

AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON, AMENDING TITLE 15 OF THE MILWAUKIE CODE BY ESTABLISHING REGULATIONS FOR UPGRADING PUBLIC FACILITIES WHEN CONSTRUCTION OR EXPANSION OF STRUCTURES OCCURS.

WHEREAS, the Legislature of the State of Oregon has, in ORS 227.215, delegated to local government the responsibility for adopting regulations for the development of land, and

WHEREAS, the City of Milwaukie is required by the Comprehensive Plan to ensure that adequate levels of public facilities and services are provided to City residents, and

WHEREAS, a mechanism is required to allow consideration of public facilities needs on a property by property basis,

NOW, THEREFORE, THE CITY OF MILWAUKIE DOES ORDAIN AS FOLLOWS:

Section 1. Findings. The following findings of fact and conclusions are adopted:

1. The City of Milwaukie Comprehensive Plan requires public facility improvements to occur as specifically described in the following Comprehensive Plan sections:

A. Neighborhood Element:

- 1) Neighborhood Area 1: Objective 4, Community Open Space
Objective 8, Walkways
Objective 9, Streets and Drainage
- 2) Neighborhood Area 2: Objective 2, Tree Preservation
Objective 3, Neighborhood Maintenance
Objective 7, Walkways
Objective 8, Streets and Drainage
- 3) Neighborhood Area 3: Objective 3, Community Open Space
Objective 7, Streets and Drainage
- 4) Neighborhood Area 4: Objective 2, Housing Quality
Objective 5, Walkways
Objective 6, Streets and Drainage

- 5) Neighborhood Area 5: Objective 2, Housing Quality
Objective 3, Land Use
Coordination
Objective 8, Streets and
Drainage

B. Transportation Element:

- 1) Table 4-A, Design Criteria for Urban Streets
- 2) Objective 3, Roadway Construction & Improvements
- 3) Objective 6, Local Transit Opportunities
- 4) Objective 8, Pedestrian/Bikeway

C. Public Facilities and Services Element:

- 1) Objective 3, Community Development
- 2) Objective 4, Water Service
- 3) Objective 5, Sanitary Sewer Service
- 4) Objective 6, Drainage and Streets
- 5) Objective 12, Utilities
- 6) Facilities Review Report

D. Energy Conservation Element:

- 1) Objective 1, Land Use
- 2) Objective 2, Transportation System
- 3) Objective 4, Site and Building Design

- 2. This ordinance provides a mechanism to implement public facilities improvements required by the Comprehensive Plan.
- 3. Establishing procedures to require public facilities improvements when on-site development occurs is a common practice of most cities and counties.

Section 2. Ordinance. The Public Facilities Improvements Ordinance is adopted as new Milwaukie Code Chapter 15.32 as follows:

ARTICLE I
STATEMENT OF PURPOSE AND OBJECTIVES

Section 1. Statement of Purpose. It is the purpose of this ordinance to provide for the orderly construction of needed public facilities by provisions designed to:

- A. Meet City Comprehensive Plan requirements for public facility improvements;
- B. Minimize the expenditure of public moneys for public facilities improvements;
- C. Identify public facilities improvements necessary for given property development proposals;
- D. Allow actual improvements of public facilities to occur at a time appropriate for the improvements needed; and
- E. Provide an equitable and consistent method of requiring public facilities improvements.

ARTICLE II
DEFINITIONS

Section 1. Interpretation.

- A. Unless specifically defined below, words or phrases used in this ordinance are intended to be interpreted so as to give them the meaning they have in common usage and to give this ordinance its most reasonable application.
- B. Specific words, phrases, or standards, other than as specifically defined below, may be interpreted by the Public Works Director based upon the finding that such interpretation shall be in keeping with the intent of this ordinance.

Section 2. Definitions as Used in this Ordinance.

CHANGE IN LAND USE: A change in the primary existing use or the addition of other use(s) for a specific real property. A proposal to change a land use may require other land use processes including rezone, conditional use, community service overlay, etc.

CITY: The City of Milwaukie, Oregon.

CONSTRUCTION: The development, building, remodeling, adding or improvement of structures for a specific real property.

DEVELOPER'S AGREEMENT: A notarized document signed by the property owner, and recorded against the property in question, wherein the property owner agrees: to construct or provide public facilities improvements specifically identified in the document, or, (in cases where Local Improvement District or Project Formation is necessary) to share in the cost of necessary public facilities improvements, to not remonstrate against the City for such improvements, and to pay the assessment or share for such improvements at the time they are made. Actual property owner share and share formula shall be determined at the time of Local Improvement District or Project Formation. This may consist of such determination methods as street frontage percentage, lot square footage and/or standard per lot assessment.

MINOR DAMAGE: Damages incurred by a structure or structures by either man-made or natural means where the cost of repair is 25% or less than the current assessed valuation of the total of all onsite improvements before the damage occurred.

NEW CONSTRUCTION: Construction occurring on vacant property or construction occurring as part of reconstruction or redevelopment of an existing developed site.

ONSITE IMPROVEMENTS: All structures or improvements on a specific real property which would require a building permit prior to construction, but not including the following: driveways, walkways, parking areas, fences, retaining walls, landscaping, and ground-level patios/decks. Onsite improvements also refers to public facility improvements occurring on the subject property or within adjacent public right-of-way or utility easements.

PUBLIC FACILITIES: Facilities intended to serve the public and consisting of either City owned or other public service agency owned streets, right-of-way, storm drainage systems, water systems, bus stops, sanitary sewer systems, street lighting, sidewalks, bicycle paths, street trees, public accessways, utility easements, and traffic controls.

PUBLIC WORKS DIRECTOR: The Public Works Director for the City of Milwaukie, Oregon, or an assigned designee.

ARTICLE III
GENERAL PROVISIONS

Section 1. Situations to which this Ordinance Applies.

This ordinance shall apply for all situations within the jurisdiction of the City of Milwaukie described as:

- A. New construction, including residential, commercial, industrial, or other;
- B. Construction resulting in an increase in occupancy;
- C. Construction resulting in increased traffic;
- D. Creation of new parcels and lots by minor land partition, major land partition, subdivision, and planned development; and
- E. A change in land use.

Section 2. Exempt Situations.

This ordinance shall not apply to the following situations within the City of Milwaukie:

- A. Construction not subject to the provisions of Sections 1.B., C. and E. above and where the improvement value is 25% or less than the current assessed valuation of the total of existing onsite improvements; or
- B. Construction consisting of re-roofing, re-siding, window installation, minor damage repair, or interior remodeling not subject to provisions of Section 1.B. above.
- C. New construction (not subject to the provisions of Section 1.B. above) for the purposes of replacing or remodeling a single family dwelling damaged by a fire, flood, or other casualty.

Section 3. Compliance.

No structure or land shall hereafter be constructed, located, converted, altered, or occupied, as indicated in Section 1, without full compliance with the terms of this ordinance and other applicable regulations. In cases of non-compliance, the City may take enforcement action, terminate City water service, establish property liens, or use other methods to ensure ordinance compliance.

ARTICLE IV
ADMINISTRATION

Section 1. Public Facility Improvements Review.

All situations to which this ordinance applies shall be reviewed by the City Public Works Department based upon established review standards in order to determine the adequacy of public facilities for the use intended and whether or not new public facilities or expansion of existing public facilities is required.

Section 2. Designation of Public Works Director.

The Public Works Director is hereby appointed to administer and implement this ordinance.

Section 3. Duties and Responsibilities of the Public Works Director.

Duties of the Public Works Director shall include, but not be limited to:

A. Permit Review.

1. City Public Works Department, Community Development Department, and Structural Safety Division shall submit copies of non-exempt land use and building permit applications to the Public Works Director for review.
2. The Public Works Director shall respond within 10 working days with an indication of ordinance applicability along with proposed conditions (if any) for compliance with this ordinance.
3. Conditions proposed for compliance with this ordinance shall be attached to the application, if approved.

B. Review Standards.

Review standards for public facilities shall be those standards currently in effect, or as modified, and identified in such public documents as the Comprehensive Plan of the City of Milwaukie, the City Sewerage Master Plan, the City Water Master Plan, the Roadway and Traffic Safety Management Plan for the City of Milwaukie, City of Milwaukie Public Works Design Standards, Standard Specifications and Drawings for Public Works Construction by the American Public Works Association Oregon Chapter, the City Zoning Ordinance, and City Subdivision Ordinance.

Section 4. Appeals Procedure.

A. Appeals.

Appeals of a decision or interpretation of the Public Works Director must be filed on forms prescribed by the City and accompanied by the appropriate filing fee within 15 days of the decision of the Public Works Director.

B. Appeal Review.

The City Manager for the City of Milwaukie shall review and decide requests for appeals of the requirements of this ordinance.

C. Appeal Review Procedure.

Appeals to the requirements of this ordinance shall be scheduled for consideration of the City Manager during normal City Hall business hours.

D. City Council Review.

A decision of the City Manager may be appealed to the City Council for consideration within 15 days of the action date. The appeal must be on forms prescribed by the City and accompanied by the appropriate filing fee.

E. Appeal Criteria.

An appeal of a decision or condition of approval for actions provided for in this ordinance shall be granted if conformance is shown to one of the following criteria:

1. That the proposal is not, in fact, a situation to which this ordinance applies; or
2. That reasonable alternatives to conditions or interpretations applied can be substituted while still maintaining ordinance purpose.

ARTICLE V
PROVISIONS FOR PUBLIC FACILITIES IMPROVEMENTS

Section 1. Improvement Methods.

If, upon review of the development proposal by the Public Works Director, the affected street or other public facility does not meet applicable standards, the property owner shall provide the improvement or other action necessary to satisfy the applicable standards. The Public Works Director may select, from the following, the most appropriate method:

- A. Construction by the property owner subject to Public Works inspection approval;
- B. Payment in lieu of construction, either in the form of a trust account or posted bond; or
- C. Developer's Agreement committing the property owner to not remonstrate against the City for the necessary improvements and to pay the assessment for such improvements. In approving this method, the Public Works Director may require a temporary improvement at a lesser standard appropriate to the circumstances.
- D. Reimbursement agreements may be authorized for off-site facilities improvements fronting other properties.

Section 2. Onsite Facilities Improvement Requirements.

Any situation to which this ordinance applies shall be required to complete or make provision for completion of improvements to public facilities following the improvement method selected from Section 1. Method C will be used when immediate construction of public facilities is not feasible or practical from an engineering standpoint.

Section 3. Off-Site Facilities Improvement Requirements.

Off-site facilities improvements shall be required for construction or development proposals which would result in detrimental effects to existing public facilities or cause existing public facilities capacity problems. Improvements shall follow the methods identified in Section 1.

Section 4. Off-Site Facilities Improvement Criteria.

Off-site facilities improvement requirements shall be based upon an analysis by the Public Works Director that the development proposal will result in one of the following:

- A. Exceed the design capacity of the facility;
- B. Exceed other generally accepted standards;
- C. Create a potential safety hazard; or
- D. Create an ongoing maintenance problem.

Section 5. Facilities Oversizing.

Public facilities improvements required by the Public Works Director shall be at sizes specified in City standards documents. Oversizing may be required in anticipation of additional systems demand. Oversizing proposed by the property owner may be allowed at the property owner's expense. The Public Works Director may authorize a reduction in systems development charges or a reimbursement agreement for developments where oversizing of facilities is required.

Section 6. Monitor Progress.

The Public Works Director shall monitor the progress of all public facilities improvements required to ensure project completion and compliance. Follow-up action, such as facilities inspection, bond release, and enforcement shall be considered a part of the monitoring process.

Section 7. Public Facilities Design.

Construction projects shall meet design standards for public facilities installation or improvements as identified by the Public Works Director or City design standards. The property owner is responsible for providing engineered facility plans to the Public Works Director for review.

Section 8. Formation of Local Improvement Districts.

As developer's agreements are collected to a sufficient majority for a given area, or, as needs for facilities improvements arise, the Public Works Director shall organize Local Improvement Districts and solicit additional funds, as necessary, to allow facility construction to completion.

Section 9. Coordination.

The Public Works Director shall coordinate with other public service agencies to ensure that public facility improvements required reflect the full range of public facilities, and not just City provided services.

Read the first time on April 5, 1988, and moved to second reading by 3-2 vote of the City Council.

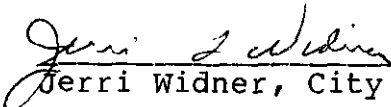
Read the second time and adopted by the City Council on April 19, 1988.

Signed by the Mayor on April 19, 1988.



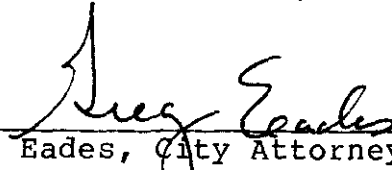
Roger A. Hall, Mayor

ATTEST:



Terri Widner, City Recorder

APPROVED AS TO FORM:



Greg Eades, City Attorney