

REQUEST FOR COUNCIL ACTION



Date Action Requested: May 15, 2023

Order <input type="checkbox"/> Ordinance <input type="checkbox"/> Resolution <input type="checkbox"/> Motion <input type="checkbox"/> Information <input checked="" type="checkbox"/>	
Subject: An Ordinance amending provisions regarding early issuance of building permits upon substantial completion of public improvements including Newberg Municipal Code, Title 15 Development Code, 15.05.030, 15.235, 15.235.080, 15.240.040, and 15.505.020	Staff: Clay Downing, Planning Manager Department: Community Development File No. DCA21-0003
Work Session <input checked="" type="checkbox"/> Business Session <input type="checkbox"/>	Order On Agenda: Presentation

Is this item state mandated? Yes No

If yes, please cite the state house bill or order that necessitated this action:

Oregon House Bill 2306 (2019), codified in ORS 455.175.

Recommendation:

Informational only.

Executive Summary:

On July 19, 2021, the Newberg City Council adopted Resolution 2021-3755, initiating a Development Code amendment regarding early issuance of building permits upon substantial completion of public improvements. The proposed the proposed amendments would:

1. Update Newberg Municipal Code (NMC) Title 15 Development Code definition related to “substantial completion” for consistency with existing Oregon state law.
2. Update NMC Title 15 Development Code text to create consistency with amendments to state law resulting from Oregon’s HB 2306 (2019).

If the Newberg City Council chooses to adopt the proposed Development Code text amendments, developers will have the opportunity to choose from:

- Path 1 (Early Issuance of Building Permits): Issuance of building permits prior to a recorded plat based on substantial completion of a project’s public improvements. For individuals who choose to pursue use of Path 1, the owner will be required to provide a security at 120% of the estimated cost of improvements not yet completed.
- Path 2 (Traditional Issuance of Building Permits): Issuance of building permits following completion of all public improvements and recordation of plat.

Exhibit A includes the proposed NMC amendments in legislative format.

On April 13, 2023, the Planning Commission held a legislative hearing to consider the proposed NMC amendments and approved Planning Commission Resolution 2023-385 which recommended that the City Council adopt the proposed NMC amendments as proposed by staff.

A. BACKGROUND

The Oregon Legislature adopted HB 2306 during the 2019 legislative session, which is attached to this report as Attachment 2. The bill was codified in ORS 455.175 which requires cities and counties to issue residential building permits upon the substantial completion of public improvements in residential subdivisions. The changes created by adoption of HB 2306 (2019) differ from traditional building permit issuance, which typically requires developers to install all public improvements and record the subject property’s plat before building permits are issued.

ORS 455.174 defines “substantial completion” as the completion of:

- water supply system;
- fire hydrant system;
- sewage disposal system;
- storm water drainage system, excepting any landscaping requirements that are part of the system; curbs;
- demarcating of street signs acceptable for emergency responders; and
- roads necessary for access by emergency vehicles.

NMC Section 15.05.030 currently states that:

“Substantially complete” means when, in the opinion of the city engineer, the city will not be adversely impacted by issuance of building permits prior to acceptance of the public improvements. “Substantially complete” includes, but is not limited to, a determination that water and wastewater lines have been tested and ready to begin service, that as-built drawings of public facilities have been submitted, that the roadway surfaces and drainage facilities will provide year-round access to each lot and that street lights are installed and authorized to be energized.

The NMC’s current definition is inconsistent with ORS 455.175 and needs to be updated in order to achieve consistency with state law.

B. PUBLIC COMMENTS

Prior to the Planning Commission hearing on April 13, 2023, one written public comment was received from Charlie Harris. The public comment was shared with the Planning Commission and considered during the legislative hearing. As of the writing of this report, no additional public comments have been since the Planning Commission hearing.

C. DISCUSSION

The adoption of HB 2306 (2019) created a permitting pathway that differs from traditional building permit issuance, which typically requires developers to install all public improvements and record the project’s plat before building permits are issued. The proposed NMC amendments would update multiple portions of NMC Title 15 Development Code to create consistency with amendments to state law resulting from Oregon’s HB 2306 (2019) and update the NMC Section 15.05.030 definition related to “substantial completion” for consistency with existing Oregon state law. If adopted by your Council, the proposed NMC text amendments would provide developers with the opportunity to choose from:

- Path 1 (Early Issuance of Building Permits): Issuance of building permits prior to a recorded plat based on substantial completion of a project’s public improvements. For individuals who choose to pursue use of Path 1, the owner will be required to provide a security at 120% of the estimated cost of improvements not yet completed.
- Path 2 (Traditional Issuance of Building Permits): Issuance of building permits following completion of all public improvements and recordation of plat.

Planning staff evaluated the NMC to identify text amendments that will bring it into compliance with ORS 455.175 while maintaining relatively simple language for applicants to consider when choosing how to form, submit, and advance their projects. Exhibit A is provided in legislative format and proposes the following amendments:

- Chapter 15.05 General Provisions, Section 15.05.030. Definitions: Update the existing definition of “substantially complete” to comply with ORS 455.175 and expand the definition to clarify the city engineer’s role in determining the adequacy of a project’s public improvements.
- Chapter 15.235 Land Divisions, Section 15.235.060. Early issuance of residential building permits: Create a new section within the *Land Divisions* chapter which establishes when, to which projects, and under which criteria early issuance of building permits may occur.
- Chapter 15.235 Land Divisions, Section 15.235.080. Filing and recording: Revise section to create an internal reference to new code section 15.235.060.
- Chapter 15.240 PD Planned Unit Development Regulations, Section 15.240.040. Final plan consideration – Step two: Create a new sub-section which establishes criteria under which certain Planned Unit Developments, those containing both residential and commercial units where 60% or more of the project is residential, may seek early issuance of building permits based on substantial completion of public improvements.
- Chapter 15.505 Public Improvement Standards, Section 15.505.020. Applicability: Revise a sub-section related to the requirement for City approval of public improvements that allows for approval pursuant to substantial completion and creates an internal reference to new code section 15.235.060.

Fiscal Impact:

There is no fiscal impact.

Attachments

Exhibit A. Proposed Development Code Amendments (File No. DCA21-0003)

Attachment 1. House Bill 2306 (2019) – Full Text

Exhibit “A”
Proposed Development Code Amendments (File No. DCA21-0003)
Early Issuance of Building Permits Upon Substantial Completion of Public Improvements

Notes: Existing text is shown in regular font.

Added text is shown in double-underline

Deleted text is shown in ~~strikethrough~~.

Section 1. The definitions in Newberg Development Code (NMC) Section 15.05.030 shall be amended as follows:

“Substantially complete” or “**substantial completion**” is defined as meaning that the city has inspected, tested and found acceptable under applicable code requirements, unless the parties agree to a lower standard:

- The water supply system;
- The fire hydrant system;
- The sewage disposal system;
- The storm water drainage system, excepting any landscaping requirements that are part of the system;
- The curbs;
- The demarcating of street signs acceptable for emergency responders; and
- The roads necessary for access by emergency vehicles.

~~means when, Further, the term is defined as meaning that in the opinion of the city engineer, the city will not be adversely impacted by issuance of building permits prior to acceptance of the public improvements. This definition is and shall remain consistent with ORS 455.175 as amended. “Substantially complete” includes, but is not limited to, a determination that water and wastewater lines have been tested and ready to begin service, that as built drawings of public facilities have been submitted, that the roadway surfaces and drainage facilities will provide year-round access to each lot and that street lights are installed and authorized to be energized.~~

Section 2. NMC Section 15.235 shall be amended to add a new subsection as follows:

15.235.060 Early issuance of residential building permits.

A. Applicability. Limited to residential developments requiring a developer, declarant or owner to subdivide land, as defined in ORS 92.010, and to obtain a permit under ORS 215.416 or 227.175.

B. Early Issuance of Building Permits. Following approval of a preliminary plat and before recordation of a final plat, applicable projects may request early issuance of residential building permits pursuant to successful completion of all required criteria.

1. The project must reach substantial completion of the public improvements, pursuant to ORS 147.755 and as defined herein;
2. The owner must sign a Security and Improvement Agreement to provide for security and schedule of completion of final infrastructure improvements;
3. The owner must provide security at 120% of the estimated costs of the public improvements not yet completed; and

4. Regardless of early issuance of building permits, certificate of occupancy shall not be issued prior to completion of all public improvements.

Section 3. NMC Section 15.235.080 shall be amended as follows:

A new lot is not a legal lot for purposes of ownership (title), sale, lease, or development/land use until a final plat is recorded for the subdivision or partition containing the lot. The final plat filing and recording requirements are as follows:

A. Filing Plat with County. Within 60 days of the city approval of the final plat, the applicant shall submit the final plat to Yamhill County for signatures of county officials as required by ORS Chapter 92.

B. Proof of Recording. Upon final recording with the county, the applicant shall submit to the city a paper copy of all sheets of the recorded final plat. This shall occur prior to the issuance of building permits for the newly created lots except where allowed pursuant to NMC 15.235.060.

C. Prerequisites to Recording the Plat.

1. No plat shall be recorded unless all ad valorem taxes and all special assessments, fees, or other charges required by law to be placed on the tax roll have been paid in the manner provided by ORS Chapter 92;

2. No plat shall be recorded until the county surveyor approves it in the manner provided by ORS Chapter 92. [Ord. 2813 § 1 (Exh. A § 7), 9-5-17.]

Section 4. NMC Section 15.240.040 shall be amended as follows:

A. Application. An application, with the required fee, for final plan approval shall be submitted in accordance with the provisions of this code, and must be in compliance with all conditions imposed and schedules previously prescribed.

B. Referral. Referral of final plans and supportive material shall be provided to appropriate agencies and departments.

C. Decision Type I Procedure. The final plan consideration shall be reviewed through the Type I procedure. Upon receipt of the application and fee, final plans and required supportive material, the director shall approve, conditionally approve or deny the application for final plan approval. The decision of the director to approve or deny the application shall be based on written findings of compliance or noncompliance with approved preliminary plans and city standards, plans, policies and ordinances. Minor variations from approved preliminary plans may be permitted if consistent with the general character of the approved preliminary plans.

D. Conditions. Applications may be approved subject to such conditions as are necessary to fulfill the purpose and provisions of this code.

E. Performance Agreement.

1. Preparation and Signatures. A duly notarized performance agreement binding the applicant, and the applicant's successors in interest, assuring construction and performance in accordance with the approved final plans shall be prepared by the city and executed by the applicant and city prior to issuance of a building permit.

2. Return. Unless an executed copy of the agreement is returned to the director within 60 days of its delivery to the applicant, final plan approval shall expire, necessitating the reapplication for final plan reapproval.
3. Filing. The director shall file a memorandum of the performance agreement with the Yamhill County recorder.
4. Improvement Petitions and Dedications. Improvement petitions and all documents required with respect to dedications and easements shall be submitted prior to completion of the agreement.
5. Project Changes. The director may permit project changes subsequent to execution of the agreement upon finding the changes substantially conform to final approved plans and comply with city standards, plans, policies and ordinances. Other modifications are subject to reapplication at the appropriate step.
6. Compliance. Compliance with this section is a prerequisite to the issuance of a building permit. [Ord. 2822 § 1 (Exh. A), 2-5-18; Ord. 2451, 12-2-96. Code 2001 § 151.228.]

F. Early Issuance of Building Permits Based on Substantial Completion. A planned unit development containing residential and commercial units where 60% or more of the PUD is residential, may seek early issuance of building permits prior to recordation of a final plat for *substantial completion* of public improvements pursuant to NMC 15.235.060.

1. Regardless of early issuance of building permits, certificate of occupancy shall not be issued prior to completion of all public improvements.

Section 5. NMC Section 15.505.020 shall be amended as follows:

The provision and utilization of public facilities and services within the City of Newberg shall apply to all land developments in accordance with this chapter. No development shall be approved unless the following improvements are provided for prior to occupancy or operation, unless future provision is assured in accordance with NMC 15.505.030(E).

A. Public Works Design and Construction Standards. The design and construction of all improvements within existing and proposed rights-of-way and easements, all improvements to be maintained by the city, and all improvements for which city approval is required shall comply with the requirements of the most recently adopted Newberg public works design and construction standards.

B. Street Improvements. All projects subject to a Type II design review, partition, or subdivision approval must construct street improvements necessary to serve the development.

C. Water. All developments, lots, and parcels within the City of Newberg shall be served by the municipal water system as specified in Chapter 13.15 NMC.

D. Wastewater. All developments, lots, and parcels within the City of Newberg shall be served by the municipal wastewater system as specified in Chapter 13.10 NMC.

E. Stormwater. All developments, lots, and parcels within the City of Newberg shall manage stormwater runoff as specified in Chapters 13.20 and 13.25 NMC.

F. Utility Easements. Utility easements shall be provided as necessary and required by the review body to provide needed facilities for present or future development of the area.

G. City Approval of Public Improvements Required. No building permit may be issued until all required public facility improvements:

1. are in place and approved by the director, or

2. are substantially complete pursuant to NMC 15.235.060 and otherwise bonded for in a manner approved by the review authority,

in conformance with the provisions of this code and the Newberg Public Works Design and Construction Standards. [Ord. 2810 § 2 (Exhs. B, C), 12-19-16.]

ATTACHMENT 1. HB 2306 FULL TEXT

80th OREGON LEGISLATIVE ASSEMBLY--2019 Regular Session

Enrolled
House Bill 2306

Sponsored by Representatives MARSH, STARK, SMITH DB; Representatives MEEK, NEARMAN, NOBLE, ZIKA, Senator HEARD (Pre-session filed.)

CHAPTER

AN ACT

Relating to residential subdivisions.

Be It Enacted by the People of the State of Oregon:

SECTION 1. (1) As used in this section:

(a) "Conditions of development" means requirements that, as part of a residential subdivision, a developer, declarant or owner must construct public improvements that are contained in:

- (A) A development agreement under ORS 94.504 to 94.528;**
- (B) Conditions of approval under ORS 92.040, 215.416 or 227.175; or**
- (C) Any other agreement with, or conditional approval by, a local government.**

(b) "Residential subdivision" means a residential development requiring a developer, declarant or owner to subdivide land, as defined in ORS 92.010, and to obtain a permit under ORS 215.416 or 227.175.

(c) "Substantial completion" means the city, county or other appropriate public body has inspected, tested and found acceptable under applicable code requirements, unless the parties agree to a lower standard:

- (A) The water supply system;**
- (B) The fire hydrant system;**
- (C) The sewage disposal system;**
- (D) The storm water drainage system, excepting any landscaping requirements that are part of the system;**
- (E) The curbs;**
- (F) The demarcating of street signs acceptable for emergency responders; and**
- (G) The roads necessary for access by emergency vehicles.**

(2) A city or county may not deny a building permit allowing the construction of residential dwellings under a residential subdivision on the basis that the conditions of development have not been met, if:

(a) Substantial completion of conditions of development for the residential subdivision occurs; and

(b) The developer, declarant or owner, to secure the completion of the remaining public improvements included as conditions of development for the residential subdivision:

- (A) Obtains and maintains a bond; or**
- (B) Undertakes an alternative form of financial guarantee, if any, that is acceptable to, but may not be required by, the city or county.**

(3) Subsection (2) of this section does not prevent a city or county from declining to issue certificates of occupancy for any residential dwellings if all conditions of development are not fully completed or the conditions for the release of the bond are not fulfilled.

Passed by House April 3, 2019

Received by Governor:

Repassed by House June 5, 2019

.....M,....., 2019

Approved:

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Timothy G. Sekerak, Chief Clerk of House

.....M,....., 2019

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Tina Kotek, Speaker of House

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Kate Brown, Governor

Passed by Senate May 16, 2019

Filed in Office of Secretary of State:

.....M,....., 2019

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Peter Courtney, President of Senate

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Bev Clarno, Secretary of State