

**ORDINANCE NO. NS-2139**

**AN ORDINANCE AMENDING CHAPTER 3.4, PUBLIC IMPROVEMENT STANDARDS OF THE BEND DEVELOPMENT CODE.**

Findings:

A. The City of Bend adopted its Development Code on July 5, 2006. The City is currently in the process of updating its Construction Standards and Specifications. Adopting the proposed text amendments will clearly link the Development Code with the City's new Standards and Specifications. The proposed text amendments also enable the Review Authority to grant waivers or modifications of public improvement standards if certain criteria are met.

B. The Bend Planning Commission held a duly noticed public hearing on the proposed text amendments on December 14, 2009. Based upon the record and the evidence and testimony presented at the hearing, the Planning Commission voted to recommend that the City Council approve the proposed amendments.

C. The City Council held a duly noticed public hearing on January 20, 2010. Based on the entire record, including all testimony, evidence, and the recommendation of the Planning Commission, the Council concluded that the application meets the criteria for approval.

Based on these findings,

**THE CITY OF BEND ORDAINS AS FOLLOWS:**

Section 1. The Bend City Council held a public hearing to consider the proposed text amendments and the Planning Commission's recommendation and found that the proposed amendments to the Development Code are consistent with the applicable criteria in Chapter 4.6 of the Development Code. In addition to the findings listed above, the Bend City Council adopts the findings in Exhibit B.

Section 2. Chapter 3.4 of the Bend Development Code is hereby amended as shown in Exhibit A.

Read for the first time the 20th day of January, 2010.

Read for the second time the 3rd day of February, 2010.

Placed upon its passage the 3rd day of February, 2010.

YES: 6                      NO: 0

Authenticated by the Mayor the 3rd day of February, 2010.

  
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Kathie Eckman, Mayor

ATTEST:  
  
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Patricia Stell, City of Bend Recorder

EXHIBIT A

**City of Bend  
Development Code Tune-Up:  
Chapter 3.4, Public Improvement Standards**

**City Council 2nd Reading  
February 3, 2010**

Prepared by:  
City of Bend Planning Division

Note:

Text in underlined typeface is proposed to be added.

Text in ~~strikethrough~~ typeface is proposed to be deleted.

\*\*\* Indicates where text from the existing code has been omitted because it will remain unchanged.

## Chapter 3.4 Public Improvement Standards

### Sections:

- 3.4.100 Purpose and Authority
- 3.4.150 Waiver and Modification of Public Improvement Standards
- 3.4.200 Transportation Improvement Standards
- 3.4.300 Public Use Areas
- 3.4.400 Sanitary Sewer and Water Service Improvements
- 3.4.500 Storm Drainage Improvements
- 3.4.600 Utilities
- 3.4.700 Easements
- 3.4.800 Construction Plan Approval and Assurances
- 3.4.900 Installation
- ~~3.4.1000 Street Improvement Standards~~

### 3.4.100 Purpose and Authority.

**A. Purpose.** The purpose of this Chapter is to provide requirements for design and construction of public and private infrastructure including: Transportation facilities; sewer, water and other utilities; and drainage features and activities. One of the primary purposes of this Chapter is to provide standards for attractive and safe streets that can accommodate vehicle traffic from planned growth, and provide a range of transportation options, including options for driving, walking, bicycling, transit and other transportation modes. This Chapter is intended to guide development through the implementation of the City of Bend Standards and Specifications.

~~**B. City's Authority.** The City Engineer may, at his/her discretion, modify or waive the required content of this chapter when in his/her judgment special circumstances dictate such change, pursuant to Section 3.4.100(C), below.~~

**B. Public Improvements Needed for Development.** Development shall not occur unless the public improvements serving the development comply with the public facility requirements established or incorporated by this Chapter, unless compliance is exempted by this Code or unless the applicable standard is modified or waived under Section 3.4.150.

~~**C. When Standards Apply.** Unless otherwise provided, the standard specifications for construction, reconstruction or repair of transportation facilities, utilities and other public improvements within the City shall conform to this Chapter. No development shall occur unless the public improvements related to development comply with the public facility requirements established in this Chapter, unless specifically exempt or otherwise specified by a land use review and/or condition of approval from a land use action.~~

**C. Compliance with Standards.** All public improvements constructed as part of a development or to comply with a condition of development approval shall comply with all applicable standards, including but not limited to any standards and specifications adopted by the City applicable to public works or public improvements. The provisions of this Chapter prevail over any inconsistent standard or specification unless the applicable standard is modified or waived under Section 3.4.150.

~~**D. Standard Specifications.** The City has standard construction specifications consistent with the guidelines of this Chapter and application of engineering principles. They are incorporated in this code by reference as the City of Bend Standards and Specifications document. Where there are conflicts between this Ordinance and the City of Bend Standards and Specifications document, the Development Code shall prevail.~~

**D. Conditions of Development Approval.** No development shall occur unless required public facilities are in place or guaranteed. Improvements required to be constructed by the developer as a condition of development approval, when not voluntarily accepted by the applicant, shall be roughly proportional to the impact of development on public facilities and services. Findings in the development approval shall indicate how the required improvements are related to and roughly proportional to the impact. The City may deny an application if required public improvements are not in place, or the City may impose conditions of approval tying the timing of construction and/or occupancy of a proposed development to anticipated public improvements without requiring the applicant to construct the public improvements.

~~**E. Conditions of Development Approval.** No development shall occur unless required public facilities are in place or guaranteed, in conformance with the provisions of this Code. Improvements required as a condition of development approval, when not voluntarily accepted by the applicant, shall be roughly proportional to the impact of development on~~

public facilities and services. Findings in the development approval shall indicate how the required improvements are roughly proportional to the impact.

### **3.4.150 Waiver and Modification of Public Improvement Standards.**

**A. Authority to Grant Waiver or Modification.** Waivers and/or modifications of the standards of this chapter and/or the City of Bend Standards and Specifications may be granted as part of a development approval only if the criteria of Subsection B are met.

**B. Criteria.** The Review Authority, after considering the recommendation of the City Engineer, may waive or modify the standards of this title and the City of Bend Standards and Specifications based on a determination that (1) the waiver or modification will not harm or will be beneficial to the public in general; (2) the waiver and modification are not inconsistent with the general purpose of ensuring adequate public facilities; and (3) one or more of the following conditions are met:

1. The modification or waiver is necessary to eliminate or reduce impacts on existing drainage patterns or natural features such as riparian areas, significant trees or vegetation, or steep slopes.
2. An existing structure such as a substantial retaining wall makes widening a street or right-of-way or required placement of lines impractical or undesirable.
3. Street access to an existing lot would be eliminated without the waiver or modification.
4. Building on an existing lot would be infeasible without the waiver or modification.
5. The standard is a street or right-of-way standard and existing structures on the same side of the block make future widening of the remainder of the street or right-of-way unlikely and the additional width on the project site would not be beneficial for sidewalks or parking without the extension for the rest of the block.
6. The modification or waiver is needed to allow development of, or street access to, the property because of topographical constraints.
7. The existing infrastructure (a) does not meet current standards, (b) is and will remain functionally equivalent to current standards, and (c) there is little likelihood that current standards will be met in the area.
8. The installation of the required improvements would likely cause unacceptable significant adverse environmental impacts and the waiver/modification would avoid such impacts.
9. There is insufficient right-of-way to allow a full width street cross section and additional right of way cannot be provided.
10. There is no street or right-of-way adjacent to the property and easement access has been obtained across private property.
11. Required street frontage improvements for individual single-family dwellings could best be accomplished by planned area-wide improvements at a future date.
12. The City has conflicting or inconsistent standards and the proposal would comply with one set of adopted standards. Standards are conflicting or inconsistent only when it is not possible to comply with both. In most situations, the more recently adopted standard should be followed and the older standard may be waived.

Any waiver or modification of applicable standards and specifications shall be the minimum needed to allow development, and maximization of the number of lots or parcels in a land division is not a reason to allow a waiver or modification.

**C. Other Requirements Not Waived.** Any waivers under this section do not exempt the developer from submitting plans which meet all other applicable specifications.

**D. Application Requirements.** The application for a waiver or modification shall be in writing submitted as part of a development application. The City Council may adopt a fee for a waiver/modification application by resolution. The application shall specify which requirement(s) of this chapter and/or the City of Bend Standards and Specifications are at issue and which of the condition(s) listed above are met. The application shall contain a statement explaining why the deviation from the required

standards is necessary and why the waiver or modification sought will not harm or will be beneficial to the general public.

**E. Conditions.** The City may impose a condition of approval requiring a signed agreement not to remonstrate against the formation of a local improvement district.

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EXHIBIT B

CITY COUNCIL FINDINGS IN SUPPORT OF PZ 09-255

CONFORMANCE WITH CITY OF BEND DEVELOPMENT CODE

Chapter 4.6 Land Use District Map and Text Amendments

4.6.200 Legislative Amendments.

**B. Criteria for Legislative Amendments.** The applicant shall submit a written narrative which explains how the approval criteria will be met. A recommendation or a decision to approve or to deny an application for a Legislative Amendment shall be based on all of the following criteria:

**1. The request is consistent with the applicable State land use law;**

**FINDING:** The proposed amendments to Chapter 3.4, Public Improvement Standards of the Development Code are consistent with applicable State land use laws. In particular, the proposed amendments will satisfy Goal 11 (Public Facilities and Services), as explained below.

Statewide Planning Goal 11 requires that public facilities and services in urban areas should be provided at levels necessary and suitable for urban uses. The City Council finds that adopting the proposed text amendments will clearly link the Development Code with the City's new Standards and Specifications. The text amendments will also enable the Review Authority to grant waivers or modifications of public improvement standards based upon a determination that (1) the waiver or modification will not harm or will be beneficial to the public in general; (2) the waiver and modification are not inconsistent with the general purpose of ensuring adequate public facilities; and (3) one or more specific conditions are met.

**2. The request is consistent with the applicable Bend Area General Plan goals and policies;**

**FINDINGS:** The "goals" established in the Bend Area General Plan express the desires of the residents of Bend as the City progresses into the future. The "goals" are generally carried out through "policies", which are statements of public policy. Chapter 8 of the General Plan includes the following goals related to public improvement standards:

- To have public and private utility systems provide adequate levels of service to the public at reasonable cost;
- For new development to pay its fair share of the cost of major facilities needed to support development;
- To ensure that public facilities and services will not have negative impacts on the environment or the community; and
- To locate and operate public buildings and other public facilities to best serve the needs of the residents.

The City Council finds that updating Chapter 3.4 as recommended by the Planning Commission will help to implement existing General Plan goals and policies related to public improvement standards.

**3. The applicant can demonstrate a public need or benefit for the proposed amendment.**

**FINDING:** There is a public need and benefit for development regulations that help to ensure that public facilities and services are provided at levels necessary and suitable for urban uses.

**4.6.600 Transportation Planning Rule Compliance.**

**When a development application includes a proposed comprehensive plan amendment or land use district change, or both, the proposal shall be reviewed to determine whether it significantly affects a transportation facility, in accordance with Oregon Administrative Rule (OAR) 660-012-0060.**

**FINDING:** The City Council is adopting a text amendment to the Bend Development Code, a functional component of the comprehensive plan. The Bend Planning Division has analyzed the proposed text amendments and has found that none of the changes would cause a "significant effect" under ORS 660-012-0060.

**CONCLUSIONS:**

Based on the above Findings of Fact and Conclusions of Law, the City Council finds that the proposed Development Code text amendments can meet, with maintenance of a record, all applicable criteria for adoption.