



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

635 Capitol Street, Suite 150

Salem, OR 97301-2540

(503) 373-0050

Fax (503) 378-5518

www.lcd.state.or.us



NOTICE OF ADOPTED AMENDMENT

5/3/2010

TO: Subscribers to Notice of Adopted Plan
or Land Use Regulation Amendments

FROM: Plan Amendment Program Specialist

SUBJECT: City of Medford Plan Amendment
DLCD File Number 002-10

The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. A copy of the adopted plan amendment is available for review at the DLCD office in Salem and the local government office.

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: Friday, May 14, 2010

This amendment was submitted to DLCD for review prior to adoption pursuant to ORS 197.830(2)(b) only persons who participated in the local government proceedings leading to adoption of the amendment are eligible to appeal this decision to the Land Use Board of Appeals (LUBA).

If you wish to appeal, you must file a notice of intent to appeal with the Land Use Board of Appeals (LUBA) no later than 21 days from the date the decision was mailed to you by the local government. If you have questions, check with the local government to determine the appeal deadline. Copies of the notice of intent to appeal must be served upon the local government and others who received written notice of the final decision from the local government. The notice of intent to appeal must be served and filed in the form and manner prescribed by LUBA, (OAR Chapter 661, Division 10). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

***NOTE:** The Acknowledgment or Appeal Deadline is based upon the date the decision was mailed by local government. A decision may have been mailed to you on a different date than it was mailed to DLCD. As a result, your appeal deadline may be earlier than the above date specified. NO LUBA Notification to the jurisdiction of an appeal by the deadline, this Plan Amendment is acknowledged.

Cc: Praline McCormack, City of Medford
Gloria Gardiner, DLCD Urban Planning Specialist

<paa> N



FORM 2

DLCD

Notice of Adoption

This Form 2 must be mailed to DLCD within **5-Working Days after the Final Ordinance is signed** by the public Official Designated by the jurisdiction and all other requirements of ORS 197.615 and OAR 660-018-000

In person electronic mailed

DEPT OF

APR 26 2010

LAND CONSERVATION AND DEVELOPMENT

DATE STAMP

For Office Use Only

Jurisdiction: **City of Medford**

Local file number: **DCA-09-091**

Date of Adoption: **April 15, 2010**

Date Mailed: **April 22, 2010**

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? Yes No Date: 1/28/10

Comprehensive Plan Text Amendment

Comprehensive Plan Map Amendment

Land Use Regulation Amendment

Zoning Map Amendment

New Land Use Regulation

Other:

Summarize the adopted amendment. Do not use technical terms. Do not write "See Attached".

An ordinance amending Sections 10.012, 10.296, 10.379, 10.666 and 10.667 in Chapter 10 of the Medford Code pertaining to the installation and posting of security for sidewalks and street trees on lower order streets in single-family residential developments, and related housekeeping revisions.

Does the Adoption differ from proposal? Yes, please explain below:

Minor, non-substantative changes have occurred since the proposal was sent.

Plan Map Changed from:

to:

Zone Map Changed from:

to:

Location:

Acres Involved:

Specify Density: Previous:

New:

Applicable statewide planning goals:

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Was an Exception Adopted? YES NO

Did DLCD receive a Notice of Proposed Amendment...

45-days prior to first evidentiary hearing?

Yes No

If no, do the statewide planning goals apply?

Yes No

If no, did Emergency Circumstances require immediate adoption?

Yes No

DLCD File No. 002-10 (18092) [16105]

DLCD file No. _____

Please list all affected State or Federal Agencies, Local Governments or Special Districts:

Jackson County Roads, The Chamber of Medford-Jackson County

Local Contact: **Praline McCormack, Planner II**

Phone: (541) 774-2380 Extension:

Address: **200 S. Ivy**

Fax Number: **541-774-2564**

City: **Medford**

Zip: **97501**

E-mail Address:

praline.mccormack@cityofmedford.org

ADOPTION SUBMITTAL REQUIREMENTS

This Form 2 must be received by DLCD no later than 5 days after the ordinance has been signed by the public official designated by the jurisdiction to sign the approved ordinance(s)
per ORS 197.615 and OAR Chapter 660, Division 18

1. This Form 2 must be submitted by local jurisdictions only (not by applicant).
2. When submitting, please print this **Form 2** on light green paper if available.
3. Send this Form 2 and One (1) Complete Paper Copy and One (1) Electronic Digital CD (documents and maps) of the Adopted Amendment to the address in number 6:
4. **Electronic Submittals: Form 2 – Notice of Adoption will not be accepted via email or any electronic or digital format at this time.**
5. The Adopted Materials must include the final decision signed by the official designated by the jurisdiction. The Final Decision must include approved signed ordinance(s), finding(s), exhibit(s), and any map(s).
6. **DLCD Notice of Adoption must be submitted in One (1) Complete Paper Copy and One (1) Electronic Digital CD via United States Postal Service, Common Carrier or Hand Carried to the DLCD Salem Office and stamped with the incoming date stamp.** (for submittal instructions, also see # 5)] **MAIL the PAPER COPY and CD of the Adopted Amendment to:**

**ATTENTION: PLAN AMENDMENT SPECIALIST
DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
635 CAPITOL STREET NE, SUITE 150
SALEM, OREGON 97301-2540**

7. Submittal of this Notice of Adoption must include the signed ordinance(s), finding(s), exhibit(s) and any other supplementary information (see ORS 197.615).
8. Deadline to appeals to LUBA is calculated **twenty-one (21) days** from the receipt (postmark date) of adoption (see ORS 197.830 to 197.845).
9. In addition to sending the Form 2 - Notice of Adoption to DLCD, please notify persons who participated in the local hearing and requested notice of the final decision at the same time the adoption packet is mailed to DLCD (see ORS 197.615).
10. **Need More Copies?** You can now access these forms online at <http://www.lcd.state.or.us/>. You may also call the DLCD Office at (503) 373-0050; or Fax your request to: (503) 378-5518.

ORDINANCE NO. 2010-83

AN ORDINANCE amending Sections 10.012, 10.296, 10.379, 10.666 and 10.667 in Chapter 10 of the Medford Code pertaining to the installation and posting of security for sidewalks and street trees on lower order streets in single-family residential developments, and related housekeeping revisions.

THE CITY OF MEDFORD ORDAINS AS FOLLOWS:

SECTION 1. Section 10.012 of the Medford Code is amended to read as follows:

10.012 Definitions, Specific.

* * *

Private improvement. Any improvement on private property necessary to bring said property into compliance with an approved plan, including, but not limited to: landscaping, irrigation, parking, bicycle and pedestrian facilities, signage, lighting, concrete curbs, buffer requirements, trash enclosures, and heating, ventilation, air conditioning concealments.

* * *

Public improvement. Any improvement, facility, or service, together with customary improvements and appurtenances thereto, necessary to provide for public needs, such as including, but not limited to: curbs, gutters, sidewalks and other vehicular, bicycle and pedestrian circulation systems, storm sewers, flood control improvements, water quality, water supply and distribution facilities, sanitary sewage disposal and treatment, public utility services, fire protection, street trees, and parks. and recreation.

* * *

SECTION 2. Section 10.296 of the Medford Code is amended to read as follows:

10.296 Issuance of Building Permits, **Consistent with Site Plan and Architectural Review Approval.**

All applications for a building permit, wherein site plan and architectural review have been required, shall be consistent with the site and architectural plans as approved by the Site Plan and Architectural Commission and all conditions of approval imposed thereon and shall be accompanied by an accurate and correct site plan.

A. Security for Street Completion of Public Improvements: If all the required street-public improvements, as specified in the conditions of site plan and architectural review approval, have not been satisfactorily completed before application for issuance of a building permit, the developer shall enter into a written agreement (provided by the City) to secure full and faithful performance thereof, according to Sections 10.666 and 10.667(A) respectively, with the City in a form acceptable to the City Attorney specifying that within one (1) year (or such other period of time as agreed upon by the commission) all improvement work shall be completed in accord with this code and the applicable approved improvement plans and specifications, and that said developer

shall warrant the materials and workmanship of said improvements in good condition and repair for an additional period of one (1) year from date of satisfactory completion and notification of same by the City. The agreement shall be approved and signed by the Planning Director or other person designated by the City Manager.

Said agreement shall in substance provide:

(1) That if the developer shall fail to complete said improvements in accord with the terms of the agreement, the City may complete the same and recover full cost and expense thereof from the developer;

(2) For the inspection of all improvements by the city engineer and the reimbursement to the City of all costs of inspection;

(3) For the indemnification of the City, its council members, officers, boards, commissioners and employees from claims of any nature arising or resulting from the performance of any acts required by the City to be done in accord therewith.

(4) As a consideration for the foregoing and any other provisions of said agreement, the agreement by the city to accept the said street, storm drains and easements in which they lie at such time as the developer has fully complied with all the terms of said agreement and has satisfactorily completed his one (1) year warranty period.

In addition to the foregoing, said agreement may contain such other and further terms, covenants, conditions or provisions as the parties agree upon.

The developer shall file with the agreement, to secure his full and faithful performance thereof, one (1) or a combination of the following:

(a) A surety bond executed by a surety company authorized to transact business in the State of Oregon.

(b) Cash.

(c) An irrevocable letter of credit, assignment of deposit or loan disbursement agreement from a bank or savings and loan association.

The security shall be in an amount determined by the commission as sufficient to cover the cost of the improvements, engineering, inspection and incidental expenses, and must be approved by the City Attorney as to form.

Upon satisfactory completion of all improvements and acceptance thereof by the City, the amount of the security shall be reduced to twenty percent (20%) of the original sum and shall remain in effect until all deficiencies in construction and maintenance discovered and brought to the attention of the developer and surety during the one (1) year warranty period have been corrected to the satisfaction of the City.

Whenever a failure to perform under said agreement has not been corrected to the satisfaction of the City within thirty (30) days after notice by mail to the developer and surety at the addresses given in the security agreement, the City may thereafter, without further notice, declare the security forfeited and cause all required construction, maintenance or repair to be done.

B. Agreement for Completion of Other Private Improvements: If all other required private improvements, as specified in the conditions of site plan and architectural review approval, have not been satisfactorily completed before application for issuance of a building permit, the permit shall not be issued unless the owner and all other parties having an interest in the property enter into a written and recorded agreement, called a **Building Site Improvement Agreement (BSIA)**,

(provided by the City) with the City. The agreement shall be in a form acceptable to the City Attorney and shall specify that, within six (6) months after signing the agreement or such longer time period as specified by the Site Plan and Architectural Commission, all improvement work shall be completed according to the approved plans. The Planning Director or other person designated by the City Manager shall sign the agreement on behalf of the City. **If a request for an extension of a Building Site Improvement Agreement is filed with the Planning Department within six (6) months after signing the Agreement, the Planning Director may grant an extension not to exceed six (6) additional months. Extensions shall be based on findings that the extension is necessary for good cause, such as: circumstances beyond the developer's control that are causing delay in completing private improvements (i.e., ODOT work), weather-related delays, building permit delays, so long as no applicable development standards have changed.**

~~When~~ The agreement is **shall be** recorded in the Official Records of Jackson County, **and once recorded**, the burdens of the agreement shall run with the title of the affected property. The property affected by the agreement shall be the property depicted on the approved site plan. The agreement shall provide that, if the work is not completed in accordance with its terms within the allotted time, the property may not thereafter be occupied or used until all deficiencies are corrected. The agreement shall provide for enforcement by the City through a civil suit for injunction and provide that the prevailing party shall be awarded costs and reasonable attorney's fees. When made in substantial compliance with this section, such an agreement shall be enforceable according to its terms, regardless of whether it would be enforceable as a covenant at common law.

Once improvements have been satisfactorily completed according to the approved plans, a Satisfaction of Building Site Improvement Agreement shall be signed by the Planning Director or other person designated by the City Manager. The agreement shall be recorded in the Official Records of Jackson County.

Section 3. Section 10.379 of the Medford Code is amended to read as follows:

10.379 Streetscape, Planter Strip, And Street Tree Standards, S-E.

Within the S-E Overlay District, streetscape features, planter strips, and street trees shall be improved and/or installed as provided in (1) through (6) below.

* * *

6. Timing for Installing Street Trees and Right-of-Way Landscaping; Security to Guarantee Installation.

a. ~~Single-Family Residential Land Divisions Development.~~ **The installation of sidewalks, planting of street trees and right-of-way landscaping of planter strips in the right-of-way** may be deferred for new single-family lots **development** until dwellings are constructed, ~~at which time street trees and landscaping conforming with the approved Streetscape and Planter Strip Plan and this Section shall be planted within thirty (30) days after occupancy of the dwelling.~~ **When the planting of In such cases where sidewalks, street trees and landscaping is are deferred, the developer shall enter into an agreement with the City and post security to ensure compliance according to Sections 10.666 and 10.667. Sidewalks, street trees and landscaping of planter strips conforming with the approved Streetscape and Planter Strip Plan shall be installed prior**

to issuance of Certificate of Occupancy.

b. Multiple-Family Residential, Commercial, and Institutional Development. Street trees and planter strip landscaping conforming with the approved Streetscape and Planter Strip Plan, Landscape Plan and this Section shall be planted in conjunction with new multiple-family residential, commercial, and institutional development. As a condition of the PUD, Site Plan and Architectural Review, or Conditional Use Permit approval, the developer shall enter into a recorded written Building Site Improvement Agreement pursuant to Sections 10.666 and 10.667(A) that ensures compliance with this Section.

~~(c) New Dwellings; Relocated Dwellings. For new or relocated dwellings on existing lots not subject to (a) or (b), street trees and landscaping conforming with the approved Streetscape and Planter Strip Plan, Landscape Plan and this Section shall be planted within thirty (30) days after occupancy. As a condition of the issuance of the building permit, the developer shall enter into a recorded Building Site Improvement Agreement that ensures compliance with this Section.~~

~~(d) Security to Guarantee Street Tree Installation. If an agreement required to defer street tree and landscape planting under this Section stipulates the posting of security, the applicant and all owners of the subject parcel, prior to issuance of the building permit or final approval of an application, shall be required to sign an agreement with the City that assures planting of the trees and landscaping required by the approved Streetscape and Planter Strip Plan and Landscape Plan within thirty (30) days after occupancy of the building. Such agreement shall expressly assume financial responsibility for the planting. The City shall approve the agreement prior to execution, and it shall be accompanied by a certified check, surety bond, or other security acceptable to the City to cover 125% of the estimated cost of planting the deferred street trees and landscaping.~~

Section 4. Section 10.666 of the Medford Code is amended to read as follows:

10.666 Improvement Agreements.

If all of the required **public** improvements, as specified in the conditions of a development permit approval **plan authorization**, have not been satisfactorily completed before the ~~development permit application~~ **application** is filed for **Final Plat, or building permit approval**, the developer shall ~~may~~ enter into a written agreement (**provided by the City**) with the Ceity in a form acceptable to the City Attorney specifying that within one (1) year (or such other period of time as agreed upon by the parties) all **public** improvement work shall be completed in accord with this code and the applicable approved improvement plans and specifications and that said developer shall warrant the materials and workmanship of said improvements in good condition and repair for an additional period of one (1) year from date of satisfactory completion and notification of same by the Ceity.

Said agreement shall in substance provide:

- (1) That if the developer shall fail to complete said **public** improvements in accord with the terms of the agreement, the Ceity may complete the same and recover full cost and expense thereof from the developer;
- (2) For the inspection of all **public** improvements by the City Engineer and the reimbursement to the Ceity of all costs of inspection;
- (3) For the indemnification of the Ceity, its councilmembers, officers, boards, commissioners and employees from claims of any nature arising or resulting from the performance of any acts required

by the Ceity to be done in accord therewith;

(4) As a consideration for the foregoing and any other provisions of said agreement, the ~~agreement~~ ~~by the Ceity~~ **agrees** to accept the said **public improvements including any streets, storm drains and easements** in which they lie at such time as the developer has fully complied with all the terms of said agreement and has satisfactorily completed his one (1) year warranty period.

In addition to the foregoing, said agreement may contain such other and further terms, covenants, conditions or provisions as the parties agree upon.

Section 5. Section 10.667 of the Medford Code is amended to read as follows:

10.667 Faithful Performance Bond Security for Public Improvements.

A. Security: The developer shall file with the ~~A~~ **agreement in Section 10.666**, to secure his full and faithful performance thereof, one (1) or a combination of the following:

(1) A surety bond executed by a surety company authorized to transact business in the State of Oregon, or

(2) Cash, or

(3) An irrevocable letter of credit, or assignment of deposit or loan disbursement agreement from a bank or savings and loan association, **redeemable at a location within city limits.**

The security shall be in an amount ~~determined~~ **approved** by the City Engineer as sufficient to cover the cost of the improvements, engineering, inspection and incidental expenses, and must be approved by the City Attorney as to form. Such security arrangements may provide for reduction of the amount in increments as improvements are completed and approved by the City Engineer. However, the number of reductions or disbursements and the amount of retainage required shall be at the discretion of the City Engineer.

Upon satisfactory completion of all improvements and acceptance thereof by the Ceity, the amount of the security shall be reduced to twenty percent (20%) of the original sum and shall remain in effect until all deficiencies in construction and maintenance discovered and brought to the attention of the developer and surety during the one (1) -year warranty period have been corrected to the satisfaction of the City Engineer.

Whenever a failure to perform under said agreement has not been corrected to the satisfaction of the City Engineer within thirty (30) days after notice by mail to the developer and surety at the addresses given in the security agreement, the City may thereafter, without further notice, declare the security forfeited and cause all required construction, maintenance or repair to be done.

B. Security Alternative: In lieu of Section (A) above, to secure the installation of only sidewalks, street trees and/or landscaping in park strips on lower order streets in single-family residential development, the developer may enter into an agreement (provided by the City) which specifies that in lieu of financial security provided in Section(A) herein, the Certificate of Occupancy shall not be issued until the required sidewalks, street trees and/or landscaping in park strips are installed to the satisfaction of the City Engineer. The Building Official is authorized to withhold Certificate of Occupancy on such terms as contained in the agreement.

PASSED by the Council and signed by me in authentication of its passage this 15 day of April, 2010.

ATTEST: Glenda Owens
City Recorder

[Signature]
Mayor

APPROVED April 15, 2010.

[Signature]
Mayor

NOTE: Matter in **bold** in an amended section is new. Matter ~~struck out~~ is existing law to be omitted. Three asterisks (***) indicate existing law which remains unchanged by this ordinance but was omitted for the sake of brevity.



City of Medford
Agenda Item Commentary

Item No.:
Meeting Date: April 15, 2010
Page: 1 of 1

SUBJECT:

An ordinance amending Chapter 10 of the *Medford Municipal Code* by amending Sections 10.012, 10.296, 10.379, 10.666 and 10.667 relating to the installation and posting of security for sidewalks and street trees on lower order streets in single-family residential developments, and related housekeeping revisions. (Land Use, Legislative)

INITIATOR:

City of Medford

STAFF INFO. SOURCE:

James E. Huber, A.I.C.P., Planning Director
Praline McCormack, Planner II
File No. DCA-09-091

FISCAL IMPACT:

N/A

RECOMMENDATION:

Adopt the ordinance.

BACKGROUND & KEY ISSUES:

In October 2009, the City Council, in response to a request from a developer, directed staff to review and propose modifications to the code language pertaining to the timing of installation and the posting of security for sidewalks and street trees on lower order streets in single-family residential developments. This ordinance is intended to provide developers with an alternative to posting security and allow delaying the installation of sidewalks and street trees until after a home is built. A Request for Comments went out on January 25, 2010, to 16 referral agencies, including Jackson County, and the Chamber of Commerce, as well as to a list of 36 developers. Comments were received from Sydnee Dreyer, representing Key West, LLC, and Planning Commissioner Walt Locke, and they were notified of this public hearing.

Whether or not to provide this alternative to posting of security is a policy decision. If a developer should elect the alternative and not post security for sidewalks and street trees, then the Certificate of Occupancy will not be issued until they are installed. On March 25, 2010, the Planning Commission voted 5 to 1 to forward a favorable recommendation to City Council for adoption of DCA-09-091, finding that the approval criteria are met.

Changes to the code can be found in summary form on page 4 of the Staff Report.

EXHIBITS:

Staff Report to City Council dated April 2, 2010, including Exhibits A – I



CITY OF MEDFORD
PLANNING DEPARTMENT

STAFF REPORT

Date: April 2, 2010
To: City Council
Reviewed By: Suzanne Myers, A.I.C.P., Principal Planner
By: Praline McCormack, Planner II *pm*
Subject: Sidewalks & Street Trees Installation/Security Code Amendment (DCA-09-091)
City of Medford, Applicant

BACKGROUND

Proposal

Consideration of a proposed Class "A" (Major) legislative amendment of the *Medford Land Development Code* to revise Sections 10.012, 10.296, 10.379, 10.666 and 10.667 relating to the installation and posting of security for sidewalks and street trees on lower order streets in single-family residential developments.

Background

City Council initiated this code amendment in October 2009 in response to a request from a developer. According to Sections 10.666 and 10.667, developers with approved subdivisions must post security until public improvements, including sidewalks and street trees, are completed. One form of security is a letter of credit with a one (1) year expiration date. Typically, lots are sold within that time and the sidewalks and street trees are installed. However, developers are experiencing a delay beyond the one-year time limit on letters of credit between subdivision approval and lot sales. In addition, banks are not funding or renewing letters of credit as easily as they used to, and the fees have increased making them more costly to obtain. Also, if sidewalks are installed before a lot is sold and a home is built, they can be damaged during construction. Street trees need water and water service is typically not available until a lot is sold and water service is installed. Therefore, developers are seeking alternatives to posting security for sidewalk and street tree public improvements. The proposed amendment provides an alternative to help address the problems just noted.

Procedures to Date

This proposed amendment was initiated by City Council in October 2009 (Exhibit "C").

- January 25, 2010 a Request for Comments was sent out to interested parties and affected agencies as well as posted on the Planning Department's website.

- February 9, 2010 the proposal was reviewed by the Citizens' Planning Advisory Committee (Exhibit "E").
- February 22, 2010 the proposal was reviewed by the Planning Commission in a study session (Exhibit "F").
- February 23, 2010 the proposal was reviewed by the Citizens' Planning Advisory Committee (Exhibit "G").
- March 15, 2010 a Public Hearing Notice was published in the *Mail Tribune* for the Planning Commission hearing.
- March 25, 2010 in a public hearing the Planning Commission voted to forward a favorable recommendation to City Council (Exhibit "I").
- April 3, 2010 a Public Hearing Notice was published in the *Mail Tribune* for the City Council hearing.
- April 15, 2010 the City Council will hold a public hearing.

Format of Legislative Amendment

The attached Exhibit "A" provides the proposed code revision language. Words to be deleted are ~~struck through~~ and words to be added are **bold**.

Criteria

Medford Land Development Code, Class "A", Action and Decision Time, Section 10.164:

"Following completion of a recommendation by the advisory agency (Planning Commission), the request shall be scheduled for a public hearing. **The decision of the approving agency (City Council) shall be based upon the application, the evidence, comments from the referral agencies, and compliance with the Statewide Planning Goals and Guidelines and with this code and the Comprehensive Plan.**" [emphasis added]

Medford Land Development Code, Application Form, Section 10.182:

"An application containing the following information shall be prepared by the City:
(1) Identification of all applicable Statewide Planning Goals and Guidelines.
(2) Identification and explanation of the goals and policies of the Comprehensive Plan considered relevant to the decision.
(3) Statement of the facts relied upon in rendering the decision, if any.
(4) Explanation of the justification for the decision based on the criteria, standards, and facts."

ISSUES/ANALYSIS

Overview of Amendment

This code amendment applies only to the installation and posting of security for sidewalks and street trees in association with single-family residential developments on lower order streets.

Lower order streets include:

- Standard Residential Streets
- Minor Residential Streets
- Residential Lanes

All other types of development will continue to require the posting of security for public improvements.

As discussed in a memorandum from the City Attorney to the City Manager (Exhibit "B"), there are two possible alternatives, one a short-term fix, and the other a permanent fix. The permanent fix is the proposed code change which will allow sidewalks and street trees to be installed after a lot is sold and a home is built. The developer will sign an Agreement which states that Certificate of Occupancy will not be issued by the Building Department until they are installed.

Until this code change could be prepared and considered, however, the City has utilized a temporary, short-term fix, a developer agreement that supersedes the code requirement to post financial security. The City Council has approved several of these developer agreements already, including:

1. October 2009 with Key West LLC for certain phases of Vista Pointe PUD (Ordinance 2009-209)
2. October 2009 with the Melleckers for Morian Park, Phase 2 (Ordinance 2009-229)
3. November 2009 with Anthony Lallo Construction Inc., for Cummings Place Subdivision (Ordinance 2009-242)
4. December 2009 with Mahar Homes and Mahar Brothers Construction Co., LLC for Summerfield Subdivision, Phase 5 (Ordinance 2009-257)
5. December 2009 with Mahar Homes, Inc., for Saddle Ridge Subdivision Phase 2 (Ordinance 2009-258)
6. December 2009 with Galpin, LLC, for Candlewood Subdivision, Phases 3, 4, and 5 (Ordinance 2009-273)
7. December 2009 with Galpin, LLC, for Westridge Village Subdivision, Phases 2 and 3 (Ordinance 2009-274)
8. January 2010 with Mahar Homes and Mahar Brothers Construction Co., LLC for Summerfield Subdivision, Phase 8 (Ordinance 2010-008)
9. February 2010 with Mahar Homes, Inc., for Saddle Ridge Subdivision Phase 3 (Ordinance 2010-020)
10. March 2010 with South Valley Bank & Trust for Heritage Place Subdivision (Ordinance 2010-035)
11. April 2010 with Mahar Homes for Summerfield Subdivision, Phase 7 (Ordinance 2010-064)

Summary of Changes – (Exhibit “A”)

When staff searched the *Land Development Code* for all places where the posting of security is referenced, we discovered that, in addition to Sections 10.666 and 10.667, there were other sections where it was referenced.

Section 10.012 contains a definition of public improvements, and it has been expanded to include curbs, gutters, sidewalks, bicycle systems, water quality facilities, fire protection, and street trees. Also, a new definition for private improvements is included.

Section 10.296, relating to the issuance of building permits associated with Site Plan and Architectural Review Approval also contains language regarding the posting of security. Much of the text in Section 10.296(A) duplicated text found in Sections 10.666 and 10.667, so the redundant language has been removed and replaced with a reference to those sections. 10.296(A) relates to security for completion of public improvements. 10.296(B) relates to completion of private improvements.

Two minor housekeeping type changes have been made to 10.296(B). First, a six month extension must be based on “good cause.” Examples of “good cause” include circumstances beyond the developer’s control that are causing a delay in completing private improvements such as ODOT work, weather-related delays, or building permit delays. Second, once private improvements have been completed, a Satisfaction of Building Site Improvement Agreement will be signed and recorded. This has been a long-standing procedure in the Planning Department, but was never codified.

Section 10.379, relating to Streetscape, Planter Strip, and Street Tree Standards in the Southeast Overlay Zone also contains language regarding the posting of security. Much of the text duplicated text found in Sections 10.666 and 10.667, so the redundant language has been removed and replaced with a reference to those sections.

Section 10.666, relating to Improvement Agreements has been revised, and the proposed changes clarify that the section relates to public improvements and that if public improvements are not done prior to application for Final Plat or building permit, the developer may enter into an improvement agreement to complete said improvements.

Section 10.667, relating to Security for Public Improvements has been revised. Section 10.667(A) relates to the current procedure for the posting of security. If the developer elects to secure the improvements with a letter of credit, language has been added that it must be redeemable at a location within City limits. In the past, drawing on letters of credit from out-of-town banks has been complicated, and this will fix that problem. This change should not be a hardship for developers as the majority of them use a local bank. Section 10.667(B) relates to the new alternative procedure being proposed for single-family residential development on lower order streets. In lieu of posting security the developer may sign an agreement stating that Certificate of Occupancy will not be issued until sidewalks and street trees are installed. The agreement also states that the developer must prepare an amendment to CCR’s in order to notify property owners that Certificate of Occupancy will not be issued until sidewalks and street trees are installed, and must specify the type of street trees to install. This agreement runs with

the land, so if a developer sells a lot, the new owners will be responsible for meeting the terms of the agreement.

Positive and Negative Consequences as a Result of Proposed Amendment

There are several positive and negative consequences that could result from adoption of the proposed amendment. First, on the positive side, the proposed amendment is a response to the current economic downturn and provides developers with an alternative to providing security for the installation of sidewalks and street trees related to single-family developments on lower order streets. Another positive consequence is that the proposed amendment will codify the alternative that is currently being approved on a case-by-case basis at City Council. By codifying it, it will be available for everyone, not just people that deal with the City consistently and know that it is an option. In addition, on the staff side, letters of credit have been difficult to manage and take up a considerable amount of staff time, so this alternative would simplify matters and save staff time. Lastly, it has long been a practice that sidewalks and street trees have not been installed until a house is built, so this amendment will align the code with what has been occurring.

On the negative side, the proposed code amendment is a long-term fix for what may only be a short-term problem. Another negative consequence to consider is that the proposed amendment may shift the burden from the developer to the homeowner by shifting the installation date to the Certificate of Occupancy. There may be instances when the home is complete, but for various reasons, such as the season, sidewalks and street trees are not installed. What this means is that people will not be able to occupy their new home until the sidewalks and street trees are installed or until someone posts security. Further discussion on this issue can be found in the minutes from the Planning Commission Study Session (Exhibit "F"). Lastly, another negative consequence to consider is that as a subdivision is developed there could be a patchwork of completed and not completed sidewalks, which could be a safety issue. Sidewalks are part of the standard street cross-section, but this code amendment will allow the deferral of the sidewalks on lower order streets for an indefinite period of time.

COMMENTS RECEIVED

The 30-day Request for Comment was sent out on January 25, 2010 to all interested parties, and affected agencies. We received comments from Sydnee Dreyer (Exhibit "D") and Walt Locke (Exhibit "H").

Ms. Dreyer represents Key West, LLC, the first developer to ask for this type of alternative to posting security and the first to receive approval from the City Council for a developer agreement. The majority of Ms. Dreyer's comments were integrated into the proposed amendment, except the following:

- (1) Section 10.296(A) applies to SPAC applications (multi-family, commercial/industrial). Section 10.667(B) applies to single-family developments on lower order streets, which are not reviewed by SPAC. Therefore, Section 10.667(B) does not apply to Section 10.296(A). No change.

- (2) BSIA's are issued for private improvements. Originally, staff had proposed to limit BSIA's to six months with a six month extension and strike out the language about a longer period of time being available upon request to the Commission. Based on Sydnee's comments, the language has been put back in. However, Staff does feel that one year should be an adequate length of time to complete private improvements.

We also received written comments from Planning Commissioner Walt Locke. His comments outline his concerns about not requiring security (Exhibit "H").

At the Planning Commission Study Session on February 22, 2010 a suggestion was made regarding the agreement to be executed per Section 10.666. The current agreement calls for CCR's to be prepared and recorded by the developer that identify that the Certificate of Occupancy will not be issued until sidewalks and street trees are installed. It was recommended that this be prepared and recorded as an amendment to the CCR's so that the requirement will stand out and be noticed by the property owner, who will be responsible for said installation. This suggestion has been incorporated into the agreement.

At the Citizens Planning Advisory Committee Meeting on February 23, 2010 a suggestion was made regarding the inclusion of the specifications for the approved street tree type in the CCRs so that a property owner will know what kind of street tree they are supposed to install. This suggestion has been incorporated into the agreement.

FINDINGS OF FACT

Compliance with Statewide Planning Goals and Guidelines

This criterion has been met.

Upon investigation, it has been determined that Goal 1 of the Statewide Planning Goals applies to the proposed amendment.

GOAL 1: CITIZEN INVOLVEMENT - To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.

The City of Medford has an established citizen involvement program consistent with Goal 1 that includes review of proposed legislative *Medford Land Development Code* amendments by the Citizens Planning Advisory Committee, the Planning Commission, and the City Council in study sessions, regular meetings, and public hearings. Affected agencies and interested persons are also invited to review and comment on such proposals, and meeting and hearing notices are published in the local newspaper. This process has been adhered to in the development of the proposed amendment.

The draft document was prepared by Staff and made available for review by the public (via the internet), affected agencies, departments, and interested persons. The Citizen's Planning Advisory Committee (CPAC) reviewed the amendment at a regular meeting on February 23,

2010. The Planning Commission reviewed the amendment in work session on February 22, 2010 and at a public hearing on March 25, 2010 making a recommendation to the City Council. The City Council will conduct an appropriately noticed legislative public hearing on the proposal on April 15, 2010.

In accordance with Statewide Planning Goal 1, the City of Medford has an established citizen involvement program and followed it to provide opportunities for citizens to be involved in the development of the proposed ordinance. The general public, the media, affected agencies, the Citizens Planning Advisory Committee, the Planning Commission and City Council were all involved in the development of this proposal, as per that program. The City followed the process in Medford's acknowledged *Comprehensive Plan* and *Medford Land Development Code*. In conclusion, the process followed for this amendment is consistent with Statewide Planning Goal 1.

Compliance with Goals and Policies of the *Comprehensive Plan*

This criterion has been met.

Upon investigation, it has been determined that none of the *Comprehensive Plan* Goals and Policies are applicable to this action as this amendment provides developers with an alternative to posting of security for sidewalk and street tree public improvements in association with single-family residential developments on lower order streets.

Compliance with *Land Development Code*

This criterion has been met.

It has been determined that the proposed amendment complies with the *Land Development Code* in that sidewalk and street tree public improvements are still required, only the timing of the installation and the procedures that the City follows are being changed. In addition, the procedures for a Class "A" amendment to the *Land Development Code* have been complied with.

CONCLUSION

The applicable criteria have been met as per this Staff Report including the facts, evidence, comments, compliance with Statewide Planning Goals and Guidelines, compliance with the *Comprehensive Plan*, and compliance with the *Land Development Code* which have been addressed herein.

RECOMMENDED ACTION

The Medford Planning Commission, at their meeting of March 25, 2010 voted to forward a favorable recommendation for DCA-09-091 by a vote of 5 to 1 as per the Staff Report dated April 2, 2010, including Exhibits A through I.

EXHIBITS

- Exhibit A Draft Amendment dated March 16, 2010
- Exhibit B Memorandum from City Attorney to City Manager re: Alternatives to Letter of Credit Securitization for Sidewalks and Street Trees dated September 10, 2009
- Exhibit C Excerpt of the Minutes from City Council Meeting September 17, 2009 and October 1, 2009
- Exhibit D Memorandum from Sydnee Dreyer re: DCA-09-091 – Sidewalk and Street Tree Installation/Timing Code Revision dated February 2, 2010
- Exhibit E Excerpt of the Minutes from Citizens Planning Advisory Committee Meeting February 9, 2010
- Exhibit F Minutes from Planning Commission Study Session February 22, 2010
- Exhibit G Excerpt of the Minutes from Citizens Planning Advisory Committee Meeting February 23, 2010
- Exhibit H Memo from Walt Locke re: DCA-09-091 dated March 25, 2010
- Exhibit I Draft minutes from Planning Commission hearing March 25, 2010

PLANNING COMMISSION AGENDA: March 25, 2010
CITY COUNCIL AGENDA: April 15, 2010

SIDEWALK AND STREET TREE INSTALLATION/TIMING CODE REVISION
DCA-09-091

ARTICLE I – GENERAL PROVISIONS

10.012 Definitions, Specific.

Private improvement. Any improvement on private property necessary to bring said property into compliance with an approved plan, including, but not limited to: landscaping, irrigation, parking, bicycle and pedestrian facilities, signage, lighting, concrete curbs, buffer requirements, trash enclosures, and heating, ventilation, air conditioning concealments.

Public improvement. Any improvement, facility, or service, together with customary improvements and appurtenances thereto, necessary to provide for public needs, such as including, but not limited to: curbs, gutters, sidewalks and other vehicular, bicycle and pedestrian circulation systems, storm sewers, flood control improvements, water quality, water supply and distribution facilities, sanitary sewage disposal and treatment, public utility services, fire protection, street trees, and parks and recreation.

ARTICLE II – PROCEDURAL REQUIREMENTS

10.296 Issuance of Building Permits, Consistent with Site Plan and Architectural Review Approval.

All applications for a building permit, wherein site plan and architectural review have been required, shall be consistent with the site and architectural plans as approved by the Site Plan and Architectural Commission and all conditions of approval imposed thereon and shall be accompanied by an accurate and correct site plan.

A. Security for Street Completion of Public Improvements: If all the required street-public improvements, as specified in the conditions of site plan and architectural review approval, have not been satisfactorily completed before issuance of a building permit, the developer shall enter into a written agreement (provided by the City) to secure full and faithful performance thereof, according to Sections 10.666 and 10.667(A) respectively, with the City in a form acceptable to the City Attorney specifying that within one (1) year (or such other period of time as agreed upon by the commission) all improvement work shall be completed in accord with this code and the applicable approved improvement plans and specifications, and that said developer shall warrant the materials and workmanship of said improvements in good condition and repair for an additional period of one (1) year from date of satisfactory completion and notification of same by the City. The agreement shall be approved and signed by the Planning Director or other person designated by the City Manager. Said agreement shall in substance provide:

~~(1) That if the developer shall fail to complete said improvements in accord with the terms of the agreement, the City may complete the same and recover full cost and expense thereof from the developer;~~

~~(2) For the inspection of all improvements by the city engineer and the reimbursement to the City of all costs of inspection;~~

~~(3) For the indemnification of the City, its council members, officers, boards, commissioners and employees from claims of any nature arising or resulting from the performance of any acts required by the City to be done in accord therewith.~~

~~(4) As a consideration for the foregoing and any other provisions of said agreement, the agreement by the city to accept the said street, storm drains and easements in which they lie at such time as the developer has fully complied with all the terms of said agreement and has satisfactorily completed his one (1) year warranty period.~~

~~In addition to the foregoing, said agreement may contain such other and further terms, covenants, conditions or provisions as the parties agree upon.~~

~~The developer shall file with the agreement, to secure his full and faithful performance thereof, one (1) or a combination of the following:~~

~~(a) A surety bond executed by a surety company authorized to transact business in the State of Oregon.~~

~~(b) Cash.~~

~~(c) An irrevocable letter of credit, assignment of deposit or loan disbursement agreement from a bank or savings and loan association.~~

~~The security shall be in an amount determined by the commission as sufficient to cover the cost of the improvements, engineering, inspection and incidental expenses, and must be approved by the City Attorney as to form.~~

~~Upon satisfactory completion of all improvements and acceptance thereof by the City, the amount of the security shall be reduced to twenty percent (20%) of the original sum and shall remain in effect until all deficiencies in construction and maintenance discovered and brought to the attention of the developer and surety during the one (1) year warranty period have been corrected to the satisfaction of the City.~~

~~Whenever a failure to perform under said agreement has not been corrected to the satisfaction of the City within thirty (30) days after notice by mail to the developer and surety at the addresses given in the security agreement, the City may thereafter, without further notice, declare the security forfeited and cause all required construction, maintenance or repair to be done.~~

B. Agreement for Completion of Other Private Improvements: If all other required private improvements, as specified in the conditions of site plan and architectural review approval, have not been satisfactorily completed before issuance of a building permit, the permit shall not be issued unless the owner and all other parties having an interest in the property enter into a written and recorded agreement, called a **Building Site Improvement Agreement (BSIA)**, (provided by the City) with the City. The agreement shall be in a form acceptable to the City Attorney and shall specify that, within six (6) months after signing the agreement or such longer time period as specified by the Site Plan and Architectural Commission, all improvement work shall be completed according to the approved plans. The Planning Director or other person designated by the City Manager shall sign the agreement on behalf of the City. **If a request for**

an extension of a Building Site Improvement Agreement is filed with the Planning Department within six (6) months after signing the Agreement, the Planning Director may grant an extension not to exceed six (6) additional months. Extensions shall be based on findings that the extension is necessary for good cause, such as: circumstances beyond the developer's control that are causing delay in completing private improvements (i.e., ODOT work), weather-related delays, building permit delays, so long as no applicable development standards have changed.

~~When~~ The agreement ~~is~~ shall be recorded in the Official Records of Jackson County, and once recorded, the burdens of the agreement shall run with the title of the affected property. The property affected by the agreement shall be the property depicted on the approved site plan. The agreement shall provide that, if the work is not completed in accordance with its terms within the allotted time, the property may not thereafter be occupied or used until all deficiencies are corrected. The agreement shall provide for enforcement by the City through a civil suit for injunction and provide that the prevailing party shall be awarded costs and reasonable attorney's fees. When made in substantial compliance with this section, such an agreement shall be enforceable according to its terms, regardless of whether it would be enforceable as a covenant at common law.

Once improvements have been satisfactorily completed according to the approved plans, a Satisfaction of Building Site Improvement Agreement shall be signed by the Planning Director or other person designated by the City Manager. The agreement shall be recorded in the Official Records of Jackson County.

ARTICLE III – ZONING DISTRICTS

10.379 Streetscape, Planter Strip, And Street Tree Standards, S-E.

Within the S-E Overlay District, streetscape features, planter strips, and street trees shall be improved and/or installed as provided in (1) through (6) below.

6. Timing for Installing Street Trees and Right-of-Way Landscaping; Security to Guarantee Installation.

a. ~~Single-Family Residential Land Divisions~~Development. The installation of sidewalks, planting of street trees and right-of-way landscaping of planter strips in the right-of-way may be deferred for new single-family lots development until dwellings are constructed,; at which time street trees and landscaping conforming with the approved Streetscape and Planter Strip Plan and this Section shall be planted within thirty (30) days after occupancy of the dwelling. ~~When the planting of~~In such cases where sidewalks, street trees and landscaping is are deferred, the developer shall enter into an agreement with the City and post security to ensure compliance according to Sections 10.666 and 10.667 and sidewalks, street trees and landscaping of planter strips conforming with the approved Streetscape and Planter Strip Plan and this Section shall be installed prior to issuance of Certificate of Occupancy.

b. Multiple-Family Residential, Commercial, and Institutional Development. Street trees and planter strip landscaping conforming with the approved Streetscape and Planter Strip Plan, Landscape Plan and this Section shall be planted in conjunction with new multiple-family residential, commercial, and institutional development. As a condition of the PUD, Site Plan and Architectural Review, or Conditional Use Permit approval, the developer shall enter into a

~~recorded written Building Site Improvement Agreement as per Sections 10.666 and 10.667(A) that to ensures compliance with this Section.~~

~~(c) New Dwellings; Relocated Dwellings. For new or relocated dwellings on existing lots not subject to (a) or (b), street trees and landscaping conforming with the approved Streetscape and Planter Strip Plan, Landscape Plan and this Section shall be planted within thirty (30) days after occupancy. As a condition of the issuance of the building permit, the developer shall enter into a recorded Building Site Improvement Agreement that ensures compliance with this Section.~~

~~(d) Security to Guarantee Street Tree Installation. If an agreement required to defer street tree and landscape planting under this Section stipulates the posting of security, the applicant and all owners of the subject parcel, prior to issuance of the building permit or final approval of an application, shall be required to sign an agreement with the City that assures planting of the trees and landscaping required by the approved Streetscape and Planter Strip Plan and Landscape Plan within thirty (30) days after occupancy of the building. Such agreement shall expressly assume financial responsibility for the planting. The City shall approve the agreement prior to execution, and it shall be accompanied by a certified check, surety bond, or other security acceptable to the City to cover 125% of the estimated cost of planting the deferred street trees and landscaping.~~

ARTICLE IV – PUBLIC IMPROVEMENT STANDARDS AND CRITERIA

10.666 Improvement Agreements.

If all of the required **public** improvements, as specified in the conditions of a ~~development permit approval~~ **plan authorization**, have not been satisfactorily completed before the ~~development permit application~~ is filed for **Final Plat, or building permit approval**, the developer shall ~~may~~ enter into a written agreement (**provided by the City**) with the Ceity in a form acceptable to the City Attorney specifying that within one (1) year (or such other period of time as agreed upon by the parties) all **public** improvement work shall be completed in accord with this code and the applicable approved improvement plans and specifications and that -said developer shall warrant the materials and workmanship of said improvements in good condition and repair for an additional period of -one (1) year from date of satisfactory completion and notification of same by the city.

Said agreement shall in substance provide:

- (1) That if the developer shall fail to complete said **public** improvements in accord with the terms of the agreement, the city may complete the same and recover full cost and -expense thereof from the developer;
- (2) For the inspection of all **public** improvements by -the City Engineer and the reimbursement to the city of all costs of inspection;
- (3) For the indemnification of the city, its -councilmembers, officers, boards, commissioners and employees from claims of any nature arising or resulting from the performance of any acts required by the city to be done in accord therewith;
- (4) As a consideration for the foregoing and any other provisions of said agreement, the ~~agreement by the Ceity~~ **agrees** to accept the said **public improvements including any streets, storm drains and easements** in which they lie at such time as the developer has fully -complied with all the terms of said agreement and has- satisfactorily completed his one (1) -year warranty period.

In addition to the foregoing, said agreement may contain such other –and further terms, covenants, conditions or provisions as the parties agree upon.

10.667 ~~Faithful Performance Bond~~ **Security for Public Improvements**

A. Security: The developer shall file with the Agreement in Section 10.666, to secure his full and faithful performance thereof, one (1) or a combination of the following:

(1) A surety bond executed by a surety company authorized to transact business in the State of Oregon, or

(2) Cash, or

(3) An irrevocable letter of credit, or assignment of deposit or loan disbursement agreement from a bank or savings and loan association, **redeemable at a location within City limits.**

The security shall be in an amount ~~determined~~ **approved** by the City Engineer as sufficient to cover the cost of the improvements, engineering, inspection and incidental expenses, and must be approved by the City Attorney as to form. Such security arrangements may provide for reduction of the amount in increments as improvements are completed and approved by the City Engineer. However, the number of reductions or disbursements and the amount of retainage required shall be at the discretion of the City Engineer.

Upon satisfactory completion of all improvements and acceptance thereof by the city, the amount of the security shall be reduced to twenty percent (20%) of the original sum and shall remain in effect until all deficiencies in construction and maintenance discovered and brought to the attention of the developer and surety during the one (1) -year warranty period have been corrected to the satisfaction of the City Engineer.

Whenever a failure to perform under said agreement has not been corrected to the satisfaction of the City Engineer within thirty (30) days after notice by mail to the developer and surety at the addresses given in the security agreement, the City may thereafter, without further notice, declare the security forfeited and cause all required construction, maintenance or repair to be done.

B. Security Alternative: In lieu of Section (A) above, to secure the installation of only sidewalks, street trees and/or landscaping in park strips on lower order streets in single-family residential development, the developer may enter into an agreement (provided by the City) which specifies that in lieu of financial security provided in Section(A) herein, the Certificate of Occupancy shall not be issued until the required sidewalks, street trees and/or landscaping in park strips are installed to the satisfaction of the City Engineer. The Building Official is authorized to withhold Certificate of Occupancy on such terms as contained in the agreement.

2

CITY OF MEDFORD

INTER-OFFICE MEMORANDUM



To: Mike Dyal, City Manager
From: John Hutt, City Attorney
Subject: Alternatives to Letter of Credit Securitization for Sidewalks and Street Trees
Date: September 10, 2009

Issue

Developers with approved subdivisions must post security until public improvements, including sidewalks and street trees, are completed. One form of security is a letter of credit with a one-year expiration. Typically, lots are sold within that time and the street trees and sidewalks are installed.

However, developers are experiencing a delay (beyond the one-year time limit on letters of credit) between subdivision approval and lot sales. And banks are not issuing letters of credit as easily as before. Therefore, developers are seeking alternatives to securitize the street tree and sidewalk public improvements for subdivisions.

The issue is limited to street trees and sidewalks for practical reasons. Street trees need water to live. Water typically is not available until a lot is sold and a home is built and water service is installed. Installing street trees before a lot has been sold or a home is built results in die-off of street trees. Sidewalks are not built to handle the wear and tear of construction equipment. When sidewalks are installed before a home is built and landscaping installed, the construction equipment often damages the sidewalks and the sidewalks need to be repaired or replaced at an additional expense to the homeowner or lot purchaser.

Discussion

Two alternatives have been discussed among staff and the development community. One alternative is a code change to allow street trees and sidewalks to be improved after a lot is sold and a home is built is a code change; the other is a developer agreement while a code change is pending.

The code in question is found in Chapter 10 of the Medford Code which is Medford's Land Development Code. Changes to local land development codes take considerable time, and the Letter of Credit in the present case will expire before a code change can be adopted.

Therefore, the developer agreement attached hereto is suggested as a solution to the current situation. The features of the development agreement are:

- The developer substitute the terms of the agreement in place of the code requirement to post financial security.
- The agreement require the Building Department to withhold Certificate of Occupancy on the residence until street trees and sidewalks are installed
- The developer remain liable in the event street trees and sidewalks need to be installed in the future
- The homeowner will also be accountable, and the developer and homeowner will address payment of street tree and sidewalk installation through covenants, codes and restrictions on the property.
- The agreement between the developer and city will be recorded to further provide notice.

The agreement has been reviewed by the City Attorney, Public Works, Planning and Building Safety. All departments find the terms of the agreement to provide adequate security that the street trees and sidewalks will be completed prior to home occupancy. The agreement will likely serve as a template for a future code change.

John R. Hutt, City Attorney

CITY OF MEDFORD
CLERK
B
DCA-09-91
1 of 2

10.666 Improvement Agreements

If all the required improvements, as specified in the conditions of a development permit approval, have not been satisfactorily completed before the development permit is filed for approval, the developer shall enter into a written agreement with the city in a form acceptable to the City Attorney specifying that within one year (or such other period of time as agreed upon by the parties) all improvement work shall be completed in accord with this code and the applicable approved improvement plans and specifications and that said developer shall warrant the materials and workmanship of said improvements in good condition and repair for an additional period of one year from date of satisfactory completion and notification of same by the city.

Said agreement shall in substance provide:

- (1) That if the developer shall fail to complete said improvements in accord with the terms of the agreement, the city may complete the same and recover full cost and expense thereof from the developer;
- (2) For the inspection of all improvements by the City Engineer and the reimbursement to the city of all costs of inspection;
- (3) For the indemnification of the city, its councilmembers, officers, boards, commissioners and employees from claims of any nature arising or resulting from the performance of any acts required by the city to be done in accord therewith;
- (4) As a consideration for the foregoing and any other provisions of said agreement, the agreement by the city to accept the said streets, storm drains and easements in which they lie at such time as the developer has fully complied with all the terms of said agreement and has satisfactorily completed his one-year warranty period.

In addition to the foregoing, said agreement may contain such other and further terms, covenants, conditions or provisions as the parties agree upon.

10.667 Faithful Performance Bond

The developer shall file with the agreement, to secure his full and faithful performance thereof, one or a combination of the following:

- (1) A surety bond executed by a surety company authorized to transact business in the State of Oregon, or
- (2) Cash, or
- (3) An irrevocable letter of credit, or assignment of deposit or loan disbursement agreement from a bank or savings and loan association.

The security shall be in an amount determined by the City Engineer as sufficient to cover the cost of the improvements, engineering, inspection and incidental expenses, and must be approved by the City Attorney as to form. Such security arrangements may provide for reduction of the amount in increments as improvements are completed and approved by the City Engineer. However, the number of reductions or disbursements and the amount of retainage required shall be at the discretion of the City Engineer.

Upon satisfactory completion of all improvements and acceptance thereof by the city, the amount of the security shall be reduced to twenty percent of the original sum and shall remain in effect until all deficiencies in construction and maintenance discovered and brought to the attention of the developer and surety during the one-year warranty period have been corrected to the satisfaction of the City Engineer.

Whenever a failure to perform under said agreement has not been corrected to the satisfaction of the City Engineer within thirty (30) days after notice by mail to the developer and surety at the addresses given in the security agreement, the City may thereafter, without further notice, declare the security forfeited and cause all required construction, maintenance or repair to be done.

CITY OF DALLAS
EXHIBIT # **B**
File # **DCA-09-91**
2 of 2



[Back](#)

[\[advanced search\]](#) [\[sitemap\]](#)

[City of Medford Oregon / Mayor & Council](#)

When available, the full agenda packet may be viewed as a pdf file by scrolling to the bottom of the page and clicking on the icon.

Thursday, September 17, 2009

MINUTES OF THE MEDFORD CITY COUNCIL MEETING

September 17, 2009

NOON SESSION

The regular meeting of the City Council was called to order at 12:00 in Council Chambers at 411 W. 8th Street with the following members and staff present.

Mayor Gary Wheeler; Councilmembers Al Densmore, James Kuntz, Bob Strosser (*left as noted), Chris Corcoran, Dick Gordon, Ben Truwe and Greg Jones.

Councilmember Jill Stout was absent.

City Manager Michael Dyal; Deputy City Manager Bill Hoke; City Attorney John Huttli; City Recorder Glenda Owens.

Employee Recognition

Employees from the Parks & Recreation, Police and Public Works departments were recognized for their years of service.

Introduction of New Employees

Valente Chavez-Sosa, Community Service Officer - Police Department was introduced.

20. Approval or correction of the minutes of the September 3, 2009 regular meeting

There being no corrections or amendments, the minutes were accepted as presented.

Mayor Wheeler requested the council take an item out of order.

COUNCIL BILL 2009-208 A resolution acknowledging Jackson County for their support of continued community outreach by allowing the City Council of the City of Medford and other City of Medford Boards and Commission meetings to be held in Jackson County Auditorium from October 2008 through September 2009.

Motion: Adopt the resolution.

Moved by: Bob Strosser

Seconded by: James Kuntz

Roll Call: Councilmembers Al Densmore, Dick Gordon, Greg Jones, Bob Strosser, Ben Truwe, James Kuntz and Chris Corcoran.

Resolution 2009-208 was duly adopted.

Mayor Wheeler presented the resolution to Commissioner Gilmore who complemented the council on the newly renovated council chambers.

30. Oral requests and communications from the audience

30.1 Students from Alba, Italy

Mayor Wheeler introduced Liz Smith, Alba Sister City Committee, who briefed the council on the visit to Medford by the Alba students. The students introduced themselves and received gifts from Mayor Wheeler on behalf of the City of Medford.



30.2 Sydnee Dryer, representing Key West Properties LLC addressed the council and noted that she was in the audience to address any questions council might have pertaining to an anticipated discussion regarding her client's development improvements in the Vista Pointe Subdivision.

30.3 Debra Lee, Multicultural Commission addressed the council and invited the council to attend the Multicultural Fair on Saturday, September 26th at Hawthorne Park.

30.4 Faye Alpertsein, 112 W. Washington St, Medford, addressed the council regarding the potential water park and how that would impact the dog park. She requested information about the relocation plan for the dog park. Parks & Recreation Director Brian Sjothun addressed the council and noted that the current dog park would be relocated potentially within Bear Creek Park and that an additional park is also being looked at for placement within another park facility. He also noted

that the Parks & Recreation Department will be posting flyers at the dog park inviting those citizens using the dog park to participate in the master planning

CITY OF MEDFORD
C-1
File # DCA-09-91
1 of 2

Roll Call: Councilmembers Al Densmore, Dick Gordon, Greg Jones, Bob Strosser, Ben Truwe, James Kuntz and Chris Corcoran.
Motion carried and so ordered.

70.3 Highway 62 Improvement Project Status

Mr. Dyal addressed the council and noted that the material in the agenda packet and distributed at their place is presented as background for the study session next week.

Councilmember Densmore requested that staff look at the bicycle and pedestrian interface with the project options. Mr. Dyal noted that the cut and cover option would affect existing businesses and Mr. Crebbin noted that the Uniform Relocation Act requires that displaced/affected businesses be compensated or relocated at ODOT's expense. Councilmember Corcoran requested information regarding the impacts on the businesses be presented at the study session. Councilmember Gordon requested more information regarding the staff's "preferred option".

*Councilmember Strosser left the meeting.

70.4 125th Anniversary Projects Action Items

Mr. Dyal requested council direction regarding the membership of the 125th Anniversary Committee. He noted that we have received three applications and need to get this committee put together so that planning activities for the anniversary celebration can get underway. Council discussed having the Mayor appoint a committee and Mayor Wheeler requested that the councilmembers provide names of potential committee members.

70.5 Mr. Dyal reported on his meeting with Jackie Rodgers, MURA Director and their discussion of the transfer of ownership of parking facilities from MURA to the City. Ms. Rodgers requested that a formal request from council be forward to the MURA board for consideration. Councilmember Corcoran questioned if the Bella Vita property would be included in this request and Mr. Dyal noted that this property is included on the list of properties distributed to the council.

Motion: Send a letter to the MURA Board requesting the properties on the parking garage/lot ownership list be transferred to City of Medford ownership.
Moved by: Chris Corcoran Seconded by: Dick Gordon

Roll Call: Councilmembers Al Densmore, Dick Gordon, Greg Jones, Bob Strosser, Ben Truwe, James Kuntz and Chris Corcoran.
Motion carried and so ordered.

70.6 Vista Pointe Subdivision Developer Request:

City Attorney John HuttI addressed the council regarding an ordinance to authorize the City to enter into an agreement with Key West LLC pertaining to issuance of occupancy condition upon installation of sidewalks and street trees. Mr. HuttI noted that this subdivision has been approved and a letter of credit for the improvements was issued but is due to expire. The developer is requesting that an agreement be entered into which will maintain the requirements but allow for the letter of credit to be released. Staff is supportive of this agreement.

COUNCIL BILL 2009-209 An ordinance authorizing an agreement with Key West LLC to condition issuance of Certificate of Occupancy upon installation of sidewalks and street trees for certain phases of the Vista Pointe Planned Unit Development.

Motion: Adopt the ordinance.
Moved by: Al Densmore Seconded by: Greg Jones

Roll Call: Councilmembers Al Densmore, Dick Gordon, Greg Jones, Bob Strosser, Ben Truwe, James Kuntz and Chris Corcoran.
Ordinance 2009-209 passed to a second reading.

70.7 Cory Crebbin, Public Works Director addressed the council regarding the Barnett/Bear Creek Greenway overcrossing and noted that the bid opening was held this morning with eight bidders on the project. The apparent low bid was \$1,660,000 and it is anticipated that the bridge will be built within budgeted funds.

70.8 Councilmember Gordon questioned the items from the 125th anniversary memo and staffs request for councilmembers to serve on a RFP review committee. Mayor Wheeler requested interested councilmembers let Ms. Owens know and council agreed to include two members of the Landmarks & Historic Preservation Committee on the review panel. Councilmember Jones volunteered to serve on the review panel.

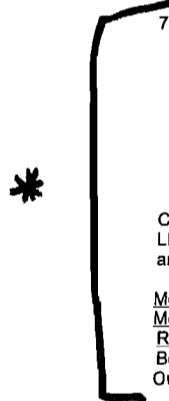
80. Propositions and remarks from the Mayor and Councilmembers

80.1 Proclamations issued:
None

80.2 Further Council committee reports.
None

80.3 Further remarks from Mayor and Councilmembers.

a. Appointments to the Mayor's Youth Advisory Commission
Mayor Wheeler appointed Garrett West, Jennifer Bryan, Andi Vondra,



CITY OF MEDFORD
ENCLOSURE # C
DCA-09-91
2 of 2



Back
 search [advanced search] [sitemap]

City of Medford Oregon / Mayor & Council

When available, the full agenda packet may be viewed as a pdf file by scrolling to the bottom of the page and clicking on the icon.

Thursday, October 01, 2009

MINUTES OF THE REGULAR MEETING OF THE MEDFORD CITY COUNCIL

October 1, 2009

NOON SESSION

The regular meeting of the Medford City Council was called to order at 12:00 noon in the Council Chambers of the Medford City Hall on the above date with the following members and staff present:

Mayor Gary Wheeler; Councilmembers Chris Corcoran, Al Densmore, Greg Jones, Bob Strosser, Jill Stout, and Ben Truwe

City Manager Michael Dyal; Deputy City Manager Bill Hoke; City Attorney John Huttli; Deputy City Recorder Karen Spoons

Councilmembers Dick Gordon and James Kuntz were absent.

Introduction of the McLoughlin Middle School Leadership Students

McLoughlin Principal Amy Tiger introduced the Leadership students and spoke on their leadership skills that they are using this year.

20. Approval or correction of the minutes of the September 17, 2009 regular meeting

There being no additions or corrections, the minutes were approved as presented.

Mayor Wheeler requested council take two items out of order.

RESOLUTION 2009-224 A resolution acknowledging the Fire Department, Police Department and the Public Works Department for their response to and participation in the joint response efforts to curtail the Deer Ridge fire that occurred beginning September 21, 2009.

Motion: Approve the resolution.
Moved by: Bob Strosser **Seconded by:** Chris Corcoran

Councilmember Strosser stated that the letters to the editor represents the support from the community; Councilmember Corcoran noted the benefits of the mock trials and how the preparation paid off. Fire Chief Bierwiler recognized those who were involved in the fire, Medford Fire Rescue, Oregon State Fire Marshall and Department of Forestry. Key issues discussed were existing relations in the public safety community, fuels reduction around homes, and mutual aid (giving and receiving). Police Chief Schoen noted their role was in patrol, traffic control and evacuation with assistance from the Public Works Department. Chief Schoen gave examples of assistance from the community, such as Bethel Church using their facility as a staging area. Communication was discussed as well as volunteers. Councilmember Corcoran questioned if there was anything else that council needed to be aware of; Chief Bierwiler noted that we need the technology to do this and that council has always come through.

Roll call: Councilmembers Corcoran, Densmore, Jones, Strosser, Stout, and Truwe voting yes.
 Resolution #2009-224 was duly adopted.

COUNCIL BILL 2009-210 A resolution supporting installation and promotion of salmon egg incubator boxes throughout southern Oregon's rivers and streams in order to promote the health and propagation of salmon in our area.

Motion: Approve the resolution.
Moved by: Al Densmore **Seconded by:** Bob Strosser

Roll call: Councilmembers Corcoran, Densmore, Jones, Strosser, Stout, and Truwe voting yes.
 Resolution #2009-210 was duly adopted.

Hal Borg Sr. and Hal Borg Jr., V.P. Rogue River Guides Association for Oregon, stated that they and other concerned citizens are trying to propagate new ideas pertaining to the fisheries. An incubator box technology was introduced to council. Eggs from wild male and female salmon, hatched in an in-stream incubator box, will

C-2
 DCA-09-91
 1 of 3

produce wild baby fish with up to a 90% hatch rate. They are requesting the support from council and the public. Councilmember Corcoran questioned what roadblock they were encountering; the Borg's noted that it is with the Fish & Game Department pertaining to the spring Chinook run. A bill with the help of Senator Jason Anderson was passed but restrictions were noted with the bill.

30. Oral requests and communications from the audience

- 30.1 Bruce Spence, SEMCO, spoke on On-Track's application for funding from the state for the Generations project. Mr. Spence noted the important information which was omitted from On-Track's application to the city. On-Track's application to the city was crafted to get approval for "just housing", whereas their application to the state was crafted to get funds approved for "social services". Mr. Spence would like to know at what point the city will recognize this as something beyond "just housing" and noted that it would seem logical to at least require a conditional use permit when there is an unusual housing arrangement so that safeguards are in place to assure that residents are protected and that all possible issues have been addressed.
- 30.2 Anne Jenkins, Medford's Visitors & Convention Center, spoke to council regarding the Jazz Jubilee, noted the changes taking place this year, and encouraged council to attend the school workshops. Ms. Jenkins will be back in a few weeks to discuss Cycle Oregon.
- 30.3 Dean Ayers, 624 Valley View Drive, expressed his concern with the economy and the funding for the water park for Medford. He urged council to hold off on building a water park for a few years at which time more information will come forward pertaining to other parks. Mr. Ayers was encouraged by council to attend the Parks & Recreation Commission meetings and that although council will be voting on this it is for consulting purposes only.

40. Consent calendar

- 40.1 COUNCIL BILL 2009-211 A resolution initiating annexation to the City of Medford of one (1) parcel plus associated right-of-way located on the west side of Thomas Road approximately 157 feet north of Sunset Drive, of approximately 1.26 acres, and concurrent zone change from County RR-2.5 (Rural Residential - 2.5 acre minimum lot size) to City SFR-00 (Single Family Residential - 1 dwelling unit per existing lot), and withdrawal of said property from the Medford Rural Fire Protection District #2, effective when notice is received from the Secretary of State. (A-09-031)
- 40.2 COUNCIL BILL 2009-212 A resolution initiating annexation to the City of Medford of one (1) parcel totaling 0.90 acres located 135 feet east of Table Rock Road approximately 430 feet north of Schulz Road, and concurrent zone change from County LI (Light Industrial) to City I-G (General Industrial/Limited Industrial Overlay) zoning district, and withdrawal of said property from the Jackson County Fire District #3, effective when notice is received from the Secretary of State. (A-07-286)
- 40.3 COUNCIL BILL 2009-213 An ordinance awarding a contract in the amount of \$175,379.15 to Asphalt Maintenance Associates, Inc. for annual slurry seal on various city streets in the City of Medford.
- 40.4 COUNCIL BILL 2009-214 A resolution affirming the Public Works Director's administrative decision requiring the repair of an unsafe sidewalk located at 1700 Johnson Street.
- 40.5 COUNCIL BILL 2009-215 A resolution modifying the Public Works Director's administrative decision requiring the repair of an unsafe sidewalk located at 404 S. Ivy Street.
- 40.6 COUNCIL BILL 2009-216 An ordinance awarding a contract in the amount of \$222,073.25 to D. Britton Enterprises, Inc. for the School Sidewalk Phase 5 (East) Project.
- 40.7 COUNCIL BILL 2009-217 An ordinance authorizing execution of a Grant Agreement with Kids Unlimited in the amount of \$182,432.00 from Community Development Block Grant funds for parking lot repair/reconstruction.
- 40.8 COUNCIL BILL 2009-218 An ordinance authorizing execution and ratification of an Intergovernmental Agreement between the State of Oregon Building Codes Division and the City of Medford Building Safety Department to provide inspection services to the Building Codes Division on an as-needed basis.
- 40.9 COUNCIL BILL 2009-219 An ordinance authorizing execution of an Intergovernmental Agreement between Jackson County and the City of Medford Building Safety Department to provide inspection services to the County on an as-needed basis.
- 40.10 COUNCIL BILL 2009-220 An ordinance authorizing the purchase of four (4) vehicles in the amount of \$98,272.00 from Butler Ford for the Police and Fire Departments.
- * [40.11 SECOND READING - COUNCIL BILL 2009-209 An ordinance authorizing an agreement with Key West, LLC to condition issuance of Certificate of Occupancy upon installation of sidewalks and street trees for certain phases of the Vista Pointe Planned Unit Development.

C-2
DCA-09-91
2 of 3

* [Motion: Adopt consent calendar.
 Moved by: Al Densmore Seconded by: Ben Truwe
 Roll call: Councilmembers Corcoran, Densmore, Jones, Strosser, Stout, and Truwe voting yes.
 Motion carried and so ordered. The following Council Bills were approved: #2009-211, 2009-212, 2009-213, 2009-214, 2009-215, 2009-216, 2009-218, 2009-219, 2009-220, and 2009-209.

50. **Items removed from consent calendar**
 Councilmember Jones requested 40.7 be removed; he is a Board member of Kids Unlimited and will abstain from voting.

40.7 COUNCIL BILL 2009-217 An ordinance authorizing execution of a Grant Agreement with Kids Unlimited in the amount of \$182,432.00 from Community Development Block Grant funds for parking lot repair/reconstruction.

Motion: Adopt the ordinance.
 Moved by: Bob Strosser Seconded by: Chris Corcoran
 Roll call: Councilmembers Corcoran, Densmore, Strosser, Stout, and Truwe voting yes; Jones abstained.
 Ordinance #2009-217 was duly adopted.

60. **Ordinances and resolutions**
 60.1 CONTINUED FROM September 17, 2009 - COUNCIL BILL 2009-203 An ordinance awarding a Personal Services Contract in the amount of \$67,680.00 to Brame Northwest to perform a parking study in the Central Business District.

Motion: Adopt the ordinance.
 Moved by: Jill Stout Seconded by: Greg Jones

Council discussed funding the contract; City Attorney HuttI questioned where the funding will come from and noted that the transferring of the funds will need to be another agenda item.

Roll call: Councilmembers Corcoran, Densmore, Jones, Strosser, Stout, and Truwe voting yes.
 Ordinance #2009-203 was duly adopted.

Motion: Direct staff to bring back to the October 15 council meeting the funding source for the parking study.

Moved by: Al Densmore Seconded by: Greg Jones

City Manager Dyal questioned the difference on funding on this ordinance compared to others; City Attorney HuttI noted that council questioned the funding source which is not part of the ordinance.

Roll call: Councilmembers Corcoran, Densmore, Jones, Strosser, Stout, and Truwe voting yes.
 Motion carried and so ordered.

60.2 COUNCIL BILL 2009-221 A resolution authorizing the transfer of \$300,000.00 from General Fund Contingency to the Parks and Recreation Department for Phase 1-Planning for a possible water park facility at Bear Creek Park.

Motion: Approve the resolution.
 Moved by: Al Densmore Seconded by: Ben Truwe

Parks Director Sjothun clarified that this would be Phase 1 to look at the site, complete the Master Plan, and to identify and complete all land use issues. This should be accomplished by May of 2010. Discussed were the different funding sources and the feasibility study from other swim parks. Councilmember Strosser questioned the emergency repairs needed to the current pools. Staff confirmed that the public will have time to provide input at various times before May of 2010.

Roll call: Councilmembers Corcoran, Densmore, Jones, Strosser, Stout, and Truwe voting yes.
 Resolution #2009-221 was duly adopted.

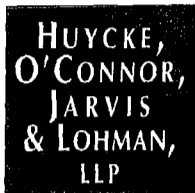
60.3 COUNCIL BILL 2009-222 An ordinance awarding a contract in the amount of \$144,924.00 to Red Sky Roofing to replace the City Hall roof.

Motion: Adopt the ordinance.
 Moved by: Bob Strosser Seconded by: Greg Jones

Questioned was the difference in roofing bids; Parks Director Sjothun noted that this is a local bidder who has had experience with roofs such as this. Council discussed the leakage to council chambers; Mr. Sjothun noted that those leaks would not be covered in this contract. Councilmember Jones questioned about the funding coming from various areas; Mr. Sjothun clarified the funding sources.

APR 27 2010
 DCA-09-91
 3 of 3

12



RECEIVED

FEB 02 2010

PLANNING DEPT.

MEMORANDUM

TO: Praline McCormack

FROM: Sydnee Dreyer

RE: DCA-09-091 – Sidewalk and Street Tree Installation/Timing Code Revision

DATE: February 2, 2010

I submit these comments in response to the above referenced code amendment. I strongly support the proposed amendment and would like to commend the City for its work toward this much needed improvement. I have a few comments/suggestions that I would like to submit for your consideration:

1. **10.296A:** The new language provides that if required improvements are not made, then the party shall enter into a written agreement per “Sections 10.666 and 10.667(A).” The problem with this language is it could be construed as expressly excluding 10.667(B), thus defeating the purpose of this amendment. As such the reference should simply provide that an agreement be entered into per “Sections 10.666 and 10.667.”
2. **10.296B:** Currently, the code provides that the BSIA is for a term of 6 months, with an opportunity to request an extension of an open-ended amount of time, as approved by SPAC. The new amendment proposes that the extension be approved by the Planning Director administratively, but the time is now limited to a maximum of an additional 6 months. In this economic climate, such a stringent and short timeframe is not advisable as many developers will not be able to complete all private improvements in only 6 additional months. The City should look to a multi-stage extensions and/or a longer time approved by the Planning Director. For example, the first extension could be for an additional 1 year as per the Planning Director, and a subsequent extension could be approved by SPAC upon a finding that certain requirements are met (such as those listed in the draft amendment). This will allow the City to reduce the number of such extensions reviewed by SPAC, while still maintaining a reasonable timeframe for completion of improvements.

With regard to the grounds for such an extension, the Planning Director need not engage in a lengthy review of the basis for the extension. Rather the initial extension should be automatic, so long as it is timely requested, and the second extension be based on those criteria listed.

CITY OF DISTRICT OF COLUMBIA
 PART # **D**
 FILE # **DCA-09-91**
1 of 2

I believe there is a typographical error in the last line of the amendment which should probably read "so long as no applicable development standards have changed."

3. **10.379(6)(a):**

- a. There is a typo in the second to last line which should read "are" deferred.
- b. This section could be construed to limit the timing to street trees and planter strips since sidewalks are expressly not mentioned. As such the section should provide that "sidewalks, street trees and landscaping of planter strips may be deferred until dwellings are constructed."

4. **10.667(B):** The language should be amended to read as follows (**bold is new**):

"Security Alternative: In lieu of (A) above, to secure the installation of only sidewalks, street trees and/or **landscaping in park strips** on lower order streets in single-family residential development, the developer may enter into an agreement which specifies that **in lieu of financial security provided in Section (A) herein**, the Certificate of Occupancy shall not be issued until the required street trees, **landscaping in park strips**, and/or sidewalks are installed to the satisfaction of the City Engineer.

Also, I question what agreement the City will enter into. Is it a form the City will adopt or must developers go to the trouble of reinventing the wheel each time?

Thank you for your consideration of these comments. Feel free to give me a call if you have any questions.

D
DCA-09-91
2 of 2



MINUTES
Citizens Planning Advisory Committee Meeting
February 9, 2010

The regular meeting of the Medford Citizens Planning Advisory Committee was called to order at 5:30 p.m. in the Medford Room of City Hall on the above date with the following members and staff in attendance:

<u>Members</u>		<u>Staff</u>
Bruce Spence, Vice Chair	Elwin Fordyce	Carly Meske, Planner II
Gerald Anderson, Secretary	Hugh Hohe	
Barbara Borgman	Jim Howe	
Christine Lachner	Joel Marks	
Dan Bell	Karen Blair	

10. Roll Call

20. Minutes.

20.1 The minutes for the January 26, 2010 meeting were approved as submitted.

30. Reports

30.1 Staff

Next meeting will be held in the Lausmann Annex, Conference Room 151.

30.2 City Council

Study Sessions. No Planning Projects Scheduled. February 11, 2010: Bill Hoke to discuss "Neighborhood Resources." Bruce Spence to attend and report back at next CPAC meeting on February 23, 2010.

Public Hearing: February 18, 2010: Crews Road Vacation (SV-09-106)

30.3 Commissions

Study Session: February 22, 2010: Urbanization Element Update?
RPS Update?

Public Hearing: February 25, 2010: Table Rock Road Sidewalk Infill (TF-09-088)

30.4 Committees & Subcommittees

Neighborhood Committees: Karen Blair reported that the Housing and Community Development Commission is reevaluating the work of the Commission, and plans to move forward on rehabilitation programs and weekend clean ups.

40 Old Business.

40.1 **The Cost of Growth** – Postponed until February 23, 2010

50 New Business.

60 General Discussion.

60.1 Applications and Referrals:

TF-09-088:

This TF proposes the installation of approximately 285 linear feet of sidewalk along Table Rock Road between Adams Lane and Swing Lane. The sidewalk will be between 6 and 7 feet

CITY OF MEDFORD
EXHIBIT # **E**
File # **DCA-09-91**
1 OF 2

MINUTES – Citizens Planning Advisory Committee Meeting

February 9, 2010

in width. CPAC suggests that, in the future, the Public Works Department ought to bring forward a proposal with zero impediments – whether that means a slightly meandering sidewalk, or under-grounding utilities.

Motion: Support the proposal with one condition: ensure a minimum 4-foot unobstructed width of sidewalk.

Moved By: Christine Lachner Seconded By: Gerald Anderson

Voice Vote: Motion passed, 9-1, 0 abstentions.

DCA-09-091

Summary: This code amendment proposes changes to Chapter 10 that would allow developers to sign Building Site Improvement Agreements for the installation of sidewalks and street trees on lower order streets in residential subdivisions. The proposed changes eliminate the requirement for the developer to submit a letter of credit to the city. The proposed changes require installation prior to issuance of the certificate of occupancy.

CPAC Discussion: Does this new language shift the burden from the developer to the homeowner? There is expectation that homeowners have that the purchase of a home also comes with sidewalks and street trees. Understanding is that code is being changed to respond to the current economic climate. Why is the code being changed instead of allowing exceptions to the code? Feel exceptions would better facilitate the desired end, instead of changing the code. CPAC also discussed submitting a letter of recommendation to the record for this code amendment. After obtaining more information, CPAC will discuss this issue again.



Motion: Not support the proposal due to insufficient justification to make the changes.

Moved By: Gerald Anderson Seconded By: Joel Marks

Voice Vote: Motion passed, 8-2, 0 abstentions.

CPAC has the following questions: Invite the Planner, Praline McCormack, and ask her the following questions: (1) Will this burden homeowners? It appears as though the CofO can be held until sidewalks and street trees are built, this is different than the code currently reads, and CPAC is fearful that the burden of installation is now being moved from the developer (where it "ought to be") to the homeowner (which is an "undue hardship"). (2) Did you model the proposed language from another jurisdiction? If so, who? And how is it working in that community? (3) It appears as though this proposal is a reaction to the current economic situation. Assuming the economic situation will change, why change the code to follow the economy? Why not simply allow exceptions to the code to allow for alternative methods of street tree and sidewalk installation?

60.2 Study Sessions

CPAC discussed question, "Why are study sessions not televised?" Members expressed a desire to view the study sessions on television as they cannot attend the noon meetings. Staff reported that the agendas and minutes are posted on the city website, and an audio recording of the session is available from city manager's office (for City Council study sessions) and

EXHIBIT # **E**
FILE # **DCA-09-91**
2 of 2

Planning Commission Study Session

MINUTES
February 22, 2010

The study session of the Medford Planning Commission was called to order at 12:00 p.m. in Room 151 of the Lausmann Annex on the above date with the following members and staff in attendance:

Commissioners: David McFadden, Norm Nelson, Robert Tull, Jerry Shean, Jared Hokanson, Tim Jackle, Walt Locke, and Brita Entenmann

Staff: Jim Huber, Bianca Petrou, Kelly Akin, Lori Cooper, Earl Lighthill, Praline McCormack, and Alex Georgevitch

Topic: Sidewalk and Street Tree Installation Timing Code Amendment and Regional Plan Update

Praline McCormack, Planner II, noted that the Regional Plan Update would not be discussed at today's study session as John Adam is absent.

Ms. McCormack indicated that the purpose of the Timing Code Amendment was to give developers an alternative for posting security in the cases of single-family homes on lower-order streets for sidewalk and street tree installation. She noted that it was a limited area that it will apply to. Ms. McCormack asked for feedback from the Commissioners on the proposed amendment. It was noted that the reason for the amendment is twofold: 1) that developers are having increased difficulty getting letters of security and/or getting them extended due to the current credit market, and 2) that developers are finding that it is taking longer than one year between final plat and when the lot sells and building construction occurs. Therefore, they are asking for an alternative option.

Holding the Certificate of Occupancy (COO) until improvements are completed was discussed. There was concern expressed about developers not being able to fulfill contracts and about the amendment creating a legal situation for the city. Several people agreed that withholding a COO is the best security.

Commissioner Jackle noted that historically, the Building Site Improvement Agreements (BSIAs) have caused political problems. Improvements are being put off to the successor of the property. He indicated that the reason for security is that actual money is being set aside by the developer, so you don't have end up with a third party that is unaware that they have to put in the improvements.

Mr. Huber noted that the focus is Section 10.667(B) which is for single-family homes on lower order streets. The developer will either have to post security or agree that the COO will not be issued until sidewalks and street trees are completed. Timing of improvements were discussed. Commissioner Shean pointed out that consistent language needed to be used in reference of the COO.

Mr. Lighthill noted that a couple of provisions in the agreement are used now, where in the past the City Council on a case-by-case basis has approved substituting COO issuance for financial security on sidewalks and trees. One provision is that the developer has to record an amendment to the existing Covenants, Conditions, and Restrictions (CC & R's), so future owners can be aware of it. In some instances, the approved street tree plan has been specified. The other provision relates to enforcement in that the agreement obligates the developer to enforce the CCR's; if they do not, then the City can. Mr. Lighthill noted that this discussion is limited to public improvements in the public right-of-way.

Commissioner Nelson asked why revisions were being made to Section 10.296 relating to Site Plan and Architectural Review Approval. Ms. McCormack responded that the purpose was to clean up the language in the code.

Comments in a letter from Sydnee Dryer were discussed.

EXHIBIT # F
FIG # DCA-09-91
1 OF 2

Planning Commission Study Session

MINUTES
February 22, 2010

Commissioner Jackle asked why would we want to fold it into the CC&R's, should just have a separate agreement between developer and city. Ms. Cooper noted that there was considerable discussion, and it was her understanding that they decided that it is the only hook we have to enforce it without having our code enforcement.

Commissioner Jackle asked about using a BSIA. Ms. Petrou indicated that the Planning Department would love to tie it to the COO, but are not able to. Ms. McCormack noted that a BSIA is not used for single-family homes. Ms. Akin noted that a BSIA is used only for required improvements on private property.

Ms. Petrou indicated that the easiest way to enforce it is to require security; Not giving a COO affects the homeowner. She noted that by tying it to the CCR's, the homeowners may read it before purchasing the property. Commissioner Nelson felt that many homebuyers do not read the CC&R's. Commissioner Jackle feels that a separate recorded document would be simpler.

Commissioner Nelson asked if this is a temporary fix due to the economy. Mr. Huber noted that once we get away from this, it will be hard to get back to security.

The BSIA's were further discussed. Ms. Petrou noted that the Land Development Agreement Form would be reworked. Ms. Petrou explained that the City Council was asked by someone representing developers to do this and the Planning Commission will be asked to make a recommendation on it. The City Council is already doing these agreements (nine so far), but they are looking to codify it. The request would be processed through the Planning Department and would not go to City Council each time.

Time extension for BSIA's was briefly discussed.

Ms. Petrou noted that while the City Council only asked for the alternative to security posting, redundant language was discovered when going through the process; The amendment wasn't originally intended to have anything to do with BSIA's or SPAC review. Commissioner Locke and Commissioner Tull expressed support of charging a fee for extensions due to time investment by staff.

Ms. Petrou indicated that she feels that developers would probably always preferred to have this proposed alternative to security posting. It does not tie up as much capital, and it passes the responsibility on to the homeowner. It was noted that having a developer post security is always preferred to holding the COO. Commissioner Jackle expressed that the agreement would need to be between builder and homeowner. He feels that in fairness, there is an obligation to get it in the Land Development Code if City Council is dealing with it consistently, so it is available for everyone, not just people that deal with the City consistently and know that it is an option.

The amendment will be seen in the future at a Planning Commission hearing.

The meeting was adjourned at 12:36 p.m.

Submitted by Kristy Grieve, Recording Secretary

CITY OF DALLAS
CLERK F
DCA-09-91
2 of 2



MINUTES
Citizens Planning Advisory Committee Meeting
February 23, 2010

The regular meeting of the Medford Citizens Planning Advisory Committee was called to order at 5:30 p.m. in the Medford Room of City Hall on the above date with the following members and staff in attendance:

<u>Members</u>		<u>Staff</u>
Curtis Folsom, Chair	Hugh Hohe	Carly Meske, Planner II
Bruce Spence, Vice Chair	Jim Howe	Praline McCormack, Planner II
Gerald Anderson, Secretary	Karen Blair	
Dan Bell	Ben Truwe	
	David McFadden	

10. Roll Call

20. Minutes.

20.1 The minutes for the February 9, 2010 meeting were approved as submitted.

30. Reports

30.1 Staff

TF-09-088 is on the Planning Commission agenda this Thursday, February 25, 2010. As a reminder, CPAC did submit comments to the Planning Commission for a 4.5 foot unobstructed width.

30.2 City Council

Study Sessions. No Planning Projects Scheduled.

Public Hearing: February 18, 2010: Crews Road Vacation (SV-09-106)

30.3 Commissions

Study Session: March 8, 2010: Urbanization Element Update. RPS Update.

Public Hearing: February 25, 2010: Table Rock Road Sidewalk Infill (TF-09-088). March 25, 2010: Sidewalk & Street Tree Timing Code Amendment (DCA-09-091).

30.4 Committees & Subcommittees

Boundary Advisory Committee (BAC): meeting postponed one week. Curtis to report next CPAC meeting.

40 Old Business.

* 40.1 **DCA-09-091** Praline McCormack attended to discuss sidewalks and tree installation timing code amendment.

Discussion:

- Theoretically, because the certificate of occupancy (CofO) is being held until the installation of sidewalks and street trees, this new amendment could be a burden for the homeowner.
- Currently the code requires sidewalk and street tree installation prior to final plat approval. So, developers are typically submitting security for the sidewalks and street trees, so that they may be installed after the construction of the single family home.
- Bruce Spence spoke with some local banks, asking if they are issuing security these



days. Banks said, "yes, but under strict circumstances."

- o Council has approved nine waivers for developers – allowing extensions of the security.
- o This process used by Council is the process proposed in the code amendment.
- o The code amendment will provide this process for all.
- o Other jurisdictions throughout Oregon are also providing relief to various codes.
 - o This amendment developed by John Huttli.
 - o Council directed staff to prepare amendment
- o Some prefer consistency in tree type for aesthetic purposes
 - o Arguments against using the same tree include: threat of disease killing all trees instead of a few; and death of tree due to age.

Suggestion:

- o Keep current code as is and add language allowing security to be returned or extended.
- o Approve proposed language with a sunset – code returns after economy improves.

40.2 Cost of Growth Curtis Folsom provided context and suggested usage of a Cost of Growth matrix in evaluation of projects.

Discussion:

- o Need the following items: # housing types in city; total housing square footage; City Financial data; property value data; and mill rate. Mill rate can be obtained from assessor's office.
- o Purpose: Answer the question, "What is the cost of development to the citizens of Medford?"
- o Curtis wants to use matrix to analysis the entire city.
- o Others suggest using matrix to analyze RPS properties.
- o The Oregon Analysis was a simple analysis of schools and capital improvements.
- o

Assignments are as follows (obtaining data related to the following categories):

1. Curtis:
 - a. examples of how this matrix is utilized (perhaps a spreadsheet)
 - b. property values (potential sources: Assessor's Office)
2. Jim:
 - a. City Budget – "total revenue & expenditures" (potential sources: City Manager's Office)
3. Bruce:
 - a. Total # Workers (potential sources: Chamber of Commerce)
4. Carly:
 - a. # developable areas by type (potential sources: Housing Element & Economic Element)

Sources for obtaining data:

1. City data (dot) com
2. Census Bureau
3. Medford Housing Element
4. Medford Economic Element
5. Portland State University
6. Jackson County Assessor's Office

CITY OF MEDFORD
EXHIBIT # **G**
DCA-09-91
2 of 2

RECEIVED

MAR 22 2010

PLANNING DEPT.

MEMO

Date: March 25, 2010

To: Norm Nelson, Chair

Cc: Medford Planning Commission, Jim Huber, Suzanne Myers

From: Walt Locke

Subject: Security Code Amendment (DCA-09-091)

Please include this document as part of the public record supporting my vote against a favorable recommendation to Council on this amendment.

1. The proposed amendment eliminates the existing requirement for posting bullet-proof security to ensure the proper installation of sidewalks and street trees on lower order streets in single family residential developments.
2. Rationale that "banks are not issuing letters-of-credit ('LOCs') as easily as before" ...is hardly a valid reason for removing the requirement for posting tangible security. Rather, the current adverse economic environment is exactly the scenario when security is most needed! Neither is the City realistically capable of evaluating the financial condition of various individuals and entities.
3. Those developers who are unable to obtain a bank LOC, typically do not qualify for credit because they fail to meet the lender's criteria for credit worthiness, based on their financial condition at time of application.
4. Certificate of Occupancy should not be issued in any event, until all the City's requirements are met. Neither should there be any need to obtain the developer's agreement to such policy.
5. Building Site Improvement Agreements ('BSIAs') create an additional, and unnecessary, legal-risk of enforcement (litigation) for the City. Which risk does not accrue under the traditional security (LOC) mandate.
6. CPAC Meeting Minutes (FEB-09-10) contains a number of insightful observations, concluded by unanimous motion to "not support the proposal." Nevertheless, the concern about shifting the financial burden from developer to homeowner is somewhat exaggerated. After all, a developer may fail to perform any number of expected tasks (e.g. water hookup, sheet-rock, or whatever.) At issue is: Who should be plaintiff when a developer fails to perform? The City should not gratuitously assume this role! The City may remain outside such disputes by adopting a policy of routinely withholding Certificates of Occupancy until such time as all requirements are met. Furthermore, legal action brought by the homeowner is a more effective incentive for a non-performing developer to maintain its public relations image.

-WCL-

(Disclosure: Commissioner Walt Locke is employed by a regional bank.)



H
DCA-09-91



MINUTES
Planning Commission Meeting
March 25, 2010

The regular meeting of the Medford Planning Commission was called to order at 5:30 p.m. in the Council Chambers on the above date with the following members and staff in attendance:

<u>Commissioners</u>		<u>Staff</u>
Norm Nelson	Allen Potter	Jim Huber, Planning Director
David McFadden	Walt Locke	Kevin O'Connell, Senior Assistant City Attorney
Robert Tull	Brita Entenmann	Larry Beskow, City Engineer
Tim Jackle, Excused Absence		Kristy Grieve, Recording Secretary
Jared Hokanson, Excused Absence		Suzanne Myers, Associate Planner
Jerry Shean, Excused Absence		Praline McCormack, Planner II

10. Roll Call

20. Consent Calendar/Written Communications. None

30. Minutes. The minutes for the March 11, 2010, meeting were approved as submitted.

40. Oral and Written Requests and Communications. None

50. Public Hearings.
New Business

50.1 DCA-09-091 Consideration of a proposed Class "A" (Major) legislative amendment of the Medford Land Development Code to revise Sections 10.012, 10.296, 10.379, 10.666, and 10.667 relating to the installation and posting of security for street trees and sidewalks on lower order streets in single-family residential developments. City of Medford, Applicant

Praline McCormack, Planner II, presented a staff report. She noted an additional Exhibit H.

Discussion: Ms. McCormack explained that Developers are finding that it is taking more than a year to sell lots. Letters of Credit are valid for only one year and Developers are finding it difficult to get extensions. Commissioner Tull asked if there were comments from other Developers, besides the one that Ms. Dreyer's comments were based on. Ms. McCormack noted that the City Council has authorized 9 Developer agreements from 5 different builders since October 2009. Larry Beskow, City Engineer, commented that Developers have to renew the Letters of Credit every year, which utilizes quite a bit of staff time in his department. He noted that out in the field, there won't be any changes seen. Commissioner McFadden asked if either sidewalk continuity or the type of street trees installed would be an issue, because the burden would fall on the homeowners. Mr. Beskow responded that it is his understanding that the homeowners are putting them in now, and there are stipulations as to what type of tree can be installed. He noted that Public Works inspects sidewalks and will continue to do so. There was discussion on Letters of Credit and their increasing cost. Commissioner Locke commented that the amendment would be removing the certainty of absolute security. Commissioner Beskow indicated that if nobody builds, then there will be no sidewalk on that lot. Commissioner Locke noted that a number of Builders in this environment have gone out of business. Commissioner Nelson indicated that in his neighborhood he only see sidewalks where

APR 1 2010
I
DCA-09-91
1 of 2

MINUTES - Planning Commission Meeting

March 11, 2010

houses have been built. Commissioner Potter asked what would happen if the Developer goes bankrupt. Mr. Beskow responded that if the Developer opts for 10.667(B) then the encumbrance becomes the new property owner's responsibility. Mr. O'Connell commented that while the Letter of Credit is nice to have, it can be difficult in getting paid. Commissioner Nelson indicated that he feels most people will go choose 10.667(B) instead of posting security.

The public hearing was opened and no testimony was given. The public hearing was closed.

Commissioner Locke commented that we will never see another Letter of Credit if this amendment is approved; Commissioner Nelson agreed.

Motion: Forward a favorable recommendation to the City Council for DCA-09-091, per the Staff Report dated March 16, 2010, including Exhibits A through H.

Commissioner Locke observed that it is a strange time in a serious economic crisis to lessen the security requirements on Developers.

Moved by: Commissioner Potter Seconded by: Commissioner Tull

Roll Call Vote: Motion passed, 5 – 1 with Commissioner Locke voting "no"

- 60. Report of Citizens Planning Advisory Committee.**
 - 60.1 Commissioner McFadden outlined the various issues that were discussed at the last meeting.
- 70. Report of the Site Plan and Architectural Commission. None**
- 80. Report of the Joint Transportation Subcommittee. None**
- 90. Report of the Boundary Advisory Committee. None**
- 100. Report of the Planning Department.**
 - 100.1 Jim Huber, Planning Director, reported that there will be one hearing on the April 8 agenda, and four hearings on April 22. He noted that the April 12 Study Session may be cancelled. Mr. Huber will meet with Chair Nelson to review projects to discuss at future study sessions. He noted that the Oregon APA Conference is May 11 - 14, and two Commissioners may be able to attend, pending approval. Interested Commissioners should notify the Planning Department by March 31. Mr. Huber reminded everyone to fill out their census form.
- 110. Messages and Papers from Chair of Planning Commission.**
 - 110.1 Commissioner Nelson suggested that the Commissioners review the Rules of Order to see if any revision is needed.
- 120. Remarks from the City Attorney. None**
- 130. Propositions and Remarks from the Commission. None**
- 140. Adjournment.** The meeting was adjourned at 6:14 p.m. The proceedings of this meeting were digitally recorded and are filed in the City Recorder's office.

Submitted by:

Kristy Grieve
Recording Secretary
Approved: April 8, 2010

Norm Nelson
Chair

CITY OF PORTLAND
COMMISSIONER I
DCA-09-91
2 of 2



7007 0710 0001 0567 0292

City of Medford
Planning Department
200 South Ivy Street
Medford OR 97501

ATTN: Plan Amendment Specialist
Dept. of Land Conser. & Develop.
635 Capitol St. NE, Ste. 150
Salem, Or 97301-2540



Hasler

018426507632

\$06.830

04/23/2010

Mailed From 97501

US POSTAGE

DEPT OF

APR 26 2010

LAND CONSERVATION
AND DEVELOPMENT

RETURN RECEIPT
REQUESTED