

MAY explained the reason she voted for the proposed amendment. She participated in a discussion in which other avenues that were suggested were eliminated completed with very little explanation, and the offered amendment looked like the only option.

SAVINA remarked that when people have to put up cash when they have the good intent of complying anyway, then we sure have a poor governing authority.

VOTE ON THE MOTION: It carried unanimously. Barrier, Hennessy and Jones were absent.

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THE CITY OF WICHITA

OFFICE OF Central Inspection Division

DATE December 14, 1978

ROUTING	
CC	
SM	
DM	
EW	
MG	
MSL	



TO Robert Lakin, Director of Planning

FROM Robert B. Feldner, Superintendent of Central Inspection

SUBJECT Proposed Ordinance pertaining to screening/landscaping guarantees

Central Inspection Division's review of the proposed ordinance (as proposed by the Law Department) pertaining to screening/landscaping guarantees has resulted in the following comments and/or recommendations. Hopefully, each of these can be included in the ordinance or forwarded with it to the MPC for their consideration.

The wording of the ordinance requires financial guarantees on all sites upon which improvements are proposed. Application of the ordinance is not restricted to CIP's or SIA's, etc., but is inclusive on all applications for building permit. If this is the intent of the Commissioners, it will create a rather voluminous amount of paperwork to be coordinated. The 1979 budgeting process resulted in Central Inspection's loss of one clerical position and the ability to absorb the additional duties is a major concern. The animosity of the builders, owners and developers which will be generated by the ordinance is another factor which should be considered, as should the fact that financial guarantees are the only proven method by which such installations can be insured with a degree of certainty.

Another concern is the wording of the fifth line of paragraph B. As written, the ordinance mandates that a Certificate of Occupancy be issued if the site is in conformance with Title 23. Should the site be in violation of other titles of City Code, Central Inspection does not anticipate the issuance of a Certificate of Occupancy. It is recommended that the wording be changed to reflect, "conformity with all applicable regulations," or similar phraseology.

The second sentence of paragraph C is another concern. Prior experience with corporate security bonds indicates that foreclosure is most difficult, should that action become necessary. Also, on this very date, the District Court is considering a similar matter involving bank letters of credit.

Page: 2

Re: Proposed Ordinance pertaining to screening/landscaping guarantees December 14, 1978

Thus, any form of guarantee, other than cash or cashier's check, should be carefully reviewed prior to inclusion in the ordinance.

If further information or clarification is desired Central Inspection will be happy to expeditiously respond.

*Robert B. Feldner*  
 Robert B. Feldner  
 Superintendent of Central Inspection

APPROVED:  
*Don E. Anderson*  
 Don E. Anderson  
 Director of Economic Development

RBF:klm



WICHITA-SEDGWICK COUNTY

DATE

METROPOLITAN AREA PLANNING DEPARTMENT

March 5, 1979

TO E. H. Denton, City Manager  
FROM Robert A. Lakin, Director of Planning

SUBJECT DR 78-35 - Possible amendment to the Zoning Ordinance  
Re: Performance guarantees for landscaping and screening.

*W. G. Ward*

Attached hereto is a delineated copy of an amendment to the zoning ordinance. Please place this item on the agenda of March 13, 1979 for consideration by the City Commission.

BACKGROUND

*also 11-28-78*

On October 24, 1978, the City Commission instructed the staff to review the ordinance requirements and recommend revisions to:

- (1) Provide that landscaping and screening requirements be guaranteed prior to the issuance of building permits;
- (2) Provide that landscaping and screening be installed prior to issuance of an occupancy permit;
- (3) Provide for a waiver process; and
- (4) Include performance and penalty provisions to assure compliance.

In review of the existing regulations with representatives of the Planning Department and Central Inspection, the Department of Law drafted a proposed revision to the zoning ordinance. This amendment was advertised and a public hearing before the Planning Commission was held on December 21, 1978. Copies of the minutes of that meeting are attached including the material discussed.

After considerable discussion, the Planning Commission did not recommend the amendment for adoption, but instead recommended that a procedure for enforcement of the ordinance be developed, which could include the withholding of occupancy permits. It was also suggested that possibly a procedure be developed to withhold permits to those that have failed to comply; the possible revocation of contractors licenses; or the revocation of utility hookups or other procedures designed around the withdrawal of "privileges" as opposed to penalties or punitive measures.

*Parade move adapt / Peter's 2nd. 50  
Part's amend - City comes instead of BZA + notice removal BZA.  
ml-50*

Page Two  
E. H. Denton, City Manager  
March 5, 1979

When this matter was referred to the City Commission for their consideration at the meeting of January 16, 1979, it was moved that the proposed amendment be returned to the Planning Commission for reconsideration. Included in the motion was a statement for need of the revision in order to enforce the landscaping requirements, and also the Planning Commission was requested to consider the comments made by the Superintendent of Central Inspection.

The main concern expressed by Mr. Feldner in his memo of December 14, 1978 was the voluminous amount of paperwork and accounting that would be required if guarantees on all sites were required to be filed prior to the issuance of building permits. The draft of the amendment that was prepared for consideration by the Planning Commission at their meeting of February 15, 1979 eliminated this major concern by not requiring guarantees prior to the issuance of a building permit.

It was pointed out by Mr. Feldner at the meeting that in the majority of projects, the contractor that takes out the permit for the building is not responsible for the installation of the screening and landscaping, and to take action to revoke the contractor's license for an inadequacy of the owner to comply would not be feasible. He also indicated that the proposal as presented would help in the matter of completion of the landscaping and screening since the owner will have to agree to complete the requirements before a permit is issued.

SUMMARY

The attached possible amendment to the zoning ordinance will make the following changes in the ordinance:

1. Require that the owner file a letter of agreement, for completion of all on site improvements prior to any occupancy of the premises, before a building permit is issued.
2. It will permit the owner to request a temporary occupancy permit from the Superintendent of Central Inspection when it can be shown that extenuating circumstances have prevented completion of on site improvements. This may be done administratively by the Superintendent of Central Inspection with

Page Three  
E. H. Denton, City Manager  
March 5, 1979

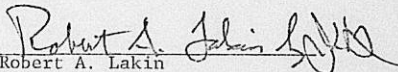
any financial guarantees, other than cash or its equivalent, subject to approval by the Director of Law.

3. Any appeals of the reasonableness or determination by the Superintendent of Central Inspection on the amount of guarantee, the time table for completion, or further extensions are to be referred to the Board of Zoning Appeals for their consideration and action.

On a vote of 7 in favor and 2 opposed, the Planning Commission has forwarded the amendment to the City Commission with a recommendation for adoption. Copies of the Planning Commission minutes of February 15, 1979 are attached.

RECOMMENDED ACTION:

1. Concur in the recommendation of the Planning Commission and place the ordinance on first reading.
2. Make any changes in the ordinance deemed to be in the best interest of the public and place the ordinance on first reading.

  
Robert A. Lakin  
Director of Planning

RAL:GEL:el  
Attachments

cc: John Dekker, Director of Law  
Don Anderson, Director of Housing & Economic Development  
Robert B. Feldner, Superintendent of Central Inspection  
Wichita Area Builders Ass'n., 730 N.Main, Suite 1, 67203  
Wichita Board of Realtors, 717 N. Emporia, 67214

Deletions marked-through  
Additions underlined

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE AMENDING THE PROVISIONS OF SECTION 22.04.220 OF THE CODE OF THE CITY OF WICHITA, KANSAS: PERTAINING TO THE ISSUANCE OF BUILDING PERMITS AND CERTIFICATES OF OCCUPANCY AND COMPLIANCE, AND THE FILING OF PERFORMANCE GUARANTEES, AND REPEALING THE ORIGINAL OF SAID SECTION 28.04.220 OF THE CODE OF THE CITY OF WICHITA, KANSAS.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 28.04.220 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"28.04.220 Building permits; certificates of occupancy and compliance; performance guarantees to assure compliance; waiver or extension.

A. The existing use and occupancy of premises shall not be changed nor shall any building be hereafter erected, enlarged, converted or altered until a building permit has been issued by the Central Inspection Superintendent stating that the proposed use of such land or building or premises complies with the provisions of this Chapter.

B. A certificate of occupancy and compliance shall be applied for coincident with the application for a building permit and shall be issued within ten days after the erection or alteration of such building or premises shall have been completed, in conformity with the provisions of these regulations. A record of all certificates shall be kept on file in the office of the Central Inspection Superintendent and copies shall be furnished on request to any person having a proprietary or tenant interest in the building permit; for all other certificates or for copies of any original certificate, there shall be a charge of one dollar for each copy thereof.

C. A building permit shall not be issued until the owner of the premises shall have filed in the office of the Superintendent of Central Inspection a letter of agreement for the completion of all on site improvements prior to any occupancy of the premises.

D. When extenuating circumstances not under the control of the owner occur, the owner may request that a temporary occupancy

permit be issued. Such circumstances may include, but not be limited to, extreme weather conditions preventing completion of on site improvements, delay of installation or incomplete public improvements that could possibly cause damage or removal of on site improvements, or other similar circumstances that could be deemed to interfere with the completion of all required improvements.

A request for a temporary occupancy permit shall be accompanied by a performance guarantee and a schedule for completion of all required improvements to the site. A written grant of the right of entry on the premises by the City or its designee for the purpose of completing the improvements shall be executed by the owner at the time of and in conjunction with the filing of the performance guarantee. The performance guarantee may consist of a <sup>Capital</sup> surety bond, a bank letter of credit, cashier's check, escrow account or other like security in an amount to be fixed by the Superintendent of Central Inspection.

The amount of such guarantee or security shall be based upon the estimated cost of improvements as evidenced by bonafide bids or contracts, to be guaranteed and may include contingency factors for inflation and cost overruns in an amount equal to twenty-five percent (25%) above the estimated cost. The guarantee, if in a form other than cash or its equivalent, shall be subject to the approval of the Director of Law and conditioned upon the actual completion of such work within the specified time period.

If the required improvements shall not have been installed in accordance with the performance guarantee, the obligor and surety, if any, shall be liable thereon to the City for the cost of the improvements not installed. In addition to all equitable remedies to enforce such guarantee, the proceeds of the security or guarantee may be claimed and used by the City to secure completion of the improvements.

E. The specified time period allowed for installation of the improvements for which the performance guarantee has been pro-

vided may be waived or extended by the Board of Zoning Appeals by resolution upon an application and showing that unusual circumstances, beyond the control of the owner of the premises, continues to prevent completion of the improvements. The amount of any performance guarantee may be reduced by the Board of Zoning Appeals when portions of the improvements have been completed. The resolution granting the waiver or extension may direct the issuance of the certificate of occupancy subject to the provisions or conditions of the resolution including the modification of the performance guarantee."

The original section 28.04.220 of the Code of the City of Wichita, Kansas, is hereby repealed.

This ordinance shall be included in the Code of the City of Wichita, Kansas, and shall be effective upon its passage and publication once in the official city paper.

ADOPTED at Wichita, Kansas, this \_\_\_\_\_ day of \_\_\_\_\_, 1979.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
Donald Gisick, City Clerk

Approved as to form:

\_\_\_\_\_  
John Dekker, Director of Law

WICHITA-SEDGWICK COUNTY

DATE

METROPOLITAN AREA PLANNING DEPARTMENT

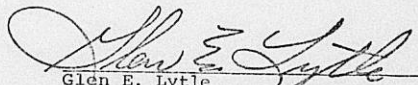
February 9, 1979

TO Wichita-Sedgwick County Metropolitan Area Planning Commission  
FROM Glen E. Lytle, Special Assistant for Zoning  
SUBJECT DR 78-35 - Possible Amendment to the City Zoning Ordinance -  
Re: Performance Guarantees for Landscaping and Screening

Attached hereto are copies of material that was considered by the Planning Commission on December 21, 1978, along with the minutes of that meeting.

On a motion to approve the amendment, the Planning Commission voted 3 in favor and 4 against the adoption of the proposed amendment. This matter was forwarded to the City Commission for their consideration on January 16, 1979. After considerable discussion, Shanahan moved that the proposed amendment be returned to the Planning Commission for reconsideration, as there is need for revision in order to enforce the landscaping requirements, and further ask that the comments of the Superintendent of Central Inspection be considered. Motion carried 5-0.

We are working with Central Inspection in the revision and development of procedures to accomplish the request of the City Commission. Copies of any further changes will be furnished to you at the meeting.

  
Glen E. Lytle  
Special Assistant for Zoning

GEL:bbc  
Attachments

cc: Robert A. Lakin, Director of Planning  
Don Anderson, Director of Economic Development  
Robert B. Feldner, Superintendent of Central Inspection  
John Dekker, Director of Law  
H. R. Kuhn, Assistant City Attorney  
Dave Furnas, C.P.O. Coordinator  
Wichita Area Builders Ass'n., 730 N. Main 67203  
Wichita Board of Realtors, 717 N. Emporia 67214

EXCERPT FROM PLANNING COMMISSION MINUTES OF FEBRUARY 15, 1979:

12. Case No. DR 78-35 - Possible Amendment to City Zoning Ordinance - Re: Filing of Performance Guarantees.

ROBERT A. LAKIN, stated that this was an item that was previously discussed pertaining to the filing of performance guarantees prior to the issuance of building permits in order to guarantee the screening and landscape improvements. The Planning Commission voted to recommend to the City Commission that the amendments not be adopted as submitted. At the City Commission meeting some feelings were expressed that they did want to adopt something, and part of that stems from the continued frustration that the City Commission experiences in having the job done. He said the staff was instructed to look at some alternatives in terms of dealing with contractors licenses, being able to revoke those as a privilege versus the right for a building permit, and to look at utility hookups. The building contractor for most of the buildings are not responsible for the total project. They obtain a permit to build the building, and are not responsible for putting in the off-street parking, screening or the electric and plumbing. To revoke the license of one contractor appears to be an unuseable device for staff because they are still not getting the person responsible for the job necessarily. An alternate for that would be to change the permit requirement, making it a dual permit where the owner of the land does take out the permit. Utilities were looked at, and felt more problems would occur, for instance, in inclement weather when the utilities are shut down, it could cause severe damage to structures. He said that there was one utility, however, that the City does control, and that is water.

LAKIN said that Central Inspection says that it is almost impossible for them to enforce the occupancy permit. He said that all sorts of alternatives were looked at, and we could not find very many alternatives to offer.

BAYOUTH asked Robert Feldner, Superintendent of Central Inspection, out of all the builders and contractors in the City of Wichita, was there any way to be 100 percent. He did not feel all of the contractors should be punished for one person that did not comply.

FELDNER said that he would tend to agree with Mr. Bayouth, if anyone had ever been involved in a building project, it was evident that a building was really not finished until many months or years after the structure was occupied.

SAVINA asked if it would require additional staff to enforce this ordinance the way it is proposed now.

FELDNER stated no. They have been operating in a very similar way in the past few months. The bonds are received and reviewed by the Law Department. The Administrative Division then accepts the bonds at the time they issue the permit. He did not believe it would be a situation that would require additional staff.

SAVINA asked if in Mr. Feldner's opinion did he think this was inflationary.

FELDNER said that the way the ordinance is written, they would only be requiring bonds for those people who had not complied at the time of request for occupancy. The original concept as he understood it was to require a bond on every permit that had any requirement for screening and landscaping, which in his opinion, would have been time consuming and probably would have required more staff.

CHAIRMAN GREIDER asked if Central Inspection was requiring some bonds now.

FELDNER said yes. GREIDER asked if there was a need for this ordinance if they are already requiring a bond. FELDNER said that it was the City Commission's request that this be explored and put into writing in the ordinance, and right now its just a matter of policy.

BELL asked if someone occupied a premise without an occupancy permit, was it a criminal activity. FELDNER said that it was a misdemeanor.

BARRIER said that speaking of the number of staff hours that Central Inspection spends in enforcement, it would seem to her that those hours would be well spent if the City was going to be strict in its enforcement, and if they were consistent in enforcement for a length of time, then she felt just like any other disciplinary action, it would be accepted and people would recognize the fact that they are going to have to comply. She asked Mr. Feldner what he thought of the signed agreement for completion of all on-site improvements prior to occupancy of the premises.

FELDNER felt this agreement would be helpful in most instances. The contractor takes out the permit and Central Inspection issues a list of requirements to be complied with, and the owner in 90 percent of the time never sees what the actual requirements are.

BARRIER asked if this would stand up in a court of law.

BELL responded that when you say something will or will not stand up in court, you are on shaky ground because it depends on the precise facts in the given case. He said that you cannot do anything that is 100 percent, airtight, iron-clad when you get to court.

LAKIN commented that one of the things that is perceived to be one of the problems in enforcement and in going to court, is identifying responsibility. He said that one of the first defenses that is usually brought up against the City, is that the contractor didn't know or was not informed in time.

GLEN LYTLE, Special Assistant for Zoning, stated that the amendment that was previously considered by the Planning Commission on December 21, 1978 meeting required a performance guarantee to be filed, prior to the issuance of a building permit, on all properties where landscaping and screening is required. On a motion to recommend adoption, the Planning Commission voted 3 in favor, and 4 against. The amendment was forwarded to the City Commission for their consideration at the meeting of January 16, 1979.

LYTLE said that when the City Commission referred this matter back to the Planning Commission, they stated as part of the motion that consideration should be given to the comments of the Superintendent of Central Inspection. As you note by his memo of December 14, 1978, the major concern expressed was that the amendment would require guarantees on all sites prior to the issuance of a building permit, thereby creating a voluminous amount of paperwork in keeping track of the guarantees.

LYTLE continued that the redraft presented to the Planning Commission today takes into consideration this concern and will not require any financial guarantees prior to the issuance of a building permit, but only require a letter of agreement, by the owner, that all on-site improvements will be completed prior to any occupancy of the premises. It will then further permit the Superintendent of Central Inspection to issue a temporary certificate of occupancy without the completion of all on-site improvements when the owner requests same, due to extenuating circumstances not under the control of the owner thereby preventing completion.

LYTLE concluded that this amendment will not penalize owners or contractors who willfully comply with the regulations. It will, however, permit the administration of the regulations by requiring guarantees for the installation of on-site improvements similar to the present policy without having to appeal to the City Commission.

BAYOUTH said he did not see why a person should be required to put up a bond because he has not landscaped, for instance if the ground was frozen and he could not landscape. He felt he should be given until Spring without the bond. He asked if this could not be handled administratively.

LYTLE said that the way its being handled now is that the guarantees are being required administratively. This amendment was prepared at the request of the City Commission that some method be devised to assure that these improvements are going to be completed.

MAY stated that the case Mr. Bayouth was bringing up as far as she was concerned is the perfect case of why we should have this. An occupancy permit is issued because it is December and trees cannot be planted, and that is the very example the City has dealt with in the past and lost.

LYTLE said that if an occupancy permit is issued without compliance then it is extremely difficult to go back at a later date and ask for compliance unless they are applying for an additional permit to make changes or adding to an existing property.

COLE stated the questions are answered in the compromise of Mr. Bayouth's concern about the contractor having a chance to do what they say they are going to do, and only if they don't comply then they have to put up a bond. He felt this was a good compromise.

**MOTION:** That the Planning Commission recommend to the City Commission that the compromise amendment be approved.  
Cole moved, May seconded.

BAYOUTH commented that he did not see where anything had been gained. He thought it was unfair to a person to landscape without the weather being in his favor, and he did not think he should have to pay the cost of a bond or anything else because it was not his fault. He felt that more cost was being created to the developer and more business for the attorney.

**VOTE ON THE MOTION:** It carried with a vote of 7 in favor (Cole, May, Greider, Barrier, Taylor, Bell and Hennessy), and 2 opposed (Bayouth and Savina). Jones was absent.

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WICHITA-SEDGWICK COUNTY

December 14, 1978 DATE

METROPOLITAN AREA PLANNING DEPARTMENT

TO Wichita-Sedgwick County Metropolitan Area Planning Commission

FROM Robert A. Lakin, Director of Planning

SUBJECT DR 78-35 - Possible Amendment to the Zoning Ordinance  
Re: Performance guarantees to assure compliance

Attached hereto is a delineated copy of a possible amendment to the City of Wichita zoning ordinance that has been advertised for public hearing at the December 21, 1978 Planning Commission meeting.

BACKGROUND:

Over the past several years, requirements for the landscaping and screening of commercial and industrial developments have been a condition of the zoning ordinance in order to provide some protection to adjacent properties. This has particularly been a condition of commercial community unit plans.

There has been an increasing concern expressed by neighborhoods adjacent to such development when screening and landscaping has not been provided in accordance with the approved plans. When deficiencies have recently been brought to the attention of the City Commission, it was felt that a revision to the procedure should be considered to assure that the owner or developer would install the improvements prior to the occupancy of the development. It was also recognized that there will be times when it will not be possible to complete all requirements by the time the tenants are ready to occupy a structure and therefore, a required satisfactory financial guarantee is being considered.

On October 24, 1978, the City Commission instructed the staff to review the present ordinance requirements and recommend revisions to:

- (1) Provide the landscaping and screening requirements be guaranteed prior to the issuance of building permits;
- (2) Provide that landscaping and screening be installed prior to issuance of an occupancy permit;
- (3) Provide for a waiver process; and
- (4) Include performance and penalty provisions to assure compliance.

The Department of Law prepared a draft of a possible ordinance and returned the same to the City Commission for their information

Wichita-Sedgwick County Metropolitan Area Planning Commission  
Page 2 - December 14, 1978

at the meeting of November 21, 1978. The proposed ordinance change would be a provision of the zoning ordinance and as required by law, it must be advertised and a public hearing held by the Planning Commission for a recommendation to the governing body. Without discussion, the City Commission referred the possible amendment to the NAFC for hearing and recommendation.

SUMMARY:

This possible amendment to Section 28.04.220 of the zoning ordinance includes the following changes:

1. Requires that the owner furnish a guarantee that landscaping, screening and other on-site improvements will be made in accordance with approved plans, such guarantee to be in an amount to be determined by the Superintendent of Central Inspection, with a contingency factor of 25% for inflation and cost overruns. The guarantee if in any form other than cash or its equivalent, shall be subject to the approval of the Director of Law.
- (2) It will require that all improvements be made to the property prior to the issuance of an occupancy permit.
- (3) It establishes a waiver procedure for extending the time for completion of improvements upon the showing of unusual circumstances beyond the control of the owner of the premises.

There has been no change recommended in the penalty provisions as they are presently in the ordinance as Sections 28.04.240 and 1.04.060 which sets a maximum penalty of \$500.00 for each violation with each day being a separate offense. The penalty is set by the courts and is in accordance with the state statutes.

  
Robert A. Lakin, Director of Planning

RAL:bbc  
cc: Don Anderson, Director of Economic Development  
Robert B. Feldner, Superintendent of Central Inspection  
John Dekker, Director of Law  
H. R. Kuhn, Assistant City Attorney  
Dave Furnas, C.P.O. Coordinator  
Wichita Area Builders Assn., 739 N. Main, 67203  
Wichita Board of Realtors, 626 N. Broadway, 67214

November 28, 1978  
CR-78-35

Deletions marked-through  
Additions underlined

Possible Amendment to the  
City of Wichita Zoning Ordinance Scheduled for  
Public Hearing Before the MAPC-Thursdays, December 21, 1978

Recommended that Section 28.04.220 be amended to read as follows:

28.04.220 Building permits; certificates of occupancy and compliance;  
performance guarantees to assure compliance; waiver or extension.

A. The existing use and occupancy of premises shall not be changed nor shall any building be hereafter erected, enlarged, converted or altered until a building permit has been issued by the central inspection superintendent stating that the proposed use of such land or building or premises complies with the provisions of this Chapter.

B. A certificate of occupancy and compliance shall be applied for coincident with the application for a building permit and shall be issued within ten days after the erection or alteration of such building or premises shall have been completed, in conformity with the provisions of these regulations. A record of all certificates shall be kept on file in the office of the central inspection superintendent and copies shall be furnished on request to any person having a proprietary or tenant interest in the building permit; for all other certificates or for copies of any original certificate, there shall be a charge of one dollar for each copy thereof.

C. A building permit shall not be issued until the owner of the premises shall have filed in the office of the central inspection superintendent an adequate performance guarantee that landscaping, screening, and other on-site improvements will be made in accordance with the plans previously submitted and approved. The performance guarantee may consist of a corporate surety bond, a bank letter of credit, cashier's check, escrow account or other like security in an amount to be fixed by the superintendent of central inspection.

The amount of such guarantee or security shall be based upon the estimated cost of improvements, as evidenced by bona fide bids or contracts, to be guaranteed and may include contingency factors for inflation and cost overruns in an amount equal to twenty-five percent (25%) of the estimated cost. The guarantee, if in a form other than cash or its equivalent, shall be subject to the approval of the director of law and conditioned upon the actual completion of such work within a specified time period and prior to the issuance of the certificate of occupancy and compliance.

If the required improvements shall not have been installed in accordance with the performance guarantee, the obligor and surety, if any, shall be liable thereon to the city for the cost of the improvements not installed. In addition to all equitable remedies to enforce such guarantee, the proceeds of the security or guarantee may be claimed and used by the city to secure completion of the improvements. A written grant of the right of entry on the premises by the city or its designee for the purpose of completing the improvements shall be executed by the owner of the time of and in conjunction with the filing of the performance guarantee.

D. The amount of any performance guarantee may be reduced by the governing body by resolution when portions of the improvements have been completed. The specified time period allowed for installation of the improvements for which the performance guarantee has been provided may be waived or extended by the governing body by resolution upon an application and showing of unusual circumstances beyond the control of the owner of the premises. The order granting the waiver or extension may direct the issuance of the certificate of occupancy and compliance subject to the provisions or conditions of said order.

EXCERPT FROM PLANNING COMMISSION MINUTES OF DECEMBER 21, 1978:

25. Case No. DR 78-35 - Possible Amendment to the City Zoning Ordinance - Filing of Performance Guarantees.

GLEN LYTLE, Special Assistant to Zoning, stated that this was a proposed amendment to the zoning ordinance which would provide for a performance guarantee to insure that onsite improvements would be completed prior to the occupancy of a building. He said that recent cases have been pointed out to the City Commission of failure of the owners or developers to fully comply with the requirements of landscaping and screening on several projects. At the October 24, 1978 City Commission meeting, the Commissioners instructed the staff to review the present ordinance requirements and recommend revisions to:

- (1) Provide the landscaping and screening requirements be guaranteed prior to the issuance of building permits;
- (2) Provide that landscaping and screening be installed prior to issuance of an occupancy permit;
- (3) Provide for a waiver process; and
- (4) Include performance and penalty provisions to assure compliance.

LYTLE said that this draft of the possible amendment was prepared by the Department of Law and includes the following changes:

- (1) Requires that the owner furnish a guarantee that landscaping, screening and other on-site improvements will be made in accordance with approved plans, such guarantee to be in an amount to be determined by the Superintendent of Central Inspection, with a contingency factor of 25% for inflation and cost overruns. The guarantee if in any form other than cash or its equivalent, shall be subject to the approval of the Director of Law.
- (2) It will require that all improvements be made to the property prior to the issuance of an occupancy permit.
- (3) It establishes a waiver procedure for extending the time for completion of improvements upon the showing of unusual circumstances beyond the control of the owner of the premises.

LYTLE continued that there was no change or recommendation for change in the penalty provisions because this was part of the enabling legislation that the maximum penalty is established by State Statute, and also it is up to the discretion of the judge in each case should it go to court. He said that comments received from the Superintendent of Central Inspection indicated that the wording of the ordinance would require that financial guarantees be required on all sites upon which these improvements are required. LYTLE said that the instructions to the Director of Law did not differentiate and that a development not in a Community Unit Plan could conceivably require a large amount of screening and landscaping and thus a concern for needed guarantees and enforcement. The Superintendent of Central Inspection has indicated his concern that the amendments not only would be a lot of paper work in order to keep track of the guarantees, but is another procedure that the builders and developers are going to have to comply with prior to the issuance of a building permit. Another concern expressed by the Superintendent of Central Inspection was the issuance of an occupancy permit if the owner complied only with the zoning ordinance. The Department of Law indicated that since

this was provision of the zoning ordinance, it should refer only to this code. The other concern of the Superintendent was the experience he had with corporate surety bonds. He indicated that they have some litigation going at the present time.

LYTLE stated that the reason all of the various guarantees are included in the ordinance was that the attorney felt that use of the same language that is in the Kansas State Statute is what should be in the ordinance.

BELL stated that he was in sympathy with the basic intent behind this. He questioned the wording of "landscaping, screening, and other onsite improvements will be made in accordance with the plans previously submitted and approved". He felt this was vague. He felt it was drawn by someone that was not familiar with the processes the Planning Commission goes through in getting up to that point, because frequently there were not plans submitted and approved, there are suggestions, commitments, and all kinds of things, yet there are still screening requirements. He felt this should be made more specific.

LYTLE interpreted it as plans submitted prior to the issuance of a building permit, and there are plans submitted, and screening and landscaping shown on these plans.

LAKIN stated that there were landscape plans that he signs and/or with the Superintendent of Central Inspection (primarily BZA cases and CUP's). There are other ordinance provisions that say just build a wall. No plans are submitted on a wall, just plans on landscaping. LAKIN suggested that wording be included in the amendment about "in accordance with plans previously submitted and approved, and for other ordinance requirements".

BELL stated that where there is a landscaping area that was required to be kept on portions of the land, it would be questionable under broad general language whether that was the kind of plan requested. His other question was the sentence that read: "The improvements shall be executed by the owner of the time of and in conjunction with the filing of the performance guarantee". He asked if there was some language omitted. (It was pointed out that it was a typographical error and should be --- "owner at the time of ---").

COLE commented that Mr. Bell's point was well taken, if all of the things are not put in that the Commission wants to comply, then there is always the escape clause for people not to comply.

MAY speaking about Mr. Feldner's memorandum, concerning the overload which would be imposed upon his Department if this ordinance is imposed on things beyond CUP's, and BZA's, she reminded the Commission that there have been many cases that were just zoning cases where screening fences were never constructed to protect residential property, and she wanted to indicate her desire that the ordinance apply to all sites in which improvements are proposed.

BAYOUTH said that he did not approve of cash guarantees in that it works a hardship on an individual.

SAVINA said that he was opposed to anything of this nature. He felt that it was a frustrated example of a frustrated ordinance, and a frustrated Department that cannot carry out its inspections properly. He said the certificate of occupancy is the key to the whole thing, and if Central Inspection operated as it should operate, then they would not need a cash guarantee. He felt that this sort of thing would cause an inflationary impact on the City, and they would have to have more staff to take care of the cash operation, people will have a lot of money tied up, and it would take months and months to get their money back after the certificate is issued. It was just not proper and right to do this kind of thing just because one or two developers have not lived up to their agreement.

COLE said that he had some sympathy for what Mr. Savina said because he had also some real concern with Central Inspection that they have not been doing their job in the past, and he has complained about it. He said that even when they do their job, more tools are needed to handle those persons who deliberately try to comply to the least extent they possibly can.

MOTION: That the Planning Commission recommend to the City Commission that the proposed amendment be approved with staff's corrections, and take into account Mr. Bell's comments. Cole moved, May seconded.

VOTE ON THE MOTION: Motion failed with a vote of 3 in favor (Cole, May and Taylor), and 4 opposed (Bell, Bayouth Greider and Savina). Barrier, Hennessy and Jones were absent.

LAKIN said that he had not been personally convinced that the occupancy permit could not be properly withheld from the people. The building permits are taken out by owners and/or licensed contractors, and it seemed to him, if they did not comply to the rules, then the licenses to operate should be taken away from them. The economic pressures to open otherwise completed buildings should force to completion of walls and/or bonding of landscaping where out of reason.

Considerable discussion continued on the occupancy permit.

BELL commented that when you get in court and talk about licensing, you are talking about a privilege to do something, and its often not interpreted with all of the equities in favor of the person who is being brought on the carpet.

MOTION: To have staff prepare a procedure for enforcement by Central Inspection Division by the use of the occupancy permit and also to consider some procedure of compliance by withholding permits; or the possible revocation of the contractors' license for failing to comply with conditions of a permit; or the revocation of utility hookups or other procedures designed around the withdrawal of "privileges" (such as licenses) as opposed to penalties or punitive measures. Bell moved, Cole seconded.

MAY explained the reason she voted for the proposed amendment. She participated in a discussion in which other avenues that were suggested were eliminated completed with very little explanation, and the offered amendment looked like the only option.

SAVINA remarked that when people have to put up cash when they have the good intent of complying anyway, then we sure have a poor governing authority.

VOTE ON THE MOTION: It carried unanimously. Barrier, Hennessy and Jones were absent.

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THE CITY OF WICHITA

OFFICE OF Central Inspection Division

DATE

ROUTING	
TO	
BY	
DATE	DEC 15 1978
FILE	December 14, 1978



TO Robert Lakin, Director of Planning

FROM Robert B. Feldner, Superintendent of Central Inspection

SUBJECT Proposed Ordinance pertaining to screening/landscaping guarantees

Central Inspection Division's review of the proposed ordinance (as proposed by the Law Department) pertaining to screening/landscaping guarantees has resulted in the following comments and/or recommendations. Hopefully, each of these can be included in the ordinance or forwarded with it to the NAPS for their consideration.

The wording of the ordinance requires financial guarantees on all sites upon which improvements are proposed. Application of the ordinance is not restricted to CIP's or EIA's, etc., but is inclusive on all applications for building permit. If this is the intent of the Commissioners, it will create a rather voluminous amount of paperwork to be coordinated. The 1979 budgeting process resulted in Central Inspection's loss of one clerical position and the ability to absorb the additional duties is a major concern. The animosity of the builders, owners and developers which will be generated by the ordinance is another factor which should be considered, as should the fact that financial guarantees are the only proven method by which such installations can be insured with a degree of certainty.

Another concern is the wording of the fifth line of paragraph B. As written, the ordinance mandates that a Certificate of Occupancy be issued if the site is in conformance with Title 24. Should the site be in violation of other titles of City Code, Central Inspection does not anticipate the issuance of a Certificate of Occupancy. It is recommended that the wording be changed to reflect, "conformity with all applicable regulations," or similar phraseology.

The second sentence of paragraph C is another concern. Prior experience with corporate security bonds indicates that foreclosure is most difficult, should that action become necessary. Also, on this very date, the District Court is considering a similar matter involving bank letters of credit.

Page: 2

Re: Proposed Ordinance pertaining to screening/landscaping guarantees  
December 14, 1978

Thus, any form of guarantee, other than cash or cashier's check, should be carefully reviewed prior to inclusion in the ordinance.

If further information or clarification is desired Central Inspection will be happy to expeditiously respond.

*Robert B. Feldner*  
Robert B. Feldner  
Superintendent of Central Inspection

APPROVED:

*Dan E. Anderson*  
Dan E. Anderson  
Director of Economic Development

RBF:kda



ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE AMENDING THE PROVISIONS OF SECTION 28.04.220 OF THE CODE OF THE CITY OF WICHITA, KANSAS: PERTAINING TO THE ISSUANCE OF BUILDING PERMITS AND CERTIFICATES OF OCCUPANCY AND COMPLIANCE, AND THE FILING OF PERFORMANCE GUARANTEES, AND REPEALING THE ORIGINAL OF SAID SECTION 28.04.220 OF THE CODE OF THE CITY OF WICHITA, KANSAS.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 28.04.220 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"28.04.220 Building permits; certificates of occupancy and compliance; performance guarantees to assure compliance; waiver or extension.

A. The existing use and occupancy of premises shall not be changed nor shall any building be hereafter erected, enlarged, converted or altered until a building permit has been issued by the Central Inspection Superintendent stating that the proposed use of such land or building or premises complies with the provisions of this Chapter.

B. A certificate of occupancy and compliance shall be applied for coincident with the application for a building permit and shall be issued within ten days after the erection or alteration of such building or premises shall have been completed, in conformity with the provisions of these regulations. A record of all certificates shall be kept on file in the office of the Central Inspection Superintendent and copies shall be furnished on request to any person having a proprietary or tenant interest in the building permit; for all other certificates or for copies of any original certificate, there shall be a charge of one dollar for each copy thereof.

C. A building permit shall not be issued until the owner of the premises shall have filed in the office of the Superintendent of Central Inspection a letter of agreement for the completion of all on site improvements prior to any occupancy of the premises.

D. When extenuating circumstances not under the control of the owner occur, the owner may request that a temporary occupancy

permit be issued. Such circumstances may include, but not be limited to, extreme weather conditions preventing completion of on site improvements, delay of installation or incomplete public improvements that could possibly cause damage or removal of on site improvements, or other similar circumstances that could be deemed to interfere with the completion of all required improvements.

A request for a temporary occupancy permit shall be accompanied by a performance guarantee and a schedule for completion of all required improvements to the site. A written grant of the right of entry on the premises by the City or its designee for the purpose of completing the improvements shall be executed by the owner at the time of and in conjunction with the filing of the performance guarantee. The performance guarantee may consist of a corporate surety bond, a bank letter of credit, cashier's check, escrow account or other like security in an amount to be fixed by the Superintendent of Central Inspection.

The amount of such guarantee or security shall be based upon the estimated cost of improvements as evidenced by bonafide bids or contracts, to be guaranteed and may include contingency factors for inflation and cost overruns in an amount equal to twenty-five percent (25%) above the estimated cost. The guarantee, if in a form other than cash or its equivalent, shall be subject to the approval of the Director of Law and conditioned upon the actual completion of such work within the specified time period.

If the required improvements shall not have been installed in accordance with the performance guarantee, the obligor and surety, if any, shall be liable thereon to the City for the cost of the improvements not installed. In addition to all equitable remedies to enforce such guarantee, the proceeds of the security or guarantee may be claimed and used by the City to secure completion of the improvements.

E. The specified time period allowed for installation of the improvements for which the performance guarantee has been pro-

vided may be waived or extended by the Board of City Commissioners by resolution upon an application and showing that unusual circumstances, beyond the control of the owner of the premises, continues to prevent completion of the improvements. Such application shall be accompanied by a current abstractors certificate listing the names, mailing address and ZIP codes of the owners of all adjacent property within 200 feet of the application area. The hearing shall not be scheduled before the Board of City Commissioners until ten days after receipt of the application and the current abstractors ownership list by the Superintendent of Central Inspection in order to allow sufficient time to notify all adjacent property owners. The amount of any performance guarantee may be reduced by the Board of City Commissioners when portions of the improvements have been completed. The resolution granting the waiver or extension may direct the issuance of the certificate of occupancy subject to the provisions or conditions of the resolution including the modification of the performance guarantee."

The original section 28.04.220 of the Code of the City of Wichita, Kansas, is hereby repealed.

This ordinance shall be included in the Code of the City of Wichita, Kansas, and shall be effective upon its passage and publication once in the official city paper.

ADOPTED at Wichita, Kansas, this \_\_\_\_\_ day of \_\_\_\_\_, 1979.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
Donald Gisick, City Clerk

Approved as to form:

\_\_\_\_\_  
John Dekker, Director of Law

4-24 Lytle  
Edie  
Ruby

69518 Published in The Daily Record on April 20, 1979/11  
ORDINANCE NO. 38-047

AN ORDINANCE AMENDING THE PROVISIONS OF SECTION 28.04.220 OF THE CODE OF THE CITY OF WICHITA, KANSAS; PERTAINING TO THE ISSUANCE OF BUILDING PERMITS AND CERTIFICATES OF OCCUPANCY AND COMPLIANCE, AND THE FILING OF PERFORMANCE GUARANTEES, AND REPEALING THE ORIGINAL OF SAID SECTION 28.04.220 OF THE CODE OF THE CITY OF WICHITA, KANSAS, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 28.04.220 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

28.04.220 Building permits; certificates of occupancy and compliance; performance guarantees to assure compliance; waiver or extension.

A. The existing use and occupancy of premises shall not be changed nor shall any building be hereafter erected, enlarged, converted or altered until a building permit has been issued by the Central Inspection Superintendent stating that the proposed use of such land or building or premises complies with the provisions of this Chapter.

B. A certificate of occupancy and compliance shall be applied for coincident with the application for a building permit and shall be issued within ten days after the erection or alteration of such building or premises shall have been completed, in conformity with the provisions of these regulations. A record of all certificates shall be kept on file in the office of the Central Inspection Superintendent and copies shall be furnished on request to any person having a proprietary or tenant interest in the building permit; for all other certificates or for copies of any original certificate, there shall be a charge of one dollar for each copy thereof.

C. A building permit shall not be issued until the owner of the premises shall have filed in the office of the Superintendent of Central Inspection a letter of agreement for the completion of all on site improvements prior to any occupancy of the premises.

D. When extenuating circumstances not under the control of the owner occur, the owner may request that a temporary occupancy permit be issued. Such circumstances may include, but not be limited to, extreme weather conditions preventing completion of on site improvements, delay of installation or incomplete public improvements that could possibly cause damage or removal of on site improvements, or other similar circumstances that could be deemed to interfere with the completion of all required improvements.

A request for a temporary occupancy permit shall be accompanied by a performance guarantee and a schedule for completion of all required improvements to the site. A written grant of the right of entry on the premises by the City or its designee for the purpose of completing the improvements shall be executed by the owner at the time of and in conjunction with the filing of the performance guarantee. The performance guarantee may consist of a corporate surety bond, a bank letter of credit, cashier's check, escrow account or other like security in an amount to be fixed by the Superintendent of Central Inspection.

The amount of such guarantee or security shall be based upon the estimated cost of improvements as evidenced by bonafide bids or contracts, to be guaranteed and may include contingency factors for inflation and cost overruns in an amount equal to twenty-five percent (25%) above the estimated cost. The guarantee, if in a form other than cash or its equivalent, shall be subject to the approval of the Director of Law and conditioned upon the actual completion of such work within the specified time period.

If the required improvements shall not have been installed in accordance with the performance guarantee, the obligor and surety, if any, shall be liable thereon to the City for the cost of the improvements not installed. In addition to all equitable remedies to enforce such guarantee, the proceeds of the security or guarantee may be claimed and used by the City to secure completion of the improvements.

E. The specified time period allowed for installation of the improvements for which the performance guarantee has been provided may be waived or extended by the Board of City Commissioners by resolution upon an application and showing that unusual circumstances, beyond the control of the owner of the premises, continue to prevent completion of the improvements. Such application shall be accompanied by a current abstractors certificate listing the names, mailing address and ZIP codes of the owners of all adjacent property within 200 feet of the application area. The hearing shall not be scheduled before the Board of City Commissioners until ten days after receipt of the application and the current abstractors ownership list by the Superintendent of Central Inspection in order to allow sufficient time to notify all adjacent property owners. The amount of any performance guarantee may be reduced by the Board of City Commissioners when portions of the improvements have been completed. The resolution granting the waiver or extension may direct the issuance of the certificate of occupancy subject to the provisions or conditions of the resolution including the modification of the performance guarantee.

The original section 28.04.220 of the Code of the City of Wichita, Kansas, is hereby repealed.

This ordinance shall be included in the Code of the City of Wichita, Kansas, and shall be effective upon its passage and publication once in the official city paper.

ADOPTED at Wichita, Kansas, this 17th day of April, 1979.  
TONY CASADO, MAYOR  
ATTEST: (SEAL)  
DONALD C. GISICK, City Clerk  
(158)

89518

4-20-79

ORDINANCE NO. 36-047

AN ORDINANCE AMENDING THE PROVISIONS OF SECTION 28.04.220 OF THE CODE OF THE CITY OF WICHITA, KANSAS: PERTAINING TO THE ISSUANCE OF BUILDING PERMITS AND CERTIFICATES OF OCCUPANCY AND COMPLIANCE, AND THE FILING OF PERFORMANCE GUARANTEES, AND REPEALING THE ORIGINAL OF SAID SECTION 28.04.220 OF THE CODE OF THE CITY OF WICHITA, KANSAS.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 28.04.220 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"28.04.220 Building permits; certificates of occupancy and compliance; performance guarantees to assure compliance; waiver or extension.

A. The existing use and occupancy of premises shall not be changed nor shall any building be hereafter erected, enlarged, converted or altered until a building permit has been issued by the Central Inspection Superintendent stating that the proposed use of such land or building or premises complies with the provisions of this Chapter.

B. A certificate of occupancy and compliance shall be applied for coincident with the application for a building permit and shall be issued within ten days after the erection or alteration of such building or premises shall have been completed, in conformity with the provisions of these regulations. A record of all certificates shall be kept on file in the office of the Central Inspection Superintendent and copies shall be furnished on request to any person having a proprietary or tenant interest in the building permit; for all other certificates or for copies of any original certificate, there shall be a charge of one dollar for each copy thereof.

C. A building permit shall not be issued until the owner of the premises shall have filed in the office of the Superintendent of Central Inspection a letter of agreement for the completion of all on site improvements prior to any occupancy of the premises.

D. When extenuating circumstances not under the control of the owner occur, the owner may request that a temporary occupancy

permit be issued. Such circumstances may include, but not be limited to, extreme weather conditions preventing completion of on site improvements, delay of installation or incomplete public improvements that could possibly cause damage or removal of on site improvements, or other similar circumstances that could be deemed to interfere with the completion of all required improvements.

A request for a temporary occupancy permit shall be accompanied by a performance guarantee and a schedule for completion of all required improvements to the site. A written grant of the right of entry on the premises by the City or its designee for the purpose of completing the improvements shall be executed by the owner at the time of and in conjunction with the filing of the performance guarantee. The performance guarantee may consist of a corporate surety bond, a bank letter of credit, cashier's check, escrow account or other like security in an amount to be fixed by the Superintendent of Central Inspection.

The amount of such guarantee or security shall be based upon the estimated cost of improvements as evidenced by bonafide bids or contracts, to be guaranteed and may include contingency factors for inflation and cost overruns in an amount equal to twenty-five percent (25%) above the estimated cost. The guarantee, if in a form other than cash or its equivalent, shall be subject to the approval of the Director of Law and conditioned upon the actual completion of such work within the specified time period.

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E. The specified time period allowed for installation of the improvements for which the performance guarantee has been pro-

vided may be waived or extended by the Board of City Commissioners by resolution upon an application and showing that unusual circumstances, beyond the control of the owner of the premises, continues to prevent completion of the improvements. Such application shall be accompanied by a current abstractors certificate listing the names, mailing address and ZIP codes of the owners of all adjacent property within 200 feet of the application area. The hearing shall not be scheduled before the Board of City Commissioners until ten days after receipt of the application and the current abstractors ownership list by the Superintendent of Central Inspection in order to allow sufficient time to notify all adjacent property owners. The amount of any performance guarantee may be reduced by the Board of City Commissioners when portions of the improvements have been completed. The resolution granting the waiver or extension may direct the issuance of the certificate of occupancy subject to the provisions or conditions of the resolution including the modification of the performance guarantee."

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This ordinance shall be included in the Code of the City of Wichita, Kansas, and shall be effective upon its passage and publication once in the official city paper.

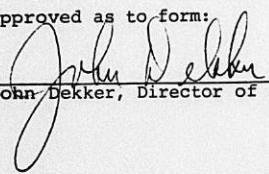
ADOPTED at Wichita, Kansas, this \_\_\_\_\_ day of \_\_\_\_\_, 1979.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
Donald Gisick, City Clerk

Approved as to form:

  
\_\_\_\_\_  
John Dekker, Director of Law

WICHITA-SEDGWICK COUNTY

DATE

METROPOLITAN AREA PLANNING DEPARTMENT

March 5, 1979

TO E. H. Denton, City Manager  
FROM Robert A. Lakin, Director of Planning  
SUBJECT DR 78-35 - Possible amendment to the Zoning Ordinance  
Re: Performance guarantees for landscaping and screening.

Attached hereto is a delineated copy of an amendment to the zoning ordinance. Please place this item on the agenda of March 13, 1979 for consideration by the City Commission.

BACKGROUND

On October 24, 1978, the City Commission instructed the staff to review the ordinance requirements and recommend revisions to:

- (1) Provide that landscaping and screening requirements be guaranteed prior to the issuance of building permits;
- (2) Provide that landscaping and screening be installed prior to issuance of an occupancy permit;
- (3) Provide for a waiver process; and
- (4) Include performance and penalty provisions to assure compliance.

In review of the existing regulations with representatives of the Planning Department and Central Inspection, the Department of Law drafted a proposed revision to the zoning ordinance. This amendment was advertised and a public hearing before the Planning Commission was held on December 21, 1978. Copies of the minutes of that meeting are attached including the material discussed.

After considerable discussion, the Planning Commission did not recommend the amendment for adoption, but instead recommended that a procedure for enforcement of the ordinance be developed, which could include the withholding of occupancy permits. It was also suggested that possibly a procedure be developed to withhold permits to those that have failed to comply; the possible revocation of contractors licenses; or the revocation of utility hookups or other procedures designed around the withdrawal of "privileges" as opposed to penalties or punitive measures.

Page Two  
E. H. Denton, City Manager  
March 5, 1979

When this matter was referred to the City Commission for their consideration at the meeting of January 16, 1979, it was moved that the proposed amendment be returned to the Planning Commission for reconsideration. Included in the motion was a statement for need of the revision in order to enforce the landscaping requirements, and also the Planning Commission was requested to consider the comments made by the Superintendent of Central Inspection.

The main concern expressed by Mr. Feldner in his memo of December 14, 1978 was the voluminous amount of paperwork and accounting that would be required if guarantees on all sites were required to be filed prior to the issuance of building permits. The draft of the amendment that was prepared for consideration by the Planning Commission at their meeting of February 15, 1979 eliminated this major concern by not requiring guarantees prior to the issuance of a building permit.

It was pointed out by Mr. Feldner at the meeting that in the majority of projects, the contractor that takes out the permit for the building is not responsible for the installation of the screening and landscaping, and to take action to revoke the contractor's license for an inadequacy of the owner to comply would not be feasible. He also indicated that the proposal as presented would help in the matter of completion of the landscaping and screening since the owner will have to agree to complete the requirements before a permit is issued.

SUMMARY

The attached possible amendment to the zoning ordinance will make the following changes in the ordinance:

1. Require that the owner file a letter of agreement, for completion of all on site improvements prior to any occupancy of the premises, before a building permit is issued.
2. It will permit the owner to request a temporary occupancy permit from the Superintendent of Central Inspection when it can be shown that extenuating circumstances have prevented completion of on site improvements. This may be done administratively by the Superintendent of Central Inspection with

Page Three  
E. H. Denton, City Manager  
March 5, 1979

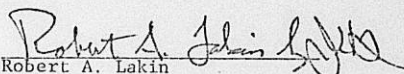
any financial guarantees, other than cash or its equivalent, subject to approval by the Director of Law.

3. Any appeals of the reasonableness or determination by the Superintendent of Central Inspection on the amount of guarantee, the time table for completion, or further extensions are to be referred to the Board of Zoning Appeals for their consideration and action.

On a vote of 7 in favor and 2 opposed, the Planning Commission has forwarded the amendment to the City Commission with a recommendation for adoption. Copies of the Planning Commission minutes of February 15, 1979 are attached.

RECOMMENDED ACTION:

1. Concur in the recommendation of the Planning Commission and place the ordinance on first reading.
2. Make any changes in the ordinance deemed to be in the best interest of the public and place the ordinance on first reading.

  
Robert A. Lakin  
Director of Planning

RAL:GEL:el  
Attachments

cc: John Dekker, Director of Law  
Don Anderson, Director of Housing & Economic Development  
Robert B. Feldner, Superintendent of Central Inspection  
Wichita Area Builders Ass'n., 730 N.Main, Suite 1, 67203  
Wichita Board of Realtors, 717 N. Emporia, 67214

March 5, 1979

E. H. Denton, City Manager

Robert A. Lakin, Director of Planning

DR 78-35 - Possible amendment to the Zoning Ordinance  
Re: Performance guarantees for landscaping and screening.

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- (2) Provide that landscaping and screening be installed prior to issuance of an occupancy permit;
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- (4) Include performance and penalty provisions to assure compliance.

In review of the existing regulations with representatives of the Planning Department and Central Inspection, the Department of Law drafted a proposed revision to the zoning ordinance. This amendment was advertised and a public hearing before the Planning Commission was held on December 21, 1978. Copies of the minutes of that meeting are attached including the material discussed.

After considerable discussion, the Planning Commission did not recommend the amendment for adoption, but instead recommended that a procedure for enforcement of the ordinance be developed, which could include the withholding of occupancy permits. It was also suggested that possibly a procedure be developed to withhold permits to those that have failed to comply; the possible revocation of contractors licenses; or the revocation of utility hookups or other procedures designed around the withdrawal of "privileges" as opposed to penalties or punitive measures.

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E. H. Denton, City Manager  
March 5, 1979

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Page Three  
E. H. Denton, City Manager  
March 5, 1979

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On a vote of 7 in favor and 2 opposed, the Planning Commission has forwarded the amendment to the City Commission with a recommendation for adoption. Copies of the Planning Commission minutes of February 15, 1979 are attached.

RECOMMENDED ACTION:

1. Concur in the recommendation of the Planning Commission and place the ordinance on first reading.
2. Make any changes in the ordinance deemed to be in the best interest of the public and place the ordinance on first reading.

\_\_\_\_\_  
Robert A. Lakin  
Director of Planning

RAL:GEL:el

Attachments

cc: John Dekker, Director of Law  
Don Anderson, Director of Housing & Economic Development  
Robert B. Feldner, Superintendent of Central Inspection  
Wichita Area Builders Ass'n., 730 N. Main, Suite 1, 67203  
Wichita Board of Realtors, 717 N. Emporia, 67214

Deletions ~~marked-through~~  
Additions underlined

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE AMENDING THE PROVISIONS OF SECTION 28.04.220 OF THE CODE OF THE CITY OF WICHITA, KANSAS; PERTAINING TO THE ISSUANCE OF BUILDING PERMITS AND CERTIFICATES OF OCCUPANCY AND COMPLIANCE, AND THE FILING OF PERFORMANCE GUARANTEES, AND REPEALING THE ORIGINAL OF SAID SECTION 28.04.220 OF THE CODE OF THE CITY OF WICHITA, KANSAS.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 28.04.220 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

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A. The existing use and occupancy of premises shall not be changed nor shall any building be hereafter erected, enlarged, converted or altered until a building permit has been issued by the Central Inspection Superintendent stating that the proposed use of such land or building or premises complies with the provisions of this Chapter.

B. A certificate of occupancy and compliance shall be applied for coincident with the application for a building permit and shall be issued within ten days after the erection or alteration of such building or premises shall have been completed, in conformity with the provisions of these regulations. A record of all certificates shall be kept on file in the office of the Central Inspection Superintendent and copies shall be furnished on request to any person having a proprietary or tenant interest in the building permit; for all other certificates or for copies of any original certificate, there shall be a charge of one dollar for each copy thereof.

C. A building permit shall not be issued until the owner of the premises shall have filed in the office of the Superintendent of Central Inspection a letter of agreement for the completion of all on site improvements prior to any occupancy of the premises.

D. When extenuating circumstances not under the control of the owner occur, the owner may request that a temporary occupancy

permit be issued. Such circumstances may include, but not be limited to, extreme weather conditions preventing completion of on site improvements, delay of installation or incomplete public improvements that could possibly cause damage or removal of on site improvements, or other similar circumstances that could be deemed to interfere with the completion of all required improvements.

A request for a temporary occupancy permit shall be accompanied by a performance guarantee and a schedule for completion of all required improvements to the site. A written grant of the right of entry on the premises by the City or its designee for the purpose of completing the improvements shall be executed by the owner at the time of and in conjunction with the filing of the performance guarantee. The performance guarantee may consist of a surety bond, a bank letter of credit, cashier's check, escrow account or other like security in an amount to be fixed by the Superintendent of Central Inspection.

The amount of such guarantee or security shall be based upon the estimated cost of improvements as evidenced by bonafide bids or contracts, to be guaranteed and may include contingency factors for inflation and cost overruns in an amount equal to twenty-five percent (25%) above the estimated cost. The guarantee, if in a form other than cash or its equivalent, shall be subject to the approval of the Director of Law and conditioned upon the actual completion of such work within the specified time period.

If the required improvements shall not have been installed in accordance with the performance guarantee, the obligor and surety, if any, shall be liable thereon to the City for the cost of the improvements not installed. In addition to all equitable remedies to enforce such guarantee, the proceeds of the security or guarantee may be claimed and used by the City to secure completion of the improvements.

E. The specified time period allowed for installation of the improvements for which the performance guarantee has been pro-

vided may be waived or extended by the Board of Zoning Appeals by resolution upon an application and showing that unusual circumstances, beyond the control of the owner of the premises, continues to prevent completion of the improvements. The amount of any performance guarantee may be reduced by the Board of Zoning Appeals when portions of the improvements have been completed. The resolution granting the waiver or extension may direct the issuance of the certificate of occupancy subject to the provisions or conditions of the resolution including the modification of the performance guarantee."

The original section 28.04.220 of the Code of the City of Wichita, Kansas, is hereby repealed.

This ordinance shall be included in the Code of the City of Wichita, Kansas, and shall be effective upon its passage and publication once in the official city paper.

ADOPTED at Wichita, Kansas, this \_\_\_\_\_ day of \_\_\_\_\_, 1979.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
Donald Gisick, City Clerk

Approved as to form:

\_\_\_\_\_  
John Dekker, Director of Law

EXCERPT FROM PLANNING COMMISSION MINUTES OF FEBRUARY 15, 1979:

12. Case No. DR 78-35 - Possible Amendment to City Zoning Ordinance - Re: Filing of Performance Guarantees.

ROBERT A. LAKIN, stated that this was an item that was previously discussed pertaining to the filing of performance guarantees prior to the issuance of building permits in order to guarantee the screening and landscape improvements. The Planning Commission voted to recommend to the City Commission that the amendments not be adopted as submitted. At the City Commission meeting some feelings were expressed that they did want to adopt something, and part of that stems from the continued frustration that the City Commission experiences in having the job done. He said the staff was instructed to look at some alternatives in terms of dealing with contractors licenses, being able to revoke those as a privilege versus the right for a building permit, and to look at utility hookups. The building contractor for most of the buildings are not responsible for the total project. They obtain a permit to build the building, and are not responsible for putting in the off-street parking, screening or the electric and plumbing. To revoke the license of one contractor appears to be an unuseable device for staff because they are still not getting the person responsible for the job necessarily. An alternate for that would be to change the permit requirement, making it a dual permit where the owner of the land does take out the permit. Utilities were looked at, and felt more problems would occur, for instance, in inclement weather when the utilities are shut down, it could cause severe damage to structures. He said that there was one utility, however, that the City does control, and that is water.

LAKIN said that Central Inspection says that it is almost impossible for them to enforce the occupancy permit. He said that all sorts of alternatives were looked at, and we could not find very many alternatives to offer.

BAYOUTH asked Robert Feldner, Superintendent of Central Inspection, out of all the builders and contractors in the City of Wichita, was there any way to be 100 percent. He did not feel all of the contractors should be punished for one person that did not comply.

FELDNER said that he would tend to agree with Mr. Bayouth, if anyone had ever been involved in a building project, it was evident that a building was really not finished until many months or years after the structure was occupied.

SAVINA asked if it would require additional staff to enforce this ordinance the way it is proposed now.

FELDNER stated no. They have been operating in a very similar way in the past few months. The bonds are received and reviewed by the Law Department. The Administrative Division then accepts the bonds at the time they issue the permit. He did not believe it would be a situation that would require additional staff.

SAVINA asked if in Mr. Feldner's opinion did he think this was inflationary.

FELDNER said that the way the ordinance is written, they would only be requiring bonds for those people who had not complied at the time of request for occupancy. The original concept as he understood it was to require a bond on every permit that had any requirement for screening and landscaping, which in his opinion, would have been time consuming and probably would have required more staff.

CHAIRMAN GREIDER asked if Central Inspection was requiring some bonds now.

FELDNER said yes. GREIDER asked if there was a need for this ordinance if they are already requiring a bond. FELDNER said that it was the City Commission's request that this be explored and put into writing in the ordinance, and right now its just a matter of policy.

BELL asked if someone occupied a premise without an occupancy permit, was it a criminal activity. FELDNER said that it was a misdemeanor.

BARRIER said that speaking of the number of staff hours that Central Inspection spends in enforcement, it would seem to her that those hours would be well spent if the City was going to be strict in its enforcement, and if they were consistent in enforcement for a length of time, then she felt just like any other disciplinary action, it would be accepted and people would recognize the fact that they are going to have to comply. She asked Mr. Feldner what he thought of the signed agreement for completion of all on-site improvements prior to occupancy of the premises.

FELDNER felt this agreement would be helpful in most instances. The contractor takes out the permit and Central Inspection issues a list of requirements to be complied with, and the owner in 90 percent of the time never sees what the actual requirements are.

BARRIER asked if this would stand up in a court of law.

BELL responded that when you say something will or will not stand up in court, you are on shaky ground because it depends on the precise facts in the given case. He said that you cannot do anything that is 100 percent, airtight, iron-clad when you get to court.

LAKIN commented that one of the things that is perceived to be one of the problems in enforcement and in going to court, is identifying responsibility. He said that one of the first defenses that is usually brought up against the City, is that the contractor didn't know or was not informed in time.

GLEN LYTLE, Special Assistant for Zoning, stated that the amendment that was previously considered by the Planning Commission on December 21, 1978 meeting required a performance guarantee to be filed, prior to the issuance of a building permit, on all properties where landscaping and screening is required. On a motion to recommend adoption, the Planning Commission voted 3 in favor, and 4 against. The amendment was forwarded to the City Commission for their consideration at the meeting of January 16, 1979.

LYTLE said that when the City Commission referred this matter back to the Planning Commission, they stated as part of the motion that consideration should be given to the comments of the Superintendent of Central Inspection. As you note by his memo of December 14, 1978, the major concern expressed was that the amendment would require guarantees on all sites prior to the issuance of a building permit, thereby creating a voluminous amount of paperwork in keeping track of the guarantees.

LYTLE continued that the redraft presented to the Planning Commission today takes into consideration this concern and will not require any financial guarantees prior to the issuance of a building permit, but only require a letter of agreement, by the owner, that all on-site improvements will be completed prior to any occupancy of the premises. It will then further permit the Superintendent of Central Inspection to issue a temporary certificate of occupancy without the completion of all on-site improvements when the owner requests same, due to extenuating circumstances not under the control of the owner thereby preventing completion.

LYTLE concluded that this amendment will not penalize owners or contractors who willfully comply with the regulations. It will, however, permit the administration of the regulations by requiring guarantees for the installation of on-site improvements similar to the present policy without having to appeal to the City Commission.

BAYOUTH said he did not see why a person should be required to put up a bond because he has not landscaped, for instance if the ground was frozen and he could not landscape. He felt he should be given until Spring without the bond. He asked if this could not be handled administratively.

LYTLE said that the way its being handled now is that the guarantees are being required administratively. This amendment was prepared at the request of the City Commission that some method be devised to assure that these improvements are going to be completed.

MAY stated that the case Mr. Bayouth was bringing up as far as she was concerned is the perfect case of why we should have this. An occupancy permit is issued because it is December and trees cannot be planted, and that is the very example the City has dealt with in the past and lost.

LYTLE said that if an occupancy permit is issued without compliance then it is extremely difficult to go back at a later date and ask for compliance unless they are applying for an additional permit to make changes or adding to an existing property.

COLE stated the questions are answered in the compromise of Mr. Bayouth's concern about the contractor having a chance to do what they say they are going to do, and only if they don't comply then they have to put up a bond. He felt this was a good compromise.

MOTION: That the Planning Commission recommend to the City Commission that the compromise amendment be approved. Cole moved, May seconded.

BAYOUTH commented that he did not see where anything had been gained. He thought it was unfair to a person to landscape without the weather being in his favor, and he did not think he should have to pay the cost of a bond or anything else because it was not his fault. He felt that more cost was being created to the developer and more business for the attorney.

VOTE ON THE MOTION: It carried with a vote of 7 in favor (Cole, May, Greider, Barrier, Taylor, Bell and Hennessy), and 2 opposed (Bayouth and Savina). Jones was absent.

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February 13, 1979  
DR-78-35

Deletions ~~marked-through~~  
Additions underlined

Possible Amendment to the  
City of Wichita Zoning Ordinance Scheduled for  
Public Hearing Before the MAPC-Thursday, February 15, 1979

Recommended that Section 28.04.220 be amended to read as follows:

28.04.220 Building permits; certificates of occupancy and compliance; ~~performance guarantees to assure compliance; waiver or extension.~~

A. The existing use and occupancy of premises shall not be changed not shall any building be hereafter erected, enlarged, converted or altered until a building permit has been issued by the Central Inspection Superintendent stating that the proposed use of such land or building or premises complies with the provisions of this Chapter.

B. A certificate of occupancy and compliance shall be applied for coincident with the application for a building permit and shall be issued within ten days after the erection or alteration of such building or premises shall have been completed, in conformity with the provisions of these regulations. A record of all certificates shall be kept on file in the office of the Central Inspection Superintendent and copies shall be furnished on request to any person having a proprietary or tenant interest in the building permit; for all other certificates or for copies of any original certificate, there shall be a charge of one dollar for each copy thereof.

C. A building permit shall not be issued until the owner of the premises shall have filed in the office of the Superintendent of Central Inspection a letter of agreement for the completion of all on site improvements prior to any occupancy of the premises.

When extenuating circumstances not under the control of the owner occur, the owner may request that a temporary occupancy permit be issued. Such circumstances may include, but not be limited to, extreme weather conditions preventing completion of on site improvements, delay of installation or incomplete public improvements that could possibly cause damage or removal of on site improvements, or other similar circumstances that could be deemed to interfere with the completion of all required improvements.

A request for a temporary occupancy permit shall be accompanied by a performance guarantee and a schedule for completion of all required improvements to the site. A written grant of the right of entry on the premises by the City or its designee for the purpose of completing the improvements shall be executed by the owner at the time of and in conjunction with the filing of the performance guarantee. The performance guarantee may consist of a corporate surety bond, a bank letter of credit, cashier's check, escrow account or other like security in an amount to be fixed by the Superintendent of Central Inspection.

The amount of such guarantee or security shall be based upon the estimated cost of improvements, as evidenced by bonafide bids or contracts, to be guaranteed and may include contingency factors for inflation and cost overruns in an amount equal to twenty-five percent (25%) above the estimated cost. The guarantee, if in a form other than cash or its equivalent, shall be subject to the approval of the Director of Law and conditioned upon the actual completion of such work within the specified time period.

If the required improvements shall not have been installed in accordance with the performance guarantee, the obligor and surety, if any, shall be liable thereon to the City for the cost of the improvements not installed. In addition to all equitable remedies to enforce such guarantee, the proceeds of the security or guarantee may be claimed and used by the City to secure completion of the improvements.

D. The specified time period allowed for installation of the improvements for which the performance guarantee has been provided may be waived or extended by the Board of Zoning Appeals by resolution upon an application and showing that unusual circumstances beyond the control of the owner of the premises continues to prevent completion of the improvements. The amount of any performance guarantee may be reduced by the Board of Zoning Appeals when portions of the improvements have been completed. The resolution granting the waiver or extension may direct the issuance of the certificate or occupancy subject to the provisions or conditions of the resolution including the modification of the performance guarantee.

WICHITA-SEDGWICK COUNTY

DATE

**METROPOLITAN AREA PLANNING DEPARTMENT**

February 9, 1979

TO Wichita-Sedgwick County Metropolitan Area Planning Commission  
FROM Glen E. Lytle, Special Assistant for Zoning  
SUBJECT DR 78-35 - Possible Amendment to the City Zoning Ordinance -  
Re: Performance Guarantees for Landscaping and Screening

Attached hereto are copies of material that was considered by the Planning Commission on December 21, 1978, along with the minutes of that meeting.

On a motion to approve the amendment, the Planning Commission voted 3 in favor and 4 against the adoption of the proposed amendment. This matter was forwarded to the City Commission for their consideration on January 16, 1979. After considerable discussion, Shanahan moved that the proposed amendment be returned to the Planning Commission for reconsideration, as there is need for revision in order to enforce the landscaping requirements, and further ask that the comments of the Superintendent of Central Inspection be considered. Motion carried 5-0.

We are working with Central Inspection in the revision and development of procedures to accomplish the request of the City Commission. Copies of any further changes will be furnished to you at the meeting.

  
Glen E. Lytle  
Special Assistant for Zoning

GEL:bbc  
Attachments

cc: Robert A. Lakin, Director of Planning  
Don Anderson, Director of Economic Development  
Robert B. Feldner, Superintendent of Central Inspection  
John Dekker, Director of Law  
H. R. Kuhn, Assistant City Attorney  
Dave Furnas, C.P.O. Coordinator  
Wichita Area Builders Ass'n., 730 N. Main 67203  
Wichita Board of Realtors, 717 N. Emporia 67214

February 9, 1979

Wichita-Sedgwick County Metropolitan Area Planning Commission  
Glen E. Lytle, Special Assistant for Zoning

DR 78-35 - Possible Amendment to the City Zoning Ordinance -  
Re: Performance Guarantees for Landscaping and Screening

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Special Assistant for Zoning

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Attachments

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Don Anderson, Director of Economic Development  
Robert B. Feldner, Superintendent of Central Inspection  
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WICHITA-SEDGWICK COUNTY

DATE

**METROPOLITAN AREA PLANNING DEPARTMENT**

January 8, 1979

TO E. H. Denton, City Manager  
FROM Robert A. Lakin, Director of Planning  
SUBJECT DR-78-35 - Possible Amendment to the Zoning Ordinance  
Re: Performance guarantees for landscaping and screening

Please place this item on the agenda of January 16, 1979 for discussion by the City Commission.

SUMMARY

On October 24, 1978 the City Commission instructed the staff to review the present ordinance requirements and recommend revisions to:

- (1) Provide that landscaping and screening requirements be guaranteed prior to the issuance of building permits;
- (2) Provide that landscaping and screening be installed prior to issuance of an occupancy permit;
- (3) Provide for a waiver process; and
- (4) Include performance and penalty provisions to assure compliance.

In review of the existing zoning requirements with representatives of the planning staff and public works, the Department of Law drafted a proposed revision to the zoning ordinance in response to the Commissions request.

This amendment was advertised and a public hearing before the planning commission was held on December 21, 1978. Copies of the information furnished the planning commission is attached for your information. Also included is a copy of comments received from Robert Feldner, Superintendent of Central Inspection. Copies of the excerpt minutes of the December 21, 1978 planning commission meeting related to this item are also attached.

RECOMMENDATION OF THE PLANNING COMMISSION

It is the recommendation of the Planning Commission that the ordinance as proposed not be adopted, and that the staff deve-

E. H. Denton, City Manager  
January 8, 1979  
Page Two

lop a procedure for enforcement by the use of the occupancy permit, which could include the withholding of permits; the possible revocation of the contractors license or further permits; or the revocation of utility hookups or other procedures designed around the withdrawal of "privileges" as opposed to penalties or punitive measures.

RECOMMENDED ACTION:

1. Concur in the recommendation of the Planning Commission and instruct the staff to prepare procedures and possible amendments to assure compliance.
2. Return the proposed amendment to the Planning Commission for reconsideration. The City Commission states the following reasons for its action.

  
\_\_\_\_\_  
Robert A. Lakin  
Director of Planning

RAL:GEL:bp  
Attachments

cc: John Dekker, Director of Law  
Don Anderson, Director of Economic Development  
Robert Feldner, Superintendent of Central Inspection  
Dave Furnas, CPO Coordinator

EXCERPT FROM PLANNING COMMISSION MINUTES OF DECEMBER 21, 1978:

25. Case No. DR 78-35 - Possible Amendment to the City Zoning Ordinance - Filing of Performance Guarantees.

GLEN LYTLE, Special Assistant to Zoning, stated that this was a proposed amendment to the zoning ordinance which would provide for a performance guarantee to insure that onsite improvements would be completed prior to the occupancy of a building. He said that recent cases have been pointed out to the City Commission of failure of the owners or developers to fully comply with the requirements of landscaping and screening on several projects. At the October 24, 1978 City Commission meeting, the Commissioners instructed the staff to review the present ordinance requirements and recommend revisions to:

- (1) Provide the landscaping and screening requirements be guaranteed prior to the issuance of building permits;
- (2) Provide that landscaping and screening be installed prior to issuance of an occupancy permit;
- (3) Provide for a waiver process; and
- (4) Include performance and penalty provisions to assure compliance.

LYTLE said that this draft of the possible amendment was prepared by the Department of Law and includes the following changes:

- (1) Requires that the owner furnish a guarantee that landscaping, screening and other on-site improvements will be made in accordance with approved plans, such guarantee to be in an amount to be determined by the Superintendent of Central Inspection, with a contingency factor of 25% for inflation and cost overruns. The guarantee if in any form other than cash or its equivalent, shall be subject to the approval of the Director of Law.
- (2) It will require that all improvements be made to the property prior to the issuance of an occupancy permit.
- (3) It establishes a waiver procedure for extending the time for completion of improvements upon the showing of unusual circumstances beyond the control of the owner of the premises.

LYTLE continued that there was no change or recommendation for change in the penalty provisions because this was part of the enabling legislation that the maximum penalty is established by State Statute, and also it is up to the discretion of the judge in each case should it go to court. He said that comments received from the Superintendent of Central Inspection indicated that the wording of the ordinance would require that financial guarantees be required on all sites upon which these improvements are required. LYTLE said that the instructions to the Director of Law did not differentiate and that a development not in a Community Unit Plan could conceivably require a large amount of screening and landscaping and thus a concern for needed guarantees and enforcement. The Superintendent of Central Inspection has indicated his concern that the amendments not only would be a lot of paper work in order to keep track of the guarantees, but is another procedure that the builders and developers are going to have to comply with prior to the issuance of a building permit. Another concern expressed by the Superintendent of Central Inspection was the issuance of an occupancy permit if the owner complied only with the zoning ordinance. The Department of Law indicated that since

this was provision of the zoning ordinance, it should refer only to this code. The other concern of the Superintendent was the experience he had with corporate surety bonds. He indicated that they have some litigation going at the present time.

LYTLE stated that the reason all of the various guarantees are included in the ordinance was that the attorney felt that use of the same language that is in the Kansas State Statute is what should be in the ordinance.

BELL stated that he was in sympathy with the basic intent behind this. He questioned the wording of "landscaping, screening, and other onsite improvements will be made in accordance with "the plans previously submitted and approved". He felt this was vague. He felt it was drawn by someone that was not familiar with the processes the Planning Commission goes through in getting up to that point, because frequently there were not plans submitted and approved, there are suggestions, commitments, and all kinds of things, yet there are still screening requirements. He felt this should be made more specific.

LYTLE interpreted it as plans submitted prior to the issuance of a building permit, and there are plans submitted, and screening and landscaping shown on these plans.

LAKIN stated that there were landscape plans that he signs and/or with the Superintendent of Central Inspection (primarily BZA cases and CUP's). There are other ordinance provisions that say just build a wall. No plans are submitted on a wall, just plans on landscaping. LAKIN suggested that wording be included in the amendment about "in accordance with plans previously submitted and approved, and for other ordinance requirements".

BELL stated that where there is a landscaping area that was required to be kept on portions of the land, it would be questionable under broad general language whether that was the kind of plan requested. His other question was the sentence that read: "The improvements shall be executed by the owner of the time of and in conjunction with the filing of the performance guarantee". He asked if there was some language omitted. (It was pointed out that it was a typographical error and should be --- "owner at the time of ---").

COLE commented that Mr. Bell's point was well taken, if all of the things are not put in that the Commission wants to comply, then there is always the escape clause for people not to comply.

MAY speaking about Mr. Feldner's memorandum, concerning the overload which would be imposed upon his Department if this ordinance is imposed on things beyond CUP's, and BZA's, she reminded the Commission that there have been many cases that were just zoning cases where screening fences were never constructed to protect residential property, and she wanted to indicate her desire that the ordinance apply to all sites in which improvements are proposed.

BAYOUTH said that he did not approve of cash guarantees in that it works a hardship on an individual.

SAVINA said that he was opposed to anything of this nature. He felt that it was a frustrated example of a frustrated ordinance, and a frustrated Department that cannot carry out its inspections properly. He said the certificate of occupancy is the key to the whole thing, and if Central Inspection operated as it should operate, then they would not need a cash guarantee. He felt that this sort of thing would cause an inflationary impact on the City, and they would have to have more staff to take care of the cash operation, people will have a lot of money tied up, and it would take months and months to get their money back after the certificate is issued. It was just not proper and right to do this kind of thing just because one or two developers have not lived up to their agreement.

COLE said that he had some sympathy for what Mr. Savina said because he had also some real concern with Central Inspection that they have not been doing their job in the past, and he has complained about it. He said that even when they do their job, more tools are needed to handle those persons who deliberately try to comply to the least extent they possibly can.

MOTION: That the Planning Commission recommend to the City Commission that the proposed amendment be approved with staff's corrections, and take into account Mr. Bell's comments. Cole moved, May seconded.

VOTE ON THE MOTION: Motion failed with a vote of 3 in favor (Cole, May and Taylor), and 4 opposed (Bell, Bayouth Greider and Savina). Barrier, Hennessy and Jones were absent.

LAKIN said that he had not been personally convinced that the occupancy permit could not be properly withheld from the people. The building permits are taken out by owners and/or licensed contractors, and it seemed to him, if they did not comply to the rules, then the licenses to operate should be taken away from them. The economic pressures to open otherwise completed buildings should force to completion of walls and/or bonding of landscaping where out of reason.

Considerable discussion continued on the occupancy permit.

BELL commented that when you get in court and talk about licensing, you are talking about a privilege to do something, and its often not interpreted with all of the equities in favor of the person who is being brought on the carpet.

MOTION: To have staff prepare a procedure for enforcement by Central Inspection Division by the use of the occupancy permit and also to consider some procedure of compliance by withholding permits; or the possible revocation of the contractors' license for failing to comply with conditions of a permit; or the revocation of utility hookups or other procedures designed around the withdrawal of "privileges" (such as licenses) as opposed to penalties or punitive measures. Bell moved, Cole seconded.

MAY explained the reason she voted for the proposed amendment. She participated in a discussion in which other avenues that were suggested were eliminated completed with very little explanation, and the offered amendment looked like the only option.

SAVINA remarked that when people have to put up cash when they have the good intent of complying anyway, then we sure have a poor governing authority.

VOTE ON THE MOTION: It carried unanimously. Barrier, Hennessy and Jones were absent.

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WICHITA-SEDGWICK COUNTY

DATE  
December 14, 1978

**METROPOLITAN AREA PLANNING DEPARTMENT**

**TO** Wichita-Sedgwick County Metropolitan Area Planning  
Commission

**FROM** Robert A. Lakin, Director of Planning

**SUBJECT** DR 78-35 - Possible Amendment to the Zoning Ordinance  
Re: Performance guarantees to assure  
compliance

Attached hereto is a delineated copy of a possible amendment to the City of Wichita zoning ordinance that has been advertised for public hearing at the December 21, 1978 Planning Commission meeting.

BACKGROUND:

Over the past several years, requirements for the landscaping and screening of commercial and industrial developments have been a condition of the zoning ordinance in order to provide some protection to adjacent properties. This has particularly been a condition of commercial community unit plans.

There has been an increasing concern expressed by neighborhoods adjacent to such development when screening and landscaping has not been provided in accordance with the approved plans. When deficiencies have recently been brought to the attention of the City Commission, it was felt that a revision to the procedures should be considered to assure that the owner or developer would install the improvements prior to the occupancy of the development. It was also recognized that there will be times when it will not be possible to complete all requirements by the time the tenants are ready to occupy a structure and therefore, a required satisfactory financial guarantee is being considered.

On October 24, 1978, the City Commission instructed the staff to review the present ordinance requirements and recommend revisions to:

- (1) Provide the landscaping and screening requirements be guaranteed prior to the issuance of building permits;
- (2) Provide that landscaping and screening be installed prior to issuance of an occupancy permit;
- (3) Provide for a waiver process; and
- (4) Include performance and penalty provisions to assure compliance.

The Department of Law prepared a draft of a possible ordinance and returned the same to the City Commission for their information

at the meeting of November 21, 1978. The proposed ordinance change would be a provision of the zoning ordinance and as required by law, it must be advertised and a public hearing held by the Planning Commission for a recommendation to the governing body. Without discussion, the City Commission referred the possible amendment to the MAPC for hearing and recommendation.

SUMMARY:

This possible amendment to Section 28.04.220 of the zoning ordinance includes the following changes:

1. Requires that the owner furnish a guarantee that landscaping, screening and other on-site improvements will be made in accordance with approved plans, such guarantee to be in an amount to be determined by the Superintendent of Central Inspection, with a contingency factor of 25% for inflation and cost overruns. The guarantee if in any form other than cash or its equivalent, shall be subject to the approval of the Director of Law.
- (2) It will require that all improvements be made to the property prior to the issuance of an occupancy permit.
- (3) It establishes a waiver procedure for extending the time for completion of improvements upon the showing of unusual circumstances beyond the control of the owner of the premises.

There has been no change recommended in the penalty provisions as they are presently in the ordinance as Sections 28.04.240 and 1.04.060 which sets a maximum penalty of \$500.00 for each violation with each day being a separate offense. The penalty is set by the courts and is in accordance with the state statutes.

  
Robert A. Lakin, Director of Planning

RAL:bbc

cc: Don Anderson, Director of Economic Development  
Robert B. Feldner, Superintendent of Central Inspection  
John Dekker, Director of Law  
H. R. Kuhn, Assistant City Attorney  
Dave Furnas, C.P.O. Coordinator  
Wichita Area Builders Assn., 730 N. Main, 67203  
Wichita Board of Realtors, 626 N. Broadway, 67214

November 28, 1978  
DR-78-35

Deletions ~~marked-through~~  
Additions underlined

Possible Amendment to the  
City of Wichita Zoning Ordinance Scheduled for  
Public Hearing Before the MAPC-Thurseday, December 21, 1978

Recommended that Section 28.04.220 be amended to read as follows:

28.04.220 Building permits; certificates of occupancy and compliance; performance guarantees to assure compliance; waiver or extension.

A. The existing use and occupancy of premises shall not be changed nor shall any building be hereafter erected, enlarged, converted or altered until a building permit has been issued by the central inspection superintendent stating that the proposed use of such land or building or premises complies with the provisions of this Chapter.

B. A certificate of occupancy and compliance shall be applied for coincident with the application for a building permit and shall be issued within ten days after the erection or alteration of such building or premises shall have been completed, in conformity with the provisions of these regulations. A record of all certificates shall be kept on file in the office of the central inspection superintendent and copies shall be furnished on request to any person having a proprietary or tenant interest in the building permit; for all other certificates or for copies of any original certificate, there shall be a charge of one dollar for each copy thereof.

C. A building permit shall not be issued until the owner of the premises shall have filed in the office of the central inspection superintendent an adequate performance guarantee that landscaping, screening, and other on-site improvements will be made in accordance with the plans previously submitted and approved. The performance guarantee may consist of a corporate surety bond, a bank letter of credit, cashier's check, escrow account or other like security in an amount to be fixed by the superintendent of central inspection.

The amount of such guarantee or security shall be based upon the estimated cost of improvements, as evidenced by bona fide bids or contracts, to be guaranteed and may include contingency factors for inflation and cost overruns in an amount equal to twenty-five percent (25%) of the estimated cost. The guarantee, if in a form other than cash or its equivalent, shall be subject to the approval of the director of law and conditioned upon the actual completion of such work within a specified time period and prior to the issuance of the certificate of occupancy and compliance.

If the required improvements shall not have been installed in accordance with the performance guarantee, the obligor and surety, if any, shall be liable thereon to the City for the cost of the improvements not installed. In addition to all equitable remedies to enforce such guarantee, the proceeds of the security or guarantee may be claimed and used by the City to secure completion of the improvements. A written grant of the right of entry on the premises by the City or its designee for the purpose of completing the improvements shall be executed by the owner of the time of and in conjunction with the filing of the performance guarantee.

D. The amount of any performance guarantee may be reduced by the governing body by resolution when portions of the improvements have been completed. The specified time period allowed for installation of the improvements for which the performance guarantee has been provided may be waived or extended by the governing body by resolution upon an application and showing of unusual circumstances beyond the control of the owner of the premises. The order granting the waiver or extension may direct the issuance of the certificate of occupancy and compliance subject to the provisions or conditions of said order.

**THE CITY OF WICHITA**

OFFICE OF Central Inspection Division

DATE December 14, 1978

ROUTING	
DP	
EP	
PM	
JM	
DW	
BW	
MG	
FILE	



TO Robert Lakin, Director of Planning

FROM Robert B. Feldner, Superintendent of Central Inspection

**SUBJECT** Proposed Ordinance pertaining to screening/landscaping guarantees

Central Inspection Division's review of the proposed ordinance (as proposed by the Law Department) pertaining to screening/landscaping guarantees has resulted in the following comments and/or recommendations. Hopefully, each of these can be included in the ordinance or forwarded with it to the MAPC for their consideration.

The wording of the ordinance requires financial guarantees on all sites upon which improvements are proposed. Application of the ordinance is not restricted to CUP's or BZA's, etc., but is inclusive on all applications for building permit. If this is the intent of the Commissioners, it will create a rather voluminous amount of paperwork to be coordinated. The 1979 budgeting process resulted in Central Inspection's loss of one clerical position and the ability to absorb the additional duties is a major concern. The animosity of the builders, owners and developers which will be generated by the ordinance is another factor which should be considered, as should the fact that financial guarantees are the only proven method by which such installations can be insured with a degree of certainty.

Another concern is the wording of the fifth line of paragraph B. As written, the ordinance mandates that a Certificate of Occupancy be issued if the site is in conformance with Title 28. Should the site be in violation of other titles of City Code, Central Inspection does not anticipate the issuance of a Certificate of Occupancy. It is recommended that the wording be changed to reflect, "conformity with all applicable regulations," or similar phraseology.

The second sentence of paragraph C is another concern. Prior experience with corporate security bonds indicates that foreclosure is most difficult, should that action become necessary. Also, on this very date, the District Court is considering a similar matter involving bank letters of credit.

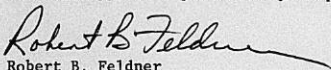


Page: 2

Re: Proposed Ordinance pertaining to  
screening/landscaping guarantees  
December 14, 1978

Thus, any form of guarantee, other than cash or cashier's check, should  
be carefully reviewed prior to inclusion in the ordinance.

If further information or clarification is desired Central Inspection  
will be happy to expeditiously respond.

  
Robert B. Feldner  
Superintendent of Central Inspection

APPROVED:

  
Don E. Anderson  
Director of Economic Development

RBF:kda

(Published in the Daily Record on November 29, 1978.)

OFFICIAL NOTICE

TO WHOM IT MAY CONCERN AND TO ALL PERSONS INTERESTED.

NOTICE IS HERBY GIVEN, that on Thursday, December 21, 1978, the Wichita-Sedgwick County Metropolitan Area Planning Commission, in the City Commission Meeting Room, First Floor, City Hall, 455 North Main, Wichita, Kansas, at 1:30 p.m., will consider the following change in Title 28, the Code of the City of Wichita, Kansas:

An amendment to Section 28.04.220 of the Zoning Ordinance pertaining to the issuance of building and occupancy permits, and the filing of performance guarantees.

Copies of the proposed amendment are available upon request from the Wichita-Sedgwick County Metropolitan Area Planning Department.

The proposed amendment will there be discussed and considered by the Wichita-Sedgwick County Metropolitan Area Planning Commission, and all persons interested in said matter will be heard at this time concerning their views and wishes, and any protest against any of the provisions of the proposed changes of the zoning ordinance will be considered by the Commission as by law provided.

WITNESS my hand and seal this 28th day of November, 1978.

Robert A. Lakin, Secretary  
Wichita-Sedgwick County  
Metropolitan Area Planning Commission

(SEAL)

(Published in the Daily Record on November 29, 1978.)

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Robert A. Lakin, Secretary  
Wichita-Sedgwick County  
Metropolitan Area Planning Commission

(SEAL)

December 14, 1978

Wichita-Sedgwick County Metropolitan Area Planning  
Commission

Robert A. Lakin, Director of Planning

DR 78-35 - Possible Amendment to the Zoning Ordinance  
Re: Performance guarantees to assure  
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There has been an increasing concern expressed by neighborhoods adjacent to such development when screening and landscaping has not been provided in accordance with the approved plans. When deficiencies have recently been brought to the attention of the City Commission, it was felt that a revision to the procedures should be considered to assure that the owner or developer would install the improvements prior to the occupancy of the development. It was also recognized that there will be times when it will not be possible to complete all requirements by the time the tenants are ready to occupy a structure and therefore, a required satisfactory financial guarantee is being considered.

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SUMMARY:

This possible amendment to Section 28.04.220 of the zoning ordinance includes the following changes:

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There has been no change recommended in the penalty provisions as they are presently in the ordinance as Sections 28.04.240 and 1.04.060 which sets a maximum penalty of \$500.00 for each violation with each day being a separate offense. The penalty is set by the courts and is in accordance with the state statutes.

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Robert A. Lakin, Director of Planning

RAL:bbc

cc: Don Anderson, Director of Economic Development  
Robert B. Feldner, Superintendent of Central Inspection  
John Dekker, Director of Law  
H. R. Kuhn, Assistant City Attorney  
Dave Furnas, C.P.O. Coordinator  
Wichita Area Builders Assn., 730 N. Main, 67203  
Wichita Board of Realtors, 626 N. Broadway, 67214

**THE CITY OF WICHITA**

OFFICE OF CITY MANAGER

DATE November 27, 1978

TO Robert A. Lakin, Director of Planning

FROM Robert G. Finch, Deputy City Manager

SUBJECT Landscaping and Screening Ordinance

On November 21, 1978, the City Commission referred the captioned ordinance to the MAPC for hearing, recommendation and subsequent return to the City Commission at a later date. The ordinance was prepared by the Department of Law based on a prior directive of the Commission. You received a copy of the October 24, 1978, memorandum from this office outlining revisions proposed by the Commission and incorporated into the ordinance.

Please bring this ordinance to the attention of the MAPC for consideration in accordance with the standard procedures.



Robert G. Finch  
Deputy City Manager

RGF/tpd

cc: John Dekker, Director of Law



(Published in the Daily Record on November 29, 1978.)

OFFICIAL NOTICE

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Copies of the proposed amendment are available upon request from the Wichita-Sedgwick County Metropolitan Area Planning Department.

The proposed amendment will there be discussed and considered by the Wichita-Sedgwick County Metropolitan Area Planning Commission, and all persons interested in said matter will be heard at this time concerning their views and wishes, and any protest against any of the provisions of the proposed changes of the zoning ordinance will be considered by the Commission as by law provided.

WITNESS my hand and seal this 28th day of November, 1978.

Robert A. Lakin, Secretary  
Wichita-Sedgwick County  
Metropolitan Area Planning Commission

(SEAL)

THE CITY OF WICHITA  
OFFICE OF DEPARTMENT OF LAW

DATE November 13, 1978

TO ROBERT G. FINCH, Deputy City Manager  
FROM JOHN DEKKER, Director of Law

SUBJECT Proposed Ordinance Revision

In accordance with the directions of the City Commission of October 24, 1978 and your memo of the same date, the department of law, in conjunction with the other departments, has drafted the proposed ordinance revision which is attached hereto. The performance penalties are included in the proposed revision. Additional penalties are already provided for under the provisions of 28.04.240 and 1.04.060 of the City Code. Of course, procedural requirements of amending the ordinance must be followed.

JOHN DEKKER  
DIRECTOR OF LAW

cc: Robert A. Lakin, Director of Planning  
Ray W. Bruggeman, Director of Public Works  
Robert B. Feldner, Superintendent of Central Inspection



ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE AMENDING SECTION 28.04.220 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO THE ISSUANCE OF BUILDING PERMITS AND CERTIFICATES OF OCCUPANCY AND COMPLIANCE, AND THE FILING OF PERFORMANCE GUARANTEES, AND REPEALING THE ORIGINAL OF SAID SECTION 28.04.220 OF THE CODE OF THE CITY OF WICHITA, KANSAS.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

Section 28.04.220 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"Building permits; certificates of occupancy and compliance; performance guarantees to assure compliance; waiver or extension.

A. The existing use and occupancy of premises shall not be changed nor shall any building be hereafter erected, enlarged, converted or altered until a building permit has been issued by the central inspection superintendent stating that the proposed use of such land or building or premises complies with the provisions of this Chapter.

"B. A certificate of occupancy and compliance shall be applied for coincident with the application for a building permit and shall be issued within ten days after the erection or alteration of such building or premises shall have been completed, in conformity with the provisions of these regulations. A record of all certificates shall be kept on file in the office of the central inspection superintendent and copies shall be furnished on request to any person having a proprietary or tenant interest in the building affected. No fee shall be charged for an original certificate applied for coincident with the application for a building permit; for all other certificates or for copies of any original certificate, there shall be a charge of one dollar for each copy thereof. (~~Ord. No. 19-725, §22.~~)

"C. A building permit shall not be issued until the owner of the premises shall have filed in the office of the central inspection superintendent an adequate performance guarantee that

landscaping, screening, and other on-site improvements will be made in accordance with the plans previously submitted and approved. The performance guarantee may consist of a corporate surety bond, a bank letter of credit, cashier's check, escrow account or other like security in an amount to be fixed by the superintendent of central inspection.

"The amount of such guarantee or security shall be based upon the estimated cost of improvements, as evidenced by bona fide bids or contracts, to be guaranteed and may include contingency factors for inflation and cost overruns in an amount equal to twenty-five percent (25%) of the estimated cost. The guarantee, if in a form other than cash or its equivalent, shall be subject to the approval of the director of law and conditioned upon the actual completion of such work within a specified time period and prior to the issuance of the certificate of occupancy and compliance.

"If the required improvements shall not have been installed in accordance with the performance guarantee, the obligor and surety, if any, shall be liable thereon to the City for the cost of the improvements not installed. In addition to all equitable remedies to enforce such guarantee, the proceeds of the security or guarantee may be claimed and used by the City to secure completion of the improvements. A written grant of the right of entry on the premises by the City or its designee for the purpose of completing the improvements shall be executed by the owner at the time of and in conjunction with the filing of the performance guarantee.

"D. The amount of any performance guarantee may be reduced by the governing body by resolution when portions of the improvements have been completed. The specified time period allowed for installation of the improvements for which the performance guarantee has been provided may be waived or extended by the governing body by resolution upon an application and showing of

unusual circumstances beyond the control of the owner of the premises. The order granting the waiver or extension may direct the issuance of the certificate of occupancy and compliance subject to the provisions or conditions of said order."

The original of Section 28.04.220 of the Code of the City of Wichita, Kansas, is hereby repealed.

This ordinance shall take effect from and after its passage and adoption and publication once in the official city paper.

ADOPTED at Wichita, Kansas, this \_\_\_\_\_ day of \_\_\_\_\_, 1978.

ATTEST:

\_\_\_\_\_  
MAYOR

\_\_\_\_\_  
City Clerk

Approved as to form:

\_\_\_\_\_  
John Dekker, Director of Law

Copy of  
draft given  
to H.R. Kahn

28.04.220 Certificates of occupancy and compliance. A. The existing use and occupancy of premises shall not be changed nor shall any building

be hereafter erected, enlarged, converted or altered until a building permit has been issued by the central inspection superintendent stating that the proposed use of such land or building or premises complies with the provisions of this chapter.

In order to guarantee that landscaping, screening and other on site improvements will be made, the Superintendent of  
Central Inspection may require that the owner furnish a corporate surety bond, cashier's check, escrow account or other like security. The amount of such security shall be based upon the estimated cost of improvements to be guaranteed and may include contingency factors for inflation and cost overruns. Such guarantee shall also be tied to a completion date prior to the intended occupancy of any portion of the area included in the required occupancy permit.

B. A certificate of occupancy and compliance shall be applied for co-incident with the application for a building permit and shall be issued within ten days after the erection or alteration of such building or premises

shall have been determined to be completed, in conformity with the provisions of these regulations, including landscaping, screening and other on site improvements; provided however, the Governing Body may waive the completion of said improvements prior to the issuance of an occupancy permit

2.

due to extenuating circumstances not under the control of the owner. This may include, but not be limited to, improper planting season for landscape material, weather conditions preventing construction, adjacent development or public improvements not completed wherein said improvements would possibly be damaged or required to be removed and replaced.

A  
record of all certificates shall be kept on file in the office of the central inspection superintendent and copies shall be furnished on request to any person having a proprietary or tenant interest in the building affected. No fee shall be charged for an original certificate applied for coincident with the application for a building permit; for all other certificates or for copies of any original certificate, there shall be a charge of one dollar for each copy thereof.

THE CITY OF WICHITA

OFFICE OF

CITY MANAGER

DATE October 24, 1978

TO John Dekker, Director of Law

FROM Robert G. Finch, Deputy City Manager

SUBJECT Landscaping and Screening  
Requirements in Connection  
with Zoning

On October 24, 1978, the City Commission directed the administrative staff to review the present ordinance requirements for landscaping and screening and recommend revisions to:

- 1) Provide that landscaping and screening requirements be guaranteed prior to issue of building permits.
- 2) Provide that landscaping and screening requirements be installed prior to issue of an occupancy permit.
- 3) Provide for a waiver process.
- 4) Include performance and penalty provisions to assure compliance.

Please work with the involved departments and divisions to return a report and proposed ordinance revision for the agenda for the City Commission meeting of November 21, 1978.

  
Robert G. Finch  
Deputy City Manager

RGF/sw

cc: Robert A. Lakin, Director of Planning  
Ray W. Bruggeman, Director of Public Works  
Robert B. Feldner, Superintendent of Central Inspection

