

**IN THE CITY COUNCIL  
FOR THE CITY OF HOOD RIVER, OREGON**

**ORDINANCE NO. 2059**

**An Ordinance amending Title 15 (Buildings and Construction) Chapter 15.16 (Building Permits), of the Hood River Municipal Code, to bring the City’s authority to exact street frontage improvements as a condition of building permit issuance into compliance with current takings law.**

The Hood River City Council finds as follows:

**WHEREAS** the Hood River Municipal Code (HRMC) currently authorizes the city to exact right-of-way dedication and full street frontage improvements as conditions of a building permit; and

**WHEREAS**, current state and federal takings case law supports such conditions when attached to a land use or development permit when there is a rational nexus between the project’s impact and the additional right-of-way or street frontage improvements and where it is also demonstrated that the cost of that right-of-way and/or frontage improvements is roughly proportional to the impact of the project; and

**WHEREAS**, such exaction and dedication conditions can rarely, if ever, be justified when attached to a building permit, which necessitates amendment of HRMC Title 15 (Buildings and Construction) Chapter 15.16 (Building Permits) to temper or eliminate that authority; and

**WHEREAS** the City Council considered an amendment to HRMC Chapter 15.16 at its regular meeting on January 11, 2021, at which time it accepted testimony and comment on the code amendment proposal set forth in Exhibit A, attached hereto and incorporated herein by this reference.

**NOW, THEREFORE**, based on the foregoing findings, which are incorporated herein by this reference, the Hood River City Council Ordains as follows:

**Section 1 – Adoption, Amendment and Renumbering.** Title 15 (Buildings and Construction) Chapter 15.16 (Building Permits) of the Hood River Municipal Code is hereby amended to read as set forth in Exhibit A, attached hereto and incorporated herein by this reference. All unamended sections shall be renumbered sequentially as reflected in Exhibit A.

**Section 2 – Severability.** If any portion of this ordinance or the amendment to HRMC Chapter 15.16 adopted herein is determined to be invalid or unenforceable for any reason, that finding shall not affect the validity or enforceability of any other provision of this ordinance or the HRMC.

**Read for the First Time** on January 11, 2021.

**Read for the Second Time** and approved on \_\_\_\_\_, 2021.

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This Ordinance shall take effect on the 31<sup>st</sup> day following the second reading.

AYES: \_\_\_\_\_

NAYS: \_\_\_\_\_

ABSTAIN: \_\_\_\_\_

ABSENT: \_\_\_\_\_

\_\_\_\_\_  
Kate McBride, Mayor

ATTEST:

Approved as to form:

\_\_\_\_\_  
Jennifer Gray, City Recorder

\_\_\_\_\_  
Daniel Kearns, City Attorney

## EXHIBIT A

### 15.16.010 Prerequisites for Building Permit Issuance

A. No building permit shall be approved for an addition, alteration, intensification of use, change of occupancy, or erection of a building within the city or the city's urban growth boundary unless the applicant or property owner have first obtained all required land division and/or land use approval(s) under Title 16 or 17, respectively. Additionally, no building permit will be issued unless:

1. The tract of land upon which the building is or will be located is a legal lot of record; and
2. The tract of land on which the building is or will be located has satisfactory and legal access to a publicly dedicated street.

B. During any required land division and/or land use permit process, the city will evaluate the need for, and exact any, right-of-way dedications or street frontage improvements needed to serve the demand created by the proposed development or to bring the property's street frontage up to current planned standards as a condition of land division or land use permit approval. In so doing, the city will make appropriate fact-based findings about the rational nexus between the proposed development and the need for right-of-way and/or street frontage improvements as well as the proportionality of any such exaction(s).

C. If no land division or land use approval is required for the improvements proposed in a building permit application and the property's sidewalk is either missing, incomplete or substandard in any respect, the following may be required as a condition of building permit issuance:

1. For building permits for new construction, or a renovation/addition the value of which is more than 50% of the property's real market value, the city may require frontage improvements limited to sidewalk construction or repair and the installation of one or more street trees as a condition of building permit issuance.
2. For commercial building permits, the city may require frontage improvements limited to sidewalk and curb construction or repair and the installation of one or more street trees as a condition of building permit issuance.
3. In all cases where any aspect of the property's street frontage improvements are not up to the city's current planned standards for improvements and the project proposed in the building permit application will result in an increase in vehicle or pedestrian traffic to or from the site, the applicant will be required to execute waivers of remonstrance to the formation of a future local improvement district that would improve the abutting street frontage in any way that would specially benefit the property.

D. No building permit will be issued for a new structure or addition to an existing structure that would interfere in any way with the future opening, accepting, grading, paving or lighting a public street, the laying of sewer or water lines, or making connections from the city mains to such lines.

E. No building permit will be issued for a new structure or addition to an existing structure without the city first determining that the building or addition proposed is consistent with the

then-current zoning, site development standards, and other applicable requirements in Chapter 17 of this code.

*Delete Sections 15.16.020 and 15.16.030 and renumber the remaining sections.*

**15.16.020 Exceptions to sidewalk construction or repair required by Section 15.16.010(C)**

Where the construction, repair or replacement of the property's sidewalk is required of a building permit applicant pursuant to Section 15.16.010(C), the Public Works Director may, within his or her sole discretion, allow the landowner to delay or avoid entirely the actual construction under the following circumstances. The permit shall indicate the reason for any delay or avoidance:

- A. Sidewalk grades have not been and cannot be established for the property in question within a reasonable period of time given the applicant's construction schedule. In this case, the property owner may delay construction by executing an irrevocable commitment to construct, repair or replace the property's sidewalk at such time as the city has established the necessary sidewalk grade(s).
- B. Planned future (within 5 years) installation of public utilities or street paving would necessarily cause severe damage to the sidewalk or other street frontage improvements to be constructed. In this case, the property owner may delay construction by executing an irrevocable commitment to construct, repair or replace the property's sidewalk at such time as the public utilities have been installed and/or the city has completed paving.
- C. Right-of-way width is insufficient to accommodate a sidewalk on one or both sides of the street.
- D. Topography or contours make the construction of a sidewalk impractical.