



# NOTICE OF DEVELOPMENT CODE AMENDMENTS

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An ordinance was recently adopted by the Board of Supervisors amending Title 8 of the San Bernardino County Code (Development Code). Ordinance 4116 was effective on September 25, 2010. For those individuals or companies with a printed copy of the Development Code, replacement pages reflecting the changes made by this ordinance can be printed out by clicking on the link below. Please remove all old pages and replace them with the new ones as indicated on the following list:

## REMOVE

Cover sheets

xxi - xxii  
xxix - xxxvi  
7-1 - 7-2  
7-67 - 7-74

## REPLACE/ADD

Cover sheets

xxi - xxii  
xxix - xxxvi  
7-1 - 7-2  
7-67 - 7-74.4

Attachment





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# **COUNTY OF SAN BERNARDINO**

## **2007 DEVELOPMENT CODE**

*Prepared for:*

County of San Bernardino  
Land Use Services Division  
385 North Arrowhead Avenue, 1st Floor  
San Bernardino, CA 92415-0182

Adopted March 13, 2007  
Effective April 12, 2007  
Amended September 25, 2010



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### **Acknowledgements**

The following individuals contributed to preparation of the San Bernardino County General Plan

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Table of Contents

---

87.03.120 Amendments to Recorded Parcel or Final Maps ..... 7-36

**Chapter 87.04 Additional Subdivision Procedures ..... 7-39**

87.04.010 Purpose ..... 7-39

87.04.020 Certificates of Compliance ..... 7-39

87.04.030 Condominiums and Condominium Conversions..... 7-40

87.04.040 Lot Line Adjustment ..... 7-43

87.04.050 Official Maps..... 7-43

87.04.060 Parcel Merger ..... 7-44

87.04.070 Reversion to Acreage ..... 7-46

87.04.080 Resident Initiated Mobile Home Park Conversion..... 7-47

**Chapter 87.05 Dedications and Exactions ..... 7-53**

87.05.010 Purpose ..... 7-53

87.05.020 Applicability ..... 7-53

87.05.030 Dedications ..... 7-53

87.05.040 Acceptance of Dedications ..... 7-54

**Chapter 87.06 Subdivision Design and Improvement Requirements ..... 7-55**

87.06.010 Purpose ..... 7-55

87.06.020 Applicability of Design and Improvement Standards ..... 7-55

87.06.030 Subdivision Design Standards..... 7-56

87.06.040 Site Preparation and Grading for Subdivision Construction ..... 7-60

87.06.050 Subdivision Improvement Requirements ..... 7-62

**Chapter 87.07 Improvement Plans, Installation, and Security..... 7-67**

87.07.010 Purpose ..... 7-67

87.07.020 Improvement Plans..... 7-67

87.07.030 Installation of Improvements..... 7-68

87.07.040 Improvement Agreements, **Lien Agreements** and **Securities** ..... 7-70

**Chapter 87.08 Soils Reports ..... 7-75**

87.08.010 Purpose ..... 7-75

87.08.020 Preliminary Soils Report ..... 7-75

87.08.030 Final Soils Report..... 7-76

87.08.040 Geologic Investigation and Report..... 7-76

# DIVISION 8      RESOURCE MANAGEMENT AND CONSERVATION

---

<b>Chapter 88.01</b>	<b>Plant Protection and Management.....</b>	<b>8-3</b>
88.01.010	Purpose .....	8-3
88.01.020	Applicability .....	8-4
88.01.030	Exempt Activities .....	8-4
88.01.040	Regulated Trees and Plants and General Permit .....	8-6
88.01.050	Tree or Plant Removal Permits .....	8-7
88.01.060	Desert Native Plant Protection .....	8-14
88.01.070	Mountain Forest and Valley Tree Conservation.....	8-16
88.01.080	Riparian Plant Conservation.....	8-17
88.01.090	Tree Protection from Insects and Disease .....	8-18
<b>Chapter 88.02</b>	<b>Soil and Water Conservation.....</b>	<b>8-21</b>
88.02.010	Purpose .....	8-21
88.02.020	Applicability .....	8-21
88.02.030	Exempt Activities .....	8-21
88.02.040	Dust Control - Desert Region .....	8-23
88.02.050	Wind-Borne Soil Erosion .....	8-23
<b>Chapter 88.03</b>	<b>Surface Mining and Land Reclamation.....</b>	<b>8-33</b>
88.03.010	Purpose .....	8-33
88.03.020	Incorporation of SMARA and State Regulations.....	8-34
88.03.030	Applicability .....	8-34
88.03.040	Permit, Plan, And Financial Assurance Requirements.....	8-34
88.03.050	Vested Rights .....	8-37
88.03.060	Application Filing, Processing, and Review .....	8-37
88.03.070	Additional Conditions of Approval .....	8-41
88.03.080	Financial Assurances.....	8-42
88.03.090	Reclamation Standards .....	8-45
88.03.100	Interim Management Plans.....	8-46
88.03.110	Annual Report .....	8-47
88.03.120	Inspections.....	8-47
88.03.130	Violations and Penalties .....	8-48
88.03.140	Post-Approval Procedures.....	8-48



**San Bernardino County Development Code**

**List of Effective Pages**

<i>Page Number</i>	<i>Effective Date</i>	<i>Page Number</i>	<i>Effective Date</i>
i - iv	4-12-2007	2-80 - 2-85	4-12-2007
v	3-25-2010	2-86 - 2-87	3-25-2010
vi	4-12-2007	2-88	10-23-2008
vii	3-25-2010	2-89 - 2-93	2-28-2008
viii	8-20-2009	2-94	8-20-2009
ix - x	4-12-2007	2-95	2-28-2008
xi	10-23-2008	2-96 - 2-97	4-12-2007
xii - xiii	3-25-2010	2-98 - 2-104	8-20-2009
xiv	4-12-2007	2-105 - 2-106	4-12-2007
xv	8-20-2009	2-107	3-25-2010
xvi	3-25-2010	2-108 - 2-141	4-12-2007
xvii	4-12-2007	2-142	6-7-2007
xviii	2-28-2008	2-143 - 2-146	4-12-2007
xix - xx	4-12-2007	2-147 - 2-150	10-23-2008
xxi	9-25-2010	3-1	4-12-2007
xxii - xxviii	4-12-2007	3-2	3-25-2010
xxix - xxxvi	3-25-2010	3-3	8-20-2009
1-1 - 1-14	4-12-2007	3-4 - 3-5	4-12-2007
2-1 - 2-3	4-12-2007	3-6 - 3-6.2	1-15-2009
2-4	3-25-2010	3-7 - 3-20	4-12-2007
2-5 - 2-6	4-12-2007	3-21	3-25-2010
2-7	3-25-2010	3-22	4-12-2007
2-8	8-20-2009	3-23	8-20-2009
2-9	4-12-2007	3-24 - 3-26	4-12-2007
2-10	3-25-2010	3-27	2-28-2008
2-11 - 2-14	4-12-2007	3-28	10-23-2008
2-15	8-20-2009	3-29 - 3-30	4-12-2007
2-16 - 2-18	4-12-2007	3-31	10-23-2008
2-19 - 2-20	10-23-2008	3-32 - 3-33	8-20-2009
2-21	3-25-2010	3-34	10-23-2008
2-22 - 2-23	4-12-2008	3-35 - 3-54	4-12-2007
2-24 - 2-26	10-23-2008	3-55	3-25-2010
2-27	4-12-2007	3-56 - 3-57	4-12-2007
2-28	8-20-2009	3-58	3-25-2010
2-29 - 2-31	3-25-2010	3-59 - 3-62	4-12-2007
2-32 - 2-33	4-12-2007	3-63 - 3-64.2	2-28-2008
2-34 - 2-36	10-23-2008	3-65 - 3-72	4-12-2007
2-37 - 2-38	4-12-2007	3-73 - 3-74	2-28-2008
2-39	3-25-2010	3-75	4-12-2007
2-40	4-12-2007	3-76	2-28-2008
2-41	8-20-2009	3-77 - 3-83	4-12-2007
2-42	2-28-2008	3-84	2-28-2008
2-43 - 2-44	4-12-2007	3-85 - 3-97	4-12-2007
2-45	8-20-2009	3-98	2-28-2008
2-46 - 2-50	10-23-2008	3-99	4-12-2007
2-51	4-12-2007	3-100	10-23-2008
2-52	8-20-2009	3-101 - 3-102	4-12-2007
2-53 - 2-59	3-25-2010	3-103 - 3-105	2-28-2008
2-60 - 2-65	10-23-2008	3-106 - 3-111	4-12-2007
2-66 - 2-67	4-12-2007	3-112 - 3-113	2-28-2008
2-68	8-20-2009	3-114 - 3-115	4-12-2007
2-69 - 2-78	4-12-2007	3-116	2-28-2008
2-79	10-23-2008	3-117	4-12-2007

**San Bernardino County Development Code**

**List of Effective Pages**

<i>Page Number</i>	<i>Effective Date</i>	<i>Page Number</i>	<i>Effective Date</i>
3-118	2-28-2008	4-112	2-28-2008
3-119 - 3-120	10-23-2008	4-113 - 4-116	4-12-2007
3-121 - 3-124	4-12-2007	4-117 - 4-118	2-28-2008
3-125	8-20-2009	4-119 - 4-120.2	8-20-2009
3-126 - 3-133	4-12-2007	4-121 - 4-125	4-12-2007
3-134 - 3-135	2-28-2008	4-126	3-25-2010
3-136 - 3-141	4-12-2007	4-127	4-12-2007
3-142	2-28-2008	4-128	2-28-2008
3-143 - 3-155	4-12-2007	4-129 - 4-130	4-12-2007
3-156	10-23-2008	4-131	2-28-2008
3-157	4-12-2007	4-132	4-12-2007
3-158	10-23-2008	4-133	3-25-2010
3-159 - 3-164	4-12-2007	4-134 - 4-139	4-12-2007
3-165	8-20-2009	4-140 - 4-141	8-20-2009
3-166	2-28-2008	4-142	3-25-2010
3-167 - 3-168	8-20-2009	4-142.1 - 4-142.2	8-20-2009
4-1	4-12-2007	4-143 - 4-144	3-25-2010
4-2	10-23-2008	4-145 - 4-151	4-12-2007
4-3	4-12-2007	4-152	3-25-2010
4-4	3-25-2010	4-153 - 4-160	4-12-2007
4-5	8-20-2009	4-161 - 4-166	3-25-2010
4-6 - 4-7	3-25-2010	5-1	4-12-2007
4-8	10-23-2008	5-2	8-20-2009
4-8.1 - 4-17	4-12-2007	5-3	3-25-2010
4-18	2-28-2008	5-4	4-12-2007
4-19	4-12-2007	5-14	4-12-2007
4-20	2-28-2008	5-15	8-20-2009
4-21	4-12-2007	5-16 - 5-29	4-12-2007
4-22 - 4-26	2-28-2008	5-30	2-28-2008
4-27 - 4-30	4-12-2007	5-31 - 5-38	4-12-2007
4-31	2-28-2008	5-39 - 5-40	2-28-2008
4-32 - 4-40	4-12-2007	5-41 - 5-46	4-12-2007
4-41 - 4-42	10-23-2008	5-47 - 5-48	2-28-2008
4-43 - 4-44	8-20-2009	5-49 - 5-50	4-12-2007
4-45 - 4-51	4-12-2007	5-51 - 5-52.2	8-20-2009
4-52	3-25-2010	5-53	10-23-2008
4-53 - 4-60	4-12-2007	5-54 - 5-81	4-12-2007
4-61	8-20-2009	5-82	8-20-2009
4-62	4-12-2007	5-83 - 5-84	4-12-2007
4-63	8-20-2009	5-85	3-25-2010
4-64	4-12-2007	5-86 - 5-88	4-12-2007
4-65	10-23-2008	6-1	4-12-2007
4-66 - 4-68	4-12-2007	6-2	2-28-2008
4-69 - 4-78	2-28-2008	6-3 - 6-18	4-12-2007
4-79	3-25-2010	6-19 - 6-20	8-20-2009
4-80 - 4-94	2-28-2008	6-22	4-12-2007
4-95 - 4-97	4-12-2007	6-23	2-28-2008
4-98	2-28-2008	6-24 - 6-34	4-12-2007
4-99	4-12-2207	6-35 - 6-36	2-28-2008
4-100	2-28-2008	6-37 - 6-41	8-20-2009
4-101 - 4-106	4-12-2007	6-42 - 6-43	10-23-2008
4-107	3-25-2010	6-44 - 6-46.8	2-28-2008
4-108 - 4-111	4-12-2007	6-47 - 6-68	4-12-2007
		6-69	10-23-2008

*San Bernardino County Development Code*

**List of Effective Pages**

<i>Page Number</i>	<i>Effective Date</i>	<i>Page Number</i>	<i>Effective Date</i>
6-70 - 6-72	4-12-2007	10-22 - 10-26	2-28-2008
7-1	4-12-2007	10-27	4-12-2007
7-2	9-25-2010	10-28	10-23-2008
7-3 - 7-66	4-12-2007	10-29 - 10-30	4-12-2007
7-67	9-25-2010	10-31 - 10-32	1-15-2009
7-68 - 7-69	4-12-2007	10-33 - 10-35.2	2-28-2008
7-70 - 7-74.4	9-25-2010	10-36 - 10-46	4-12-2007
7-75 - 7-76	4-12-2007	10-47	3-25-2010
8-1 - 8-12	4-12-2007	10-48 - 10-57	4-12-2007
8-13	2-28-2008	10-58	10-23-2008
8-14 - 8-16	4-12-2007	10-59 - 10-67	4-12-2007
8-17	10-23-2008	10-68	2-28-2008
8-18 - 8-22	4-12-2007	10-69 - 10-72	4-12-2007
8-23	2-28-2008	10-73	3-25-2010
8-24 - 8-48	4-12-2007	10-74	8-20-2009
9-1 - 9-22	4-12-2007	10-81	4-12-2007
10-1 - 10-3	4-12-2007	10-82	10-23-2008
10-4	8-20-2009	10-83 - 10-88	2-28-2008
10-5 - 10-6	2-28-2008	10-89 - 10-106	4-12-2008
10-7 - 10-10	4-12-2007	10-107	2-28-2008
10-11	3-25-2010	10-108 - 10-116	4-12-2007
10-12 - 10-21	4-12-2007		

*San Bernardino County Development Code*

*List of Ordinances Amending the Development Code*

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**List of Ordinances Amending the Development Code**

Ordinance Number	Date of Adoption	Effective Date	Ordinance Number	Date of Adoption	Effective Date
4011	03-13-2007	04-12-2007			
4020	05-08-2007	06-07-2007			
4043	01-29-2008	02-28-2008			
4057	09-23-2008	10-23-2008			
4065	12-16-2008	01-15-2009			
4085	07-21-2009	08-20-2009			
4098	02-23-2010	03-25-2010			
4116	07-27-2010	09-25-2010			

Ordinance Disposition Table

Ordinance Disposition Table

Ordinance	Disposition	Ordinance	Disposition
4011	Entire Title 8		810.01.060(k)(4); 810.01.140(hh); 810.01.200(k)
4020	82.22.020; 82.22.030		
4043	82.03.040(b); 82.04.040(b); 82.05.040(b); 82306.030; 82.06.030; 82.06.040(b); 82.06.050(c); 82.13.060(a); 82.13.060(b)(3); 82.13.060(b)(7)(C); 82.13.060(b)(11), (12), (13); 82.13.060(c) and (d)(1); 82.13.060(d)(8); 82.13.070; 82.13.080(e)(3); 83.02.070(b)(1); 83.02.080; 83.06.040(b); 83.06.070(a); 83.08.020; 83.08.040(a)(1); 83.08.040(c)(3); 83.10.060(a)(4); 83.10.070(e)(2)(A); 83.10.080(a)(4); 83.10.080(b)(5); 83.10.080(c)(2); 83.11.040(c)(5); 83.11.070(a)(1); 83.11.070(h)(4); 83.11.080(h)(1)(A); 83.13.050(c)(7); 83.13.050(c)(8); 73.13.050(e); 83.13.090(c)(1); Chapter 83.15; 84.01.050(b); 84.04.050(d)(8); 84.04.050(e)(8); 84.04.060(c)(4); 84.04.070(e); 84.04.070(f); 84.04.090(B)(1); 84.04.090(h); 84.05.030(b); 84.08.040(e); Chapter 84.16; 84.17.080(a); 84.18.030(b); 84.19.080; 84.21.030(d); 84.21.030(f); 84.24.030(a); 84.25.010; 84.25.070; 84.27.060; 85.06.080; Chapter 85.09; 85.10.070(b)(3)(C)(II) and (III); 85.10.070(e); 85.17.040(a); 86.06.060(b); Chapter 86.09; 86.15.050(a)(2)(B)(II); 88.01.050(i)(8); 88.02.040(c); 810.01.030(g); 810.01.050(mn) – (xxx); 810.01.070(i) – (x); 810.01.150(yy); 810.01.200(j) – (zz); 810.01.210(a); 810.01.240(d)	4065	83.01.040(c)(1); 83.01.040(c)(2); 83.01.040(c)(3); 810.01.060(ff)
		4085	82.01.020(c)(4)(A); 82.01.020(c); 82.02.040(b)(6); 82.04.040(a); 82.06.040(b); 82.05.060; 82.06.030; 82.07.040; 82.13.060(d)(1); 82.13.080; 83.02.060(a)(1); 83.02.080(d); 83.11.100(c)(10)(C); 83.15.070; 84.01.020(b); 84.08.040(i) and (k); 84.14.030; 84.14.050(g); 84.21.030(j)(1) and (2); 84.25.040(l); 84.25.070(a), (c) and (d); 85.03.020; Chapter 85.11; 85.17.040(a); 86.06.020(b); 86.06.040; 86.09.050; 86.09.090(b), (c) and (d); 86.09.100(c); 810.01.030(a)(4)(D); 810.01.180(h)
		4098	82.01.030, 82.03.040; 82.04.040; 82.05.040; 82.06.050; 82.13.040(a) and (f); 82.13.040(f)(1)(B); 82.14.020(a); Chapter 82.24; 83.02.040(s)(2)(O); 83.050.070; 84.01.030(c); 84.01.040(b); 84.12.040; 84.16.050(k); 84.19.040; 84.23.030(b)(10); 84.25.040(c); 84.25.070(c)(2); Chapter 84.26; 84.26.030(a); 84.26.030(b); 84.26.030(h); 84.27.060(b); Chapter 84.29; Chapter 85.18; 85.18.020(b); 86.09.050(b); 810.01.030(dd); 810.01.090(n); 810.01.070(c)(1) and (2)
		4116	87.07.040
4057	82.01.030(d)(3); 82.03.040(b); 82.03.060; 82.04.040(b); 82.04.060; 82.05.060; 82.06.040(c); 82.06.060; 82.10.030; 82.13.050(b); 82.13.090(b); Chapter 82.24; 83.02.070(c)(1); 83.02.080(c)(3); 83.02.080(d); 83.10.070(b)(4); 83.11.080(f) and (h)(1)(A); 83.13.090(c)(5); 83.13.100(a)(6); 84.01.030(d); 84.01.040(c); 84.01.050(a)(3) and (b); 84.08.030; 84.08.040(a)(2) and (d)(3); 84.14.030; 84.14.060; 84.21.030(i); 85.12.020(b)(1); 86.09.030(d); 86.09.090(c); 86.09.110(b)(9) and (d)(2)(D); 86.15.050(a)(3)(B); 88.01.080(b)(1);		

***Cross Index – Section to Ordinance***

---

**Cross Index – Section to Ordinance**

<b>Section</b>	<b>Ordinance</b>	<b>Section</b>	<b>Ordinance</b>
81.01.010 - 81.01.090	4011	84.10.010 - 84.10.030	4011
81.02.010 - 81.02.020	4011	84.11.010 - 84.11.030	4011
		84.12.010 - 84.12.120	4011, 4098
82.01.010 - 82.01.030	4011, 4057, 4085, 4098	84.13.010 - 84.13.030	4011
82.02.010 - 82.02.060	4011, 4085	84.14.010 - 84.14.080	4011, 4057, 4085
82.03.010 - 82.03.070	4011, 4043, 4057, 4098	84.15	4011
82.04.010 - 82.04.060	4011, 4043, 4057, 4085, 4098	84.16.010 - 84.16.080	4011, 4043, 4098
82.05.010 - 82.05.060	4011, 4043, 4057, 4085, 4098	84.17.010 - 84.17.080	4011, 4043
82.06.010 - 82.06.070	4011, 4043, 4057, 4085, 4098	84.18.010 - 84.18.040	4011, 4043
82.07.010 - 82.07.040	4011, 4085	84.19.010 - 84.19.090	4011, 4043, 4098
82.08.010 - 82.08.040	4011	84.20.010 - 84.20.030	4011
82.09.010 - 82.09.060	4011	84.21.010 - 84.21.030	4011, 4043, 4057, 4085
82.10.010 - 82.10.030	4011, 4057	84.22.010 - 84.22.030	4011
82.11.010 - 82.11.050	4011	84.23.010 - 84.23.030	4011, 4098
82.12.010 - 82.12.050	4011	84.24.010 - 84.24.060	4011, 4043, 4085
82.13.010 - 82.13.090	4011, 4043, 4057, 4085, 4098	84.25.010 - 84.25.070	4011, 4043, 4085, 4098
82.14.010 - 82.14.070	4011, 4098	84.26.010 - 84.26.030	4011, 4098
82.15.010 - 82.15.040	4011	84.27.010 - 84.27.110	4011, 4043, 4098
82.16.010 - 82.16.030	4011	84.28.010 - 84.28.050	4011
82.17.010 - 82.17.040	4011	84.29	4098
82.18.010 - 82.18.030	4011		
82.19.010 - 82.19.050	4011	85.01.010 - 85.01.030	4011
82.20.010 - 82.20.040	4011	85.02.010 - 85.02.050	4011, 4085
82.21.010 - 82.21.030	4011	85.03.010 - 85.03.110	4011
82.22.010 - 82.22.030	4011, 4020	85.04.010 - 85.04.030	4011
82.23.010 - 82.23.040	4011	85.05.010 - 85.05.020	4011
82.24.010 - 82.24.030	4057, 4098	85.06.010 - 85.06.110	4011, 4043
		85.07.010 - 85.07.020	4011
83.01.010 - 83.01.100	4011, 4065	85.08.010 - 85.08.030	4011
83.02.010 - 83.02.080	4011, 4043, 4057, 4085, 4098	85.09.010 - 85.09.030	4011, 4043
83.03.010 - 83.03.120	4011	85.10.010 - 85.10.100	4011, 4043
83.04.010 - 83.04.080	4011	85.11.010 - 85.11.020	4011, 4085
83.05.010 - 83.05.080	4011, 4098	85.12.010 - 85.12.020	4011, 4057
83.06.010 - 83.06.070	4011, 4043	85.13.010 - 85.13.020	4011
83.07.010 - 83.07.040	4011	85.14.010 - 85.14.060	4011
83.08.010 - 83.08.040	4011, 4043	85.15.010 - 85.15.120	4011
83.09.010 - 83.09.060	4011	85.16.010 - 85.16.040	4011
83.10.010 - 83.10.100	4011, 4043, 4057	85.17.010 - 85.17.080	4011, 4043, 4085
83.11.010 - 83.11.100	4011, 4043, 4057, 4085	85.18.010 - 85.18.040	4011, 4098
83.12.010 - 83.12.030	4011		
83.13.010 - 83.13.130	4011, 4043, 4057	86.01.010 - 86.01.030	4011
83.14.010 - 83.14.030	4011	86.02.010 - 86.02.050	4011
83.15.010 - 83.15.070	4043, 4085	86.03.010 - 86.03.050	4011
		86.04.010	4011
84.01.010 - 84.01.050	4011, 4043, 4057, 4085, 4098	86.05.010	4011
84.02.010 - 84.02.040	4011	86.06.010 - 86.06.090	4011, 4043, 4085
84.03.010 - 84.03.030	4011	86.07.010 - 86.07.070	4011
84.04.010 - 84.04.090	4011, 4043	86.08.010 - 86.08.070	4011
84.05.010 - 84.05.060	4011, 4043	86.09.010 - 86.09.210	4011, 4043, 4057, 4085, 4098
84.06.010 - 84.06.040	4011	86.10.010 - 86.10.020	4011
84.07.010 - 84.07.030	4011	86.11.010 - 86.11.040	4011
84.08.010 - 84.08.040	4011, 4043, 4057, 4085	86.12.010 - 86.12.070	4011
84.09.010 - 84.09.060	4011	86.13.010 - 86.13.080	4011

*San Bernardino County Development Code*

*Cross Index – Section to Ordinance*

---

86.14.010 - 86.14.090	4011	88.01.010 - 88.01.090	4011, 4043, 4057
86.15.010 - 86.15.080	4011, 4043, 4057	88.02.010 - 88.02.050	4011, 4043
		88.03.010 - 88.03.140	4011
87.01.010 - 87.01.120	4011		
87.02.010 - 87.02.130	4011	89.01.010 - 89.01.070	4011
87.03.010 - 87.03.120	4011	89.02.010 - 89.02.050	4011
87.04.010 - 87.04.080	4011	89.03.010 - 89.03.090	4011
87.05.010 - 87.05.040	4011		
87.06.010 - 87.06.050	4011	810.01.010 - 810.01.280	4011, 4043, 4057,
87.07.010 - 87.07.040	4011, 4116		4065, 4085, 4098
87.08.010 - 87.08.040	4011		

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# DIVISION 7 SUBDIVISIONS

<b>Chapter 87.01</b>	<b>Subdivision Ordinance Applicability and Administration .....</b>	<b>3</b>
87.01.010	Purpose.....	3
87.01.020	Authority .....	3
87.01.030	Applicability .....	3
87.01.040	Definitions.....	4
87.01.050	Responsibility for Administration.....	4
87.01.060	Advisory Agency .....	4
87.01.070	Authority for Subdivision Decisions .....	5
87.01.080	Type of Subdivision Approval Required .....	6
87.01.090	Applications Deemed Approved.....	7
87.01.100	Exceptions to Subdivision Standards.....	7
87.01.110	Appeals .....	8
87.01.120	Enforcement of Subdivision Regulations .....	8
<b>Chapter 87.02</b>	<b>Tentative Map Filing and Processing.....</b>	<b>11</b>
87.02.010	Purpose.....	11
87.02.020	Tentative Map Preparation, Application Contents.....	11
87.02.030	Tentative Map Filing, Initial Processing.....	12
87.02.040	Evaluation of Application .....	13
87.02.050	Review and Decision .....	14
87.02.060	Tentative Map Approval or Disapproval .....	15
87.02.070	Conditions of Approval.....	19
87.02.080	Effective Date of Tentative Map Approval .....	21
87.02.090	Changes to Approved Tentative Map or Conditions .....	21
87.02.100	Effect of Tentative Map Approval, Completion of Subdivision Process .....	22
87.02.110	Vesting Tentative Maps .....	23
87.02.120	Tentative Map Time Limits and Expiration.....	27
87.02.130	Extensions of Time for Tentative Maps.....	27
<b>Chapter 87.03</b>	<b>Parcel Maps and Final Maps .....</b>	<b>29</b>
87.03.010	Purpose.....	29
87.03.020	Parcel Maps.....	29
87.03.030	Waiver of Parcel Map .....	29
87.03.040	Parcel Map Form and Content .....	30
87.03.050	Filing and Processing of Parcel Maps.....	30
87.03.060	Parcel Map Approval .....	31
87.03.070	Final Maps .....	31
87.03.080	Final Map Form and Content.....	32
87.03.090	Filing and Processing of Final Maps .....	32
87.03.100	Final Map Approval.....	34

87.03.110 Composite Development Plans .....35

87.03.120 Amendments to Recorded Parcel or Final Maps .....36

**Chapter 87.04 -Additional Subdivision Procedures .....39**

87.04.010 Purpose.....39

87.04.020 Certificates of Compliance .....39

87.04.030 Condominiums and Condominium Conversions .....40

87.04.040 Lot Line Adjustment .....43

87.04.050 Official Maps .....43

87.04.060 Parcel Merger.....44

87.04.070 Reversion to Acreage.....46

87.04.080 Resident Initiated Mobile Home Park Conversion .....47

**Chapter 87.05 Dedications and Exactions .....53**

87.05.010 Purpose.....53

87.05.020 Applicability .....53

87.05.030 Dedications .....53

87.05.040 Acceptance of Dedications .....54

**Chapter 87.06 Subdivision Design and Improvement Requirements .....55**

87.06.010 Purpose.....55

87.06.020 Applicability of Design and Improvement Standards.....55

87.06.030 Subdivision Design Standards .....56

87.06.040 Site Preparation and Grading for Subdivision Construction.....60

87.06.050 Subdivision Improvement Requirements.....62

**Chapter 87.07 Improvement Plans, Installation, and Security.....67**

87.07.010 Purpose.....67

87.07.020 Improvement Plans .....67

87.07.030 Installation of Improvements .....68

87.07.040 Improvement Agreements, **Lien Agreements** and **Securities** .....70

**Chapter 87.08 Soils Reports .....75**

87.08.010 Purpose.....75

87.08.020 Preliminary Soils Report.....75

87.08.030 Final Soils Report .....76

87.08.040 Geologic Investigation and Report .....76

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## CHAPTER 87.07 IMPROVEMENT PLANS, INSTALLATION, AND SECURITY

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### Sections:

- 87.07.010 Purpose
- 87.07.020 Improvement Plans
- 87.07.030 Installation of Improvements
- 87.07.040 Improvement Agreements, **Lien Agreements** and **Securites**

### 87.07.010 Purpose

This Chapter provides standards for the preparation and review of improvement plans, the installation of improvements, and for security to guarantee improvement installation.

Adopted Ordinance 4011 (2007); Amended Ordinance 4116 (2010)

### 87.07.020 Improvement Plans

After the approval of a Tentative Map and before the construction of any improvements, the subdivider shall submit plans to the County as follows:

- (a) **Preparation and content.** Improvement plans shall be prepared by a California registered professional engineer. Improvement plan submittals shall include all of the following information:
  - (1) Any drawings, specifications, calculations, design reports, and other information required by the Director of Public Works;
  - (2) Grading, drainage, **Water Quality Management Plan**, erosion and sediment control, and a storm water pollution prevention plan (SWPPP) for the entire subdivision; and
  - (3) The improvement plan/specification checking and construction inspection fees required by the County Fee Ordinance.
- (b) **Submittal of plans.** Improvement plans shall be submitted to the Director of Public Works and other appropriate reviewing agencies for review and approval. Upon the approval of improvement plans in compliance with Subsection (c) (Review and approval), below, the subdivider shall also submit to the Director of Public Works a detailed cost estimate of all improvements, based on guidelines provided by the County.
  - (1) **Street and drainage plans and profiles.** Plans, profiles, and specifications of proposed street and drainage improvements shall be submitted to the County Department of Public Works, checked and approved before presentation of the

Final Map to the Board for acceptance. These plans and profiles shall show full details of the proposed improvements in compliance with County standards.

- (2) **Water systems plans.** Plans, specifications, and all necessary details of the proposed water system shall be submitted to the Chief of the Division of Environmental Health Services for review; provided that the supplier has certified that it is willing and able to supply water upon request.
  - (3) **Sanitary sewer plans.** Plans, profiles, specifications, and all necessary details of the sanitary sewers to be installed shall be submitted to the Chief of the Division of Environmental Health Services for review; provided that before submitting the plans, they shall have been approved by the governmental entity that will serve the subdivision, or if a private sewage disposal company is to provide service, the plans shall have been approved by the Chief of the Division of Environmental Health Services.
- (c) **Review and approval.** Improvement plans shall be reviewed and approved by the applicable agency within the time limits provided by Map Act Section 66456.2.
- (d) **Effect of approval.** The final approval of improvement plans shall generally be required before approval of a Parcel or Final Map. The approval of improvement plans shall not bind the County to accept the improvements nor waive any defects in the improvements as installed.

Adopted Ordinance 4011 (2007); Amended Ordinance 4116 (2010)

### **87.07.030 Installation of Improvements**

Subdivision improvements required as conditions of approval of a Tentative Map in compliance with this Chapter (see Section 87.06.050) shall be installed as provided by this Section.

- (a) **Timing of improvements.** Required improvements shall be constructed or otherwise installed only after the approval of improvement plans in compliance with Section 87.07.020, and before the approval of a Parcel or Final Map in compliance with Sections 87.03.060 (Parcel Map Approval) or 87.03.100 (Final Map Approval), except where:
- (1) Improvements are deferred in compliance with Section 87.07.040 (Improvement Agreements and Security); or
  - (2) Improvements are required as conditions on the approval of a subdivision of four or fewer parcels, in which case construction of the improvements shall be required:
    - (A) When a Building Permit is issued for development of an affected parcel; or

- (B) At the time the construction of the improvements is required in compliance with an agreement between the subdivider and the County, as identified in Section 87.07.040 (Improvement Agreements and Security); or
  - (C) At the time identified in a condition of approval, when the review authority finds that fulfillment of the construction requirements by that time is necessary for public health and safety, or because the required construction is a necessary prerequisite to the orderly development of the surrounding area.
- (3) To avoid breaking up street paving, underground utility or service lines required to be installed as part of a subdivision and which are planned to run across or underneath a street or alley right-of-way shall be installed before the preparation of subgrade and before the surfacing of any streets or alleys. In the event that the development of the subdivision requires the utility company to perform utility construction work, the developer shall pay a deposit satisfactory to the utility company within sufficient time to allow construction work to be performed before subgrade preparation. In no event shall subgrade preparation commence before installation of all necessary utilities and laterals.
- (b) **Inspection of improvements.** The inspection of the construction and installation of required subdivision improvements shall occur as follows.
- (1) **Supervision.** Before starting any work, the contractor engaged by the subdivider shall designate in writing an authorized representative who shall have the authority to represent and act for the contractor in contacts with the County. The designated representative shall be present at the work site at all times while work is in progress. At times when work is suspended, arrangements acceptable to the Director of Public Works shall be made for any emergency work that may be required.
  - (2) **Inspection procedures.**
    - (A) **Inspections required.** The agency that has required a specific action shall make any inspections as it deems necessary to ensure that all construction complies with the approved improvement plans. Where required by the agency, the developer shall enter into an agreement with the County to pay the full cost of any contract inspection services determined to be necessary by that agency.
    - (B) **Access to site and materials.** The agency that has required a specific action shall have access to the work site at all times during construction, and shall be furnished with every reasonable facility for verifying that the materials and workmanship are in compliance with the approved improvement plans.
    - (C) **Authority for approval.** The work done and all materials furnished shall be subject to the inspection and approval of the agency that has required a

specific action. The inspection of the work or materials shall not relieve the contractor of any obligations to fulfill the work as prescribed.

**(D) Improper work or materials.** Work or materials not meeting the requirements of the approved plans and specifications may be rejected, regardless of whether the work or materials were previously inspected by the agency that has required a specific action. In the event that the agency determines that subdivision improvements are not being constructed as required by the approved plans and specifications, it shall order the work stopped and shall inform the contractor of the reasons for stopping work and the corrective measures necessary to resume the work. Any work done after issuance of a stop work order shall be a violation of this Chapter.

**(3) Notification.** The subdivider shall notify the Director of Public Works as part of condition compliance upon the completion of each stage of construction before recordation as outlined in this Chapter. Further construction may only be completed if all required actions included in the conditions of approval have been accomplished and signed off by the agency that has required the action(s).

Adopted Ordinance 4011 (2007)

#### **87.07.040 Improvement Agreements, Lien Agreements and Securities**

**(a) Improvement Agreements.** If all required improvements, and inspections are not satisfactorily completed before a Parcel or Final Map is approved, the owner(s) of the subdivision shall, before the approval of the Parcel or Final Map, enter as contractor into an **Improvement Agreement** with the Board whereby in consideration of the acceptance by the Board of the streets, easements, and any other land offered for dedication, the contractor agrees to furnish the equipment, labor, and material necessary to complete the work within the time specified in the agreement.

**(b) Amount of security required.** To ensure that the work will be completed, improvement security shall be furnished to guarantee the performance of any act or **Improvement Agreement** in the following amounts and for the following purposes:

(1) An amount, not less than 100 percent of the total estimated cost of the improvement or of the act to be performed, conditioned upon the faithful performance of the required act or **Improvement Agreement**.

(2) An additional amount, not less than 50 percent nor more than 100 percent of the total estimated cost of the improvement or the performance of the required act, securing payment to the contractor, to the subcontractors, and to persons furnishing labor, materials, or equipment to them for the improvement or the performance of the required act.

- (3) Whenever an entity required to furnish security in compliance with this Section is a California nonprofit corporation, funded by the United States of America or one of its agencies, or funded by this State or one of its agencies, the entity shall not be required to comply with Subsections (a)(1) and (a)(2), above, if the following conditions are met:
  - (A) The contractor installing the improvements has bonded to the nonprofit corporation and the County as co-obligee the amount of 100 percent of the contract for the faithful performance of the work, and has further bonded to the nonprofit corporation and the County as co-obligee an amount of not less than 50 percent of the contract for the payment of labor and materials, and those bonds comply with the provisions of this Section.
  - (B) All monies payable to the contractor by the nonprofit corporation are deposited in a depository complying with the provisions of the **Subdivision Map Act (Government Code Sections 66473 et seq.)** and out of which progress payments are conditioned upon:
    - (I) The contractor's certification to the nonprofit corporation that all labor performed in the work and all materials furnished to and installed in the work, have been paid for in full to the date of the certification.
    - (II) The written approval of the nonprofit corporation.
    - (III) The review and approval of progress payment billings by **County Director of Public Works**. The term "progress payment" as used in this Section shall mean payment made in compliance with the schedule of partial payments agreed upon in the contract for the work. No less than **ten** percent of the total contract price shall be retained for the 60 days following the filing of the Notice of Completion.
    - (IV) Final payment to the contractor not being made until 60 days shall have expired after the filing and recording of the Notice of Completion of the work and written acceptance of the work by the County.
  - (C) All certifications as to progress payments shall be delivered through the U.S. mail to the nonprofit corporation.
- (4) An amount as determined by the County Director of Public Works, but not more than 25 percent of the total estimated cost of improvements or performance of the required act necessary for the guarantee and warranty of the improvement for 12 months following the completion and acceptance, against any defective work or labor done, or defective materials furnished.
- (5) As part of the obligation guaranteed by the security and in addition to the face amount of the security, there shall be included costs and reasonable expenses and

fees, including reasonable attorney's fees incurred by the County in successfully enforcing the obligation secured.

**(c) Type of security required.**

- (1) The furnishing of security in connection with the performance of any act or **Improvement Agreement** shall be one of the following, at the option of and subject to the approval of the Board:
  - (A) Bond or bonds by one or more duly authorized corporate sureties;
  - (B) A deposit, either with the County, responsible bank or trust company, at the option of the County, of money or negotiable bonds of the kind approved for securing deposits of public monies; and
  - (C) **A letter or other** instrument of credit from one or more financial institutions subject to regulation by the State or Federal government, and pledging that the funds necessary to carry out the act or **Improvement Agreement** are on deposit and guaranteed for payment.
  - (D) **Lien Agreement as described in Subsection 87.07.040(d) below.**
- (2) Bonds to secure faithful performance and for the benefit of laborers and material of any agreement, shall be in substantially the forms as shown in the **Subdivision Map Act (Government Code Sections 66473 et seq.)**. The money, negotiable bond, or instrument of credit shall be a trust fund to guarantee performance and shall not be subject to enforcement of a money judgment by any creditors of the depositor until the obligation secured thereby is performed to the satisfaction of the County.

**(d) Lien Agreement as Security.**

- (1) **As authorized herein, the owner of a "subdivision" (defined for purposes of this paragraph (d) as a residential subdivision with more than five lots up to a maximum lot size of two acres or a commercial or industrial subdivision) may, in lieu of posting the security described in Subsection (c) of this Section, enter into an agreement with the County to construct the required improvements in the future, securing such performance by granting the County a lien on the property to be subdivided. Such an agreement shall be known as a "Lien Agreement."**
- (2) **Where the Director of the Department of Public Works finds that it could not be in the public interest to require the installation of the required improvements sooner than two years after recordation of the map, the owner of the subdivision may execute a Lien Agreement with the County at the time the owner of the subdivision enters into an Improvement Agreement with the County to construct required improvements pursuant to the Section. A Lien Agreement may also be**



used to substitute existing security which was furnished under Subsection (c) of this Section; provided, however, that use of a Lien Agreement as substitution for existing security shall be at the County's sole option. Notwithstanding any provisions of the foregoing to the contrary, however, the county will not accept a Lien Agreement from any owner of a subdivision, either at the time of execution of the Improvement Agreement, or as a substitute for existing security, if any lots have been sold, if construction permits (including but not limited to building or grading permits), have been issued on any of the property, or if construction of any of the required improvements has begun.

(3) Notwithstanding the above, the County may accept a Lien Agreement from any owner of a subdivision as a substitute for existing security if grading has commenced on the land to be divided so long as the grading is in strict accordance with a valid grading permit and all the following are met:

- (A) There is no need for the County to construct the required improvements if the subdivision is abandoned or delayed for any period of time or for any other reason;
- (B) The grading has no effect on the use, operation and maintenance of existing streets or highways, public or private;
- (C) The grading has not caused the modification or closure of any public access points, existing streets or highways, public or private;
- (D) Additional drainage improvement and/or erosion controls are not necessary and/or installed in the road right-of-way due to the grading;
- (E) Delay of the construction of the required improvements for the subdivision do not affect or delay the improvements of an adjacent subdivision project who has already commenced work on his, her or its required improvements.

(4) **Lien Agreements shall:**

Be used only when in the absence of this Subsection, the owner of the subdivision would be required to construct or agree to construct the improvements required by the Director of the Department of Public Works.

- (A) Be used to secure future improvements in easements, rights-of way, rejected offers of dedication or irrevocable offers of dedication
- (B) Be in an approved form acceptable to County Counsel.
- (C) Contain an itemization of the required improvements and an estimate of costs approved by the Director of the Department of Public Works, and

shall specify that the obligation of the owner of the subdivision or any subsequent owner extends to the actual cost of construction if such costs exceed the estimate.

- (D) Be recorded with the County Recorder and have the priority of a judgment lien as prescribed by Government Code Section 66499(b). The recorded Lien Agreement shall be indexed in the Grantor Index to the names of all record owners of the real property as specified on the map and in the Grantee Index to the County records. From the time of the recordation of the Lien Agreement, a lien shall attach to the property in an amount necessary to complete the required improvements. Under no circumstance shall the County agree to subordinate the lien.
  - (E) Be approved concurrently with the approval of the map with a note of the Lien Agreement's existence placed on the map, except where the Lien Agreement is being substituted after map approval for other security already deposited, in which case the Lien Agreement shall be signed and acknowledged by all parties having any record title interest in the real property, as prescribed by Government Code Section 66436, consenting to the subordination of their interests to the Lien Agreement.
  - (F) Be allowed only where the owner of the subdivision provides a title insurance policy and current title report from a title company approved by the County that documents that the owner of the subdivision is the record owner of the real property to be divided and the real property to be divided is not subject to any mortgages, deeds of trust, or judgment liens. The title insurance policy and title report shall be issued within the 90 days and ten days prior to the execution of the Lien Agreement.
- (5) The Lien Agreement shall provide that the owner of the subdivision shall substitute acceptable security for the Lien Agreement and commence to construct the required improvements (i) within two years following recordation of the map, or (ii) in the case of a Lien Agreement which has been substituted for existing security, within two years following recordation of the Lien Agreement.
  - (6) For Lien Agreements executed at the time of recordation of the map, the time for substitution of acceptable security and commencement of construction of the required improvements may be extended up to two times, each extension for a period not to exceed one year, by the Director of the Department of Public Works. The Director of the Department of Public Works may not grant such extensions if the owner of the subdivision has substituted a Lien Agreement for security originally furnished. The Board of Supervisors, however, on its own motion or at the request of the owner of the subdivision, may grant additional time extensions, on a case-by-case basis, as it deems appropriate, for substitution of acceptable security and commencement of construction of the required improvements pursuant to agreements secured either by (i) Lien Agreements

executed at the time of recordation of the map, or (ii) Lien Agreements substituted for existing security.

- (7) During the term of the Lien Agreement, legal ownership of the property to be subdivided shall be transferred to a title company approved by the Director of the Department of Public Works. No individual lots may be sold while the Lien Agreement is in force. Fee title to the entire property encumbered by the Lien Agreement, however, or to all lots designated on any individual final map which is encumbered by the Lien Agreement, may be sold in the aggregate to a single purchaser, provided that the proposed purchaser of the property must, prior to assuming title to the property, either (i) execute a new Lien Agreement in a form acceptable to the County which will encumber the property to be conveyed, specifying the respective obligations of the owners of property subject to the original and such new Lien Agreement, or (ii) provide acceptable alternative security for the improvements the County requires be constructed as a condition to development of the property conveyed. Any new Lien Agreement must require that acceptable security be substituted therefore, and the improvements secured thereby commenced by the same date provided in the Lien Agreement with the original owner, unless such date shall be extended as provided above.
- (8) At the time of the approval of a Lien Agreement by the Board of Supervisors, the owner of the subdivision shall provide a cash deposit in the amount of \$15,000 to the Department of Public Works for the purpose of reverting the property to acreage if the owner of the subdivision breaches the terms of the Lien Agreement. In addition, at such time as title to any property subject to a Lien Agreement shall be conveyed, the transferee thereof, if such transferee executes a new Lien Agreement to secure construction of the improvements imposed upon such property as described above, shall also provide a cash deposit in the amount of \$15,000 to the Department of Public Works for the purpose of reverting the property to acreage if the owner of the subdivision breaches the terms of the Lien Agreement. The effect of these requirements shall be that each owner of property which is encumbered by a Lien Agreement shall at all times have \$15,000 per Lien Agreement encumbering such owner's property on deposit with the County for the purpose described herein. Any unused portion of any such deposit shall be refunded to the owner of the subdivision following completion of such reversion. If the costs of reverting the property to acreage exceeds \$15,000, the owner of the subdivision shall pay such additional costs to County prior to recordation of the reversion to acreage map.
- (9) When a Lien Agreement is utilized as security upon approval of the map, offers of dedication for street purposes will not be accepted until the Lien Agreement is released following substitution of acceptable alternative security and the required improvements are completed to the satisfaction of the Director of the Department of Public Works.

- (10) The Lien Agreement shall be released upon (i) substitution by the owner of the subdivision of acceptable security for the Lien Agreement in order to begin construction of the required improvements, or (ii) recordation of a reversion to acreage map.
  - (11) The property to be subdivided must have sufficient equity to cover the estimated delayed infrastructure cost at the time the Lien Agreement is processed. The total estimate of costs shall not exceed fifty percent (50%) of the appraised value. The owner of subdivision shall provide documents that will allow for the determination of the property's value, equity, and conditions of title. Appraisals will be performed by a state certified general real estate appraiser.
  - (12) Prior to the approval of any time extension of the Lien Agreement, the Director of the Department Works, in his or her sole discretion, may require the owner of the subdivision to obtain a property appraisal. If the lien amount exceeds fifty percent (50%) of the appraised value, the County may elect the reversion to acreage map utilizing the cash deposit.
  - (13) In no instance shall the Lien Agreement compel the County to construct the required improvements.
  - (14) No Lien Agreement or extension of any Lien Agreement will be valid under this chapter unless entered into on or before December 31, 2015.
- (c) **Forfeiture on failure to complete.** Upon the failure of the owner of the subdivision to complete any improvements and work within two years from the date the Improvement Agreement is executed, the Board may, upon notice in writing served by registered mail addressed to the last known address of the person, firm, or corporation signing the contract, determine that the improvement work or any part of the work is uncompleted and may cause to be forfeited to the County or Flood Control District, the sum of money or bonds given for the faithful performance of the work as may be necessary to complete the work.
- (d) **Exoneration of improvement security.** With the exception of flood control or drainage works inspected by the Flood Control Engineer, it shall be the duty of the County Director of Public Works to inspect or receive certificates of completion of all improvements installed as to their compliance with this Chapter and County standards. The security furnished by the owner of the subdivision may be released as follows:
- (1) Security given for faithful performance of any act or Improvement Agreement shall be released upon the performance of the act or final completion and acceptance of the required work.
  - (2) Security guaranteeing the payment to the contractor, subcontractors, and to persons furnishing labor, materials, or equipment shall, after passage of the time within which claims of lien are required to be recorded in compliance with Civil

Code Article 3 (commencing with Section 3114) of Chapter 2 of Title 15 of Part 4 of Division 3 and other acceptance of the work, be reduced to an amount equal to the total claimed by all claimants for whom claims of lien have been recorded and notice thereof given in writing to the Board, and if no claims have been recorded, the security shall be released in full.

- (3) The release shall not apply to any required guarantee and warranty period, nor to the amount of the security deemed necessary by the County for the guarantee and warranty period, nor to cost and reasonable expenses and fees, including reasonable attorney's fees.
- (4) Maintenance security necessary for guarantee and warranty of the work for a period of 12 months following completion and acceptance thereof against any defective work or labor completed, or defective materials furnished shall be released if no claims of defective work have been filed with the Board. In the event of the defective work, the security shall be held until all work is considered satisfactory and acceptable by the County.

Adopted Ordinance 4011 (2007); Amended Ordinance 4116 (2010)

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