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Ordinance No. 1770

ADEQUATE PUBLIC FACILITIES AND CONTRIBUTION ORDINANCE

(An ordinance interpreting the adequate capacity of public facilities requirement in the Hood River Comprehensive Plan and in the Hood River Municipal Code and providing a means for development to contribute to the improvement of public facilities to ensure the safety of the facilities and public and so that development can proceed)

- A. WHEREAS, Goal 11, Policy #13 of the City of Hood River's Comprehensive Plan ("Comprehensive Plan") states that as urban growth occurs, "public facilities. . . of adequate size will be provided to serve the planned urban uses";
- B. WHEREAS, Goal 11, Implementation Strategy #8 of the Comprehensive Plan states that "[p]ublic facilities . . . in urban areas shall be provided at levels adequate to serve the needs of the urban area";
- C. WHEREAS, with respect to certain development proposals under the City of Hood River Municipal Code ("HRMC"), affirmative findings regarding the presence of adequate capacity of public facilities are required in order for the proposal to be approved;
- D. WHEREAS, with respect to certain development proposals under the HRMC, affirmative findings regarding the level of service on streets and intersections serving a development proposal are required in order for the proposal to be approved;
- E. WHEREAS, all development proposals subject to review under HRMC Chapter 17.09 must conform to the Comprehensive Plan (HRMC Chapter 17.09.);
- F. WHEREAS, all property divisions subject to review under HRMC Title 16 must conform to the Comprehensive Plan (HRMC Title 16);
- G. WHEREAS, in order for a development proposal to be consistent with Goal 11, affirmative findings must be made with respect to the adequacy of public facilities and the level of service of streets and intersections serving the proposal;
- H. WHEREAS, public facilities are those facilities the City determines to be necessary for the public health, safety and welfare. (Comprehensive Plan, Definitions, p. 40);
- I. WHEREAS, inadequate public facilities are unsafe and detrimental to the health and safety of the public and the City;
- J. WHEREAS, the developer should contribute its proportionate share to the improvement of inadequate public facilities impacted by the proposed development or property division;

K. WHEREAS, the impact of some development proposals and property divisions may not be roughly proportional to the entire cost of the necessary improvements to the public facility;

L. WHEREAS, a determination of the developer's proportionate share of the necessary improvements to the public facility, the developer's obligation to contribute its proportionate share as a condition of approval of the development proposal, and the City's obligation to apply the funds to construct or install the necessary improvements would constitute a finding that adequate public facilities exist with respect to the facility within the meaning of the applicable Comprehensive Plan provisions and development review criteria;

M. WHEREAS, notice was duly given and a public hearing was held to consider this Ordinance;

N. WHEREAS, certain public facilities in the City are currently inadequate and the City does not have the means to improve the facilities without contribution from development; and

O. WHEREAS, neither the public sector nor the private sector should incur the total costs of improving public facilities; and

P. WHEREAS, developers are seeking to develop properties served by those inadequate public facilities;

NOW, THEREFORE, the City of Hood River ordains as follows:

1. General.

A. Upon review of any land use application to which Goal 11 applies, affirmative findings may be made that adequate public facilities exist with respect to a public facility if, in addition to the requirements of the HRMC, the hearing body can make the affirmative findings required in Section 2 below, and the public facility with respect to which the Section 2 findings are made is a qualified public facility pursuant to Section 3 below.

B. As used in this Ordinance, the terms "development proposal" and "proposed development" refer to any land use application to which Goal 11 applies, except zone changes and comprehensive plan amendments.

C. Notwithstanding anything to the contrary in this Ordinance, the applicant shall have the burden of proving the adequacy of public facilities.

2. Findings Required. In order to find, under this Ordinance, that adequate public facilities exist with respect to a public facility, or that the level of service on a street or at an intersection is acceptable, the following findings must first be made:

A. The public facility is currently, or as a result of the proposed development will become, an inadequate public facility and/or does not or will not operate at an acceptable level of service. This finding must point to the specific evidence in the record that supports this finding.

B. The proposed development will impact the public facility and to what extent the proposed development will impact the public facility. The finding addressing the extent of the impact shall point to specific evidence in the record in support of the finding.

C. A description of the improvements necessary to make the facility an adequate public facility and/or make it operate at an acceptable level of service (“Necessary Improvements”) and the estimated costs of the Necessary Improvements (“Improvement Costs”).

D. Why a condition of approval requiring the applicant to contribute to the improvement of the public facility is reasonably related to the impacts of the proposed development on the public facility.

E. The impact of the proposed development is or is not roughly proportional to the Necessary Improvements and Improvement Costs.

F. If the impact of the proposed development is not roughly proportional to the Necessary Improvements and Improvement Costs, the impact of the proposed development is roughly proportional to a specified dollar amount of, or proportion in terms of percentages of the Improvement Costs for the public facility (“Proportionate Contribution”). This finding shall explain with reasonable particularity the determination of rough proportionality.

3. Qualified Public Facility. A qualified public facility is a public facility that is subject to public facilities planning under the Comprehensive Plan; part of an existing public facilities plan; and for which the City has a designated improvement fund, which fund may or may not be currently funded.

4. Impact Study. The applicant shall provide adequate, reliable and quantifiable information as to the extent the proposed development will impact the public facility. If the information is not available to determine the impact proposed development will have on a public facility, the applicant shall provide, at the applicant’s cost, an impact study prepared by a registered professional engineer licensed in the State of Oregon with respect to the proposed development and facility being studied.

5. Alternative Findings Allowed. This Ordinance does not preclude the hearing body from otherwise finding that adequate public facilities exist or cannot exist (even if the findings under Section 2 can be made) with respect to a public facility or that a street

or intersection is operating at an acceptable level of service or cannot so operate for other reasons supported by the record. In other words, if other reasons and evidence in the record support a finding of the existence of adequate public facilities, the applicant shall not be required to make a Proportionate Contribution payment.

6. Conditions and Limits. If the hearing body makes affirmative findings pursuant to Section 2 above and the development proposal is approved, approval shall be conditioned on the following:

A. The applicant's written agreement to pay the Proportionate Contribution specified in Section 2(F) above. The agreement shall provide that full payment, partial payment or the posting of acceptable security must be made to the City on or before the commencement of any work on and issuance of any permit for the subject property under the development proposal. The condition shall also provide that if payment is not made as provided in this Ordinance, the City Council shall assess the Proportionate Contribution against the subject property by resolution and shall enter the assessment resolution in the docket of city liens and record the same in the Hood River County Assessor's real property records.

B. The determination under this Ordinance of the applicant's Proportionate Contribution to the Necessary Improvements of the public facility shall be final and neither the applicant, nor the applicant's successors and assigns, shall be entitled to a refund or credit in the event the total actual costs to the City of the Necessary Improvements are less than the Improvement Costs. Similarly, the City shall not be entitled to seek additional contribution from an applicant or the applicant's successors and assigns if the total actual costs to the City of the Necessary Improvements exceeds the Improvement Costs.

7. Project Determination. An owner or owners of real property that is served by a public facility and who anticipate(s) that development may occur in phases, may apply to the City for a determination under this Ordinance ("Project Determination"). The application form shall be provided by the City and the request shall be heard by the Planning Commission in accordance with the procedures under HRMC Chapter 17.09. The application shall describe the subject properties with respect to which the Project Determination is sought. The provisions of this section shall be in addition to the other applicable provisions of this Ordinance.

A. The findings required by this Ordinance shall also include the following:

(1). Legal description(s) of the additional property(ies) to be covered by the findings in Section 2 above.

(2). The findings in Section 2 above shall be based on the level and intensity of development that could occur on the subject property under the applicable zoning if the applicant does not have a development proposal, or on a proposed level and intensity of development under the applicable zoning to which the applicant agrees to

commit. The level and intensity of allowable development shall be described with reasonable particularity.

B. Approval shall be conditioned upon development occurring at or below the level and intensity considered under the applicable zoning at the time the findings are made.

C. The applicant, and the applicant's successors and assigns, shall be responsible for making the payment pursuant to Section 6(A) above and no work shall occur on or any permit (including any subsequent development permit) be issued for any of the subject properties prior to receipt by the City of the payment. All of the subject parcels shall be subject to the lien described in Section 6(A).

D. A Project Determination under this Section 7 shall constitute compliance with Goal 11 with respect to adequacy of public facilities and findings of adequate public facilities and/or acceptable level of service (with respect to a street or intersection) for all subsequent development proposals on the subject properties submitted in accordance with the condition in Section 7(B) above.

8. Final Determination. Subject to any right to appeal the City's decision under HRMC and state and federal law, the determination under this Ordinance of the applicant's Proportionate Contribution to the Necessary Improvements of the public facility shall be final and neither the applicant, nor the applicant's successors and assigns, shall be entitled to a refund or credit in the event the total actual costs to the City of the Necessary Improvements are less than the Improvement Costs. Similarly, the City shall not be entitled to seek additional contribution from an applicant or the applicant's successors and assigns if the total actual costs to the City of the Necessary Improvements exceeds the Improvement Costs. This section does not preclude reimbursement of amounts paid in excess of the Proportionate Contribution pursuant to an agreement between the City and applicant, or as may otherwise be required by ordinance, statute, or other law.

9. Application of Funds. Proportionate Contribution funds received by the City shall be deposited in a designated fund and applied by the City to the construction and installation of the Necessary Improvements. Any unused Proportionate Contribution funds remaining upon completion and the City's acceptance of the Necessary Improvements shall remain in the designated City fund and may be used by the City only for improvements to public facilities in accordance with the designated fund.

10. Time Limits. Findings made pursuant to this Ordinance shall be valid for as long as the underlying permit for the development proposal is valid, including any extensions thereof. A Project Determination shall be valid for a period of eighteen (18) months, but may be extended by the Planning Director upon application made to the Planning Director at least 30 days prior to expiration. The Project Determination may be extended for additional periods of up to one year each if there has been no substantial change in circumstances.

11. Effective Date. This Ordinance shall become effective thirty (30) days after its adoption by the City Council and may, at the applicant's election, apply to any development proposals currently subject to review and approval.

Read for the first time: May 10, 1999.

Read for the second time and passed: May 24, 1999, to become effective thirty (30) days hence.


Paul G. Cummings, Mayor

ATTEST:


Anita R. Smith, City Recorder