ORDINANCE NO. 590

AN ORDINANCE OF THE CITY COUNCIL OF WOODINVILLE, WASHINGTON, ADOPTING FINDINGS; AMENDING SECTION 15.04.060 OF THE WOODINVILLE MUNICIPAL CODE TO AMEND THE RIGHT-OF-WAY IMPROVEMENT REQUIREMENTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE; AND ALLOWING FOR SUMMARY PUBLICATION BY TITLE ONLY.

WHEREAS, pursuant to the requirements of the Washington State Growth Management Act, the City of Woodinville is required to develop and adopt development regulations implementing its Comprehensive Plan; and

WHEREAS, the City Council has determined that specific regulations require amendments that improve the clarity and consistency of the development standards; and

WHEREAS, the City Council added a zoning code amendment to the 2014 Docket List, to review proposed amendments to revise the requirements for frontage improvements as part of development; and

WHEREAS, the City Council referred this matter to the Woodinville Planning Commission for study and recommendation; and

WHEREAS, the Woodinville Planning Commission reviewed this matter at a study session on June 4, 2014; and at a public hearing October 1, 2014; and

WHEREAS, the Woodinville Planning Commission recommends amendment of the Woodinville Municipal Code to revise the street frontage improvement regulations; and

WHEREAS, the Woodinville City Council has reviewed the Planning Commission's recommendation and received additional public comment regarding the recommended changes at a public hearing on October 21, 2014; and

WHEREAS, the Woodinville City Council has determined that the proposed amendments contained in Ordinance No. 590 are consistent with the City's Comprehensive Plan Goals and Policies, the purposes of the Zoning Code, and the required criteria in WMC 15.04.060; and; and

WHEREAS, the requirements of the State Environmental Policy Act (SEPA) RCW 43.21C have been met; and

WHEREAS, adoption of this ordinance will promote the public health, safety, and general welfare within the City of Woodinville;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF WOODINVILLE, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. **Findings.** The above recitals are adopted by this reference as findings in support of Section 2 of this Ordinance.

Section 2. Section 15.04.060, Right-of-way improvements required for permit issuance, is hereby amended to read as set forth below (new text is shown by underline; deletions of text are shown by ~~strikethrough~~); all other provisions of this section shall remain unchanged and in full force and effect.

15.04.060 Right-of-way improvements required for permit issuance.

(1) Purpose. The purpose of this section is to require ~~private persons to bear the burden~~ the developer of private property to participate in the mitigation of the adverse impacts of private property development ~~and to mitigate the specific, clearly identifiable, adverse impacts~~ on City Streets and on pedestrian facilities, non-motor-vehicle and motor vehicle traffic arising directly as a result of such development and to enable the development of the City's street system concurrent with private property development in the City.

(2) Definitions. For the purposes of this section, the following definitions are adopted:

(a) Street frontage: the public right-of-way that abuts the applicant's property, or the public right-of-way from which the applicant's property obtains access by means of a private road or driveway.

(b) Street improvements: Includes the installation of open or enclosed curb, gutter, sidewalk, storm drainage, street lighting, traffic signal equipment, signing, striping, pavement markings, utility installation, relocation or undergrounding, landscaping, street trees, irrigation, street widening, and channelization, as needed to meet the adopted Transportation Infrastructure Standards. They may be required to extend beyond the street frontage that abuts the applicants property to provide adequate transitions from existing conditions to the applicants required improvements.

(~~2~~3) Scope. The installation of street frontage improvements is required prior to issuance of a certificate of occupancy for the following development:

(a) New Single-Family Residential Development. Street improvements shall only be required when new single-family residential units are permitted for construction ~~constructed~~ in accordance with the City's most recently adopted development standards. Single-family residential remodels, alterations, additions, expansions, or the addition of accessory dwelling units not meeting the definition of "new single family residential unit", regardless of size, shall not be required to construct ~~any~~ street improvements. For the purposes of this section, the construction of or improvements made to an existing single family residential unit shall be considered a "new single-family residential unit" if more than 50 percent of the exterior walls are removed, or the valuation for the work exceeds 50 percent of the assessed value of all existing improvements, as determined by the Director of Development Services.

(b) ~~Commercial, Industrial and~~ Multifamily and Non-Residential Development. Street improvements shall be required of all new construction of any ~~commercial, industrial, or~~ multifamily residential or non-residential structures in accordance with the City's most recently adopted transportation infrastructure ~~development~~ standards. Street improvements shall be required of all additions to, or remodels ~~(except for interior tenant improvements)~~ of, ~~commercial, industrial, or~~ multifamily residential or non-residential structures where the expansion creates additional pedestrian impacts, additional ~~p.m. peak hour trips~~ vehicle

trips (average daily trips), or additional parking ~~requirements~~ spaces or improvements, in accordance with the City's most recently adopted development standards.

(~~3~~4) Right-of-Way Improvements. The applicant shall be required to construct complete half-street frontage improvements, or the minimum required to comply with the Fire Code as adopted in Chapter 15.15 WMC, on the side of the public road that abuts their property, along the entire street frontage of the property at the sole cost of the applicant. Such improvements shall be made on all sides of such property that abut a public street or planned public street. Beyond the property frontage, the applicant shall provide ramps from the new sidewalk or walkway to the existing shoulder, and pavement and channelization tapering back to the existing pavement and channelization as needed for safety. No building or other development permit, except as limited by the scope provisions in this section, shall be issued by the Building Official until or unless plans have been submitted, and approved by the Public Works Director, demonstrating that these requirements have been met, including: ~~. standardization of: (a) the primary public access road, and/or (b) the public right-of-way from which the applicant's property obtains access by means of a private road, if necessary in order to mitigate specific, clearly identifiable, adverse impacts arising directly as a result of the proposal, has been demonstrated or provided for as follows:~~

(a) Improvements demonstrated or to be provided for shall meet the adopted Transportation Infrastructure Standards, pursuant to Chapter 12.09 Woodinville Municipal Code, as adopted at the time of a complete building or other development permit application. ~~City's then-current minimum design standards for public and private roads as set forth in applicable ordinances and resolutions; and~~

(b) If any right-of-way dedication is needed to meet current adopted right-of-way widths, this dedication shall be a condition of permit approval, and shall be executed prior to final inspection or certificate of occupancy.~~; and~~

(c) If full right-of-way improvements as required above are not feasible due to utility or infrastructure conflicts, topographic conditions, project location(s) or on-site limitations and the above such improvements should not or cannot be accomplished at the time of building construction, the Public Works Director and~~/or~~ Fire Marshal may waive, limit or modify the requirement(s) for such improvements through an approved deviation.

(d) When, in the opinion of the Public Works Director, circumstances such as traffic safety, pending projects, existing LID covenants, or other unusual circumstances make actual construction of right-of-way improvements on the frontage at the time of development or construction not in the best interests of orderly development, the City may require the applicant to (option chosen at the discretion of the Public Works Director):

(i) Pay to the city an amount equal to the property owner's cost of installing the required improvements prior to issuance of a building permit. The property owner shall provide documentation satisfactory to the city of materials costs, quantities, and labor costs; or

(ii) Record an agreement and provide a guarantee which provides for these improvements to be installed by the property owner by a date acceptable to the city; or

(iii) Record an agreement to not protest a local improvement district to improve the street frontage,

~~(4) Options for Provision of Improvements.~~

~~(a) Primary Frontage. When, in the opinion of the Executive Branch Administering Official, circumstances such as traffic safety, pending projects, existing LID covenants, or other unusual circumstances make actual construction of right-of-way improvements on the primary frontage not in the best interests of orderly development, the City shall have the option to require building permit applicants to: (i) provide a payment in lieu of improvement, or (ii) execute an LID covenant.~~

~~(b) Secondary Frontage. In cases where the primary frontage meets current City street design standards, but a secondary frontage is substandard and merits improvement in order to mitigate impacts to it, building permit applicants shall have the option of: (i) actually constructing improvements, (ii) making a payment in lieu of construction, or (iii) executing an LID covenant.~~

(5) Posting of a Performance ~~Bond or Acceptable Surety~~ Guarantee.

(a) Building permit applicants ~~who opt~~ required by their permit to construct street improvements, but who have not completed such improvements by the time the final inspection or certification of occupancy could otherwise be given or issued, may be allowed, by the Public Works Director subject to the criteria listed below, to submit a performance ~~bond or other acceptable surety~~ guarantee in the form of a surety bond, assignment of funds, or letter of credit, on a form approved by the ~~City Engineer~~ Public Works Director and City Attorney. The amount of the bond or surety shall be based upon 150 percent of the total cost for design, construction and inspection of the street project, which costs shall be ~~estimated~~ approved by the ~~City Engineer~~ Public Works Director. Applicants shall have one year from posting of the bond or surety to complete the improvements. Thereafter, the City may avail itself of the proceeds of the bond or surety in order to complete the improvements.

(b) Applicants may be allowed to post a surety when the Public Works Director has determined that the following criteria have been met:

(i) Whether only minor items of the required improvements need to be completed such as the final lift of asphalt pavement and/or landscaping; or

(ii) Whether the City and/or other public agency's capital project needs to be completed ahead of the required improvements to allow for logical sequence of construction to prevent damage or disruption to the improvements being made; or

(iii) Whether constructing the required improvements prior to final approval will create an unnecessary and unusual hardship to the applicant that is not self-created; and

(iv) Whether the need for the performance guarantee is not the result of deliberate actions of the applicant; and

(v) The extent to which public health, safety, and welfare are not endangered by allowing the final inspection or certificate of occupancy to be approved without the required improvements being completed, prior to final approval.

(6) Posting of a Maintenance Bond or Acceptable Surety. Before the City will release the performance guarantee, the applicant shall post a maintenance guarantee, pursuant to WMC 15.42.350-.400.

(7) Reimbursement for Oversizing – Engineering Costs – Recovery Contracts.

(a) Oversizing. If an applicant is required to install a storm drainage improvement ~~with a diameter in excess of 12 inches~~ larger than what is required by their development, and if the purpose for such oversizing is to provide for future needs and not merely to meet the needs of the property responsible for constructing the improvement, the City may enter into a recovery contract in accordance with Chapter 35.91 RCW with the applicant for the difference in material, design and engineering, construction, installation, and right-of-way acquisition costs incurred solely by reason of the oversizing requirement. No such reimbursement shall be made except upon:

(i) Full compliance with this section;

(ii) Certification of the oversizing costs, with such verification from the material supplier and contractor as the City Engineer may require;

(iii) Approval of the oversizing costs by the City Council.

(b) Recovery Contracts. If, within 60 days after acceptance of improvements by the ~~City Engineer~~ Public Works Director, the applicant presents a recovery contract acceptable to the City, the City may enter into the contract for recovery of a pro rata share of the costs described in subsection (6)(a) of this section from other parties that will later derive a benefit from using the improvements. No such contract shall extend for a period in excess of 15 years, and preference shall be given to contracts of five and 10 years' duration. The City Council shall approve or disapprove such recovery contracts on a case-by-case basis.

(c) Collection Procedure. Upon the City's entry into a recovery contract, the contract shall be recorded in the County Auditor's office. Thereafter, the City shall collect for the applicant a prorated portion of the costs of the storm drainage improvements, based upon the applicant's frontage as a percentage of the total frontage improved, from any latecoming property owner who benefits from the improvements. Such collection shall be paid to the original applicant who paid for the improvements, his personal representative or assigns, within 60 days after each collection. The City shall deduct five percent from each payment made by latecoming property owners in order to cover the City's costs of administering the recovery contract and collecting the payments. The five percent charge shall be payable to the street improvement funds. Unless otherwise provided in the contract itself, the administrative charge shall be deducted from the amount paid by latecoming property owners and deposited to the City street fund prior to disbursement of the remaining balance to the contract applicant or his successors. If the recovery contract so provides, latecomer charges at the same rate may continue to be collected for the benefit of the City's street fund from all latecoming property owners using the engineering after termination of the contract period.

(d) Enforcement of Collections. The City shall not have the right to waive any collections required by a recovery contract and shall exercise reasonable diligence to assure that payment of fair shares is not evaded; provided, however, that if the City neglects, for whatever reason, to collect any fair share, the City shall not be liable to the contract

applicant. The sole and exclusive remedy shall be for the contract applicant to sue in the City's name to collect such fair share.

Section 3. **Severability.** Should any section, paragraph, sentence, clause, or phrase of this Ordinance be held invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause, or phrase of this Ordinance.

Section 4. **Copy to Commerce Department.** Pursuant to RCW 36.70A.106(3), the City Clerk is directed to send a copy of the amendments to the State Department of Commerce for its files within ten (10) days after adoption of this ordinance.

Section 5. **Effective Date.** The adoption of this Ordinance, which is a power specifically delegated to the City legislative body, is not subject to referendum. This Ordinance or a summary thereof shall be published in the official newspaper of the City, and shall take effect and be in full force five days after publication.

ADOPTED BY THE CITY COUNCIL AND SIGNED IN AUTHENTICATION OF ITS PASSAGE THIS 6TH DAY OF JANUARY 2015.

Bernard W. Talmas, Mayor

ATTEST/AUTHENTICATED:

Jennifer Kuhn
City Clerk/CMC

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY

Greg Rubstello, City Attorney

PASSED BY THE CITY COUNCIL: 1-06-2015
PUBLISHED: 1-12-2015
EFFECTIVE DATE: 1-20-2015
ORDINANCE NO. 590

STATE OF WASHINGTON
DEPARTMENT OF COMMERCE
1011 Plum Street SE • PO Box 42525 • Olympia, Washington 98504-2525 • (360) 725-4000
www.commerce.wa.gov

January 21, 2015

Jennifer Kuhn
City Clerk
City of Woodinville
17301 - 133rd Avenue Northeast
Woodinville, Washington 98072

Dear Ms. Kuhn:

Thank you for sending the Washington State Department of Commerce (Commerce) the following materials as required under RCW 36.70A.106. Please keep this letter as documentation that you have met this procedural requirement.

City of Woodinville - Adopted Ordinance No. 590 amending Section 15.04.060 of the Municipal Code to amend the right-of-way improvement requirements; providing for severability; providing for an effective date; and allowing for summary publication by title only. These materials were received on January 21, 2015 and processed with the Material ID # 20991.

We have forwarded a copy of this notice to other state agencies.

If this submitted material is an adopted amendment, then please keep this letter as documentation that you have met the procedural requirement under RCW 36.70A.106.

If you have submitted this material as a draft amendment, then final adoption may occur no earlier than sixty days following the date of receipt by Commerce. Please remember to submit the final adopted amendment to Commerce within ten days of adoption.

If you have any questions, please contact Growth Management Services at reviewteam@commerce.wa.gov, or call Dave Andersen (509) 434-4491 or Paul Johnson (360) 725-3048.

Sincerely,

Review Team
Growth Management Services