

**ORDINANCE NO. 1907**

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BY            CODIFIED  
Date 10/10/07

(An ordinance chapter 3.20 of the Hood River Municipal Code—Adequate Public Facilities and Contribution)

WHEREAS, Hood River Municipal Code Chapter 3.20 allows an applicant for development to pay a proportionate contribution towards improvement of a public facility instead of installing a public improvement required for the public facility to meet the adequate public facilities criteria;

WHEREAS, the proportionate contribution tool is a useful too when the public improvements needed for a public facility to meet the adequate public facilities criteria exceed the impact of the applicant’s proposed development in violation of the constitutional rough proportionality requirement;

WHEREAS, engineering studies or other impact studies are required to determine the improvement costs and proportionate contributions;

WHEREAS, the amount of an applicant’s proportionate contribution is based on the improvement costs, which is defined by Chapter 3.20 as the estimated costs of the necessary improvements. Necessary improvements is defined as the improvements necessary to make the public facility adequate under the adequate public facilities criteria;

WHEREAS, the cost of those studies should be included in the improvement costs as a cost of constructing the public improvements;

WHEREAS, an amendment to Chapter 3.20 is necessary to clarify that the costs of the studies are included in the improvement costs.

NOW, THEREFORE, THE CITY OF HOOD RIVER ORDAINS AS FOLLOWS:

Chapter 3.20 of the Hood River Municipal Code is amended to read as follows:  
**[additions shown in underline and deletions shown in strike-out]**

**CHAPTER 3.20 – ADEQUATE PUBLIC FACILITIES AND CONTRIBUTION**

- Sections:
- 3.20.010 General
- 3.20.020 Findings Required
- 3.20.030 Qualified Public Facility
- 3.20.040 Impact Study
- 3.20.050 Alternate Findings Allowed
- 3.20.060 Conditions and Limits
- 3.20.070 Project Determination

- 3.20.080 Final Determination
- 3.20.090 Application of Funds
- 3.20.100 Time Limits

3.20.010 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 this code~~the HRMC~~, the hearing body can make the affirmative findings required in Section 3.20.020 below, and the public facility with respect to which the Section 3.20.020 findings are made is a qualified public facility pursuant to Section 3.20.030 below.

B. As used in this Chapter, 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 Chapter, the applicant shall have the burden of proving the adequacy of public facilities.

3.20.020 Findings Required. In order to find, under this Chapter, 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.

3.20.030 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.

3.20.040 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 sufficient for the City 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, if a study has not already been prepared by the City. The City Engineer has the authority to determine whether an impact study is required and to set the scope of the study. The cost of the study, whether provided by the applicant or by the City, shall be included in the Improvement Costs.

3.20.050 Alternative Findings Allowed. This Chapter does not preclude the hearing body from otherwise finding that adequate public facilities exist or cannot exist (even if the findings under Section 3.20.020 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.

3.20.060 Conditions and Limits. If the hearing body makes affirmative findings pursuant to Section 3.20.020 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 3.20.020(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 Chapter, 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 Chapter 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.

3.20.070 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 ~~Chapter~~ Section ("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 Chapter.

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

(1). Legal description(s) of the additional property(ies) to be covered by the findings in Section 3.20.020 above.

(2). The findings in Section 3.20.020 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 3.20.060(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 3.20.060(A).

D. A Project Determination under this Section 3.20.070 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 3.20.070(B) above.

3.20.080 Final Determination. Subject to any right to appeal the City's decision under ~~HRMC~~ this code and state and federal law, the determination under this Chapter 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.

3.20.090 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.

3.20.100 Time Limits. Findings made pursuant to this Chapter 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.

Read for the first time: August 14, 2006.

Read for the second time and passed: August 28, 2006, to become effective thirty (30) days hence.

Signed August 30, 2006.



Linda Streich, Mayor

ATTEST:



Jill Rommel, City Recorder