



CITY OF MOLALLA

117 N. Molalla Avenue
PO Box 248
Molalla, OR 97038

Staff Report

Agenda Category: Ordinances

Agenda Date: 4/10/2024

From: Dan Zinder, Senior Planner

Approved by:

SUBJECT: Ordinance 2024-02; a development code amendment that modifies Molalla Municipal Code (MMC) Section 17-3.6.100, Subsection B *Determination of the Sum* so that the required assurance is at least 125% of the estimated improvement costs. The current assurance requirement is 150% of the estimated improvement cost.

FISCAL IMPACT: None/NA

RECOMMENDATION/RECOMMEND MOTION: Staff Recommends that Council adopt Ordinance 2024-02.

BACKGROUND: There is currently a discrepancy between the Public Works Standards and Molalla Municipal Code for the amount that an applicant is required to provide for a performance bond assurance for public improvements. In Section 1.15.7 of the Molalla Standard Specifications for Public Works Construction (hereafter "Molalla Public Works Standards" the required assurance is 125% of the improvement costs and in the Municipal Code the requirement is 150% of the improvement costs. This ordinance serves to cure that discrepancy.

Staff recommends reconciling the two documents by changing the Municipal Code to require a 125% assurance. The removes a cost impediment for development while still ensures sufficient funding to complete public improvements in the event that the Applicant is unable to. The 150% requirement is also substantially higher than industry standards and thus puts us at a disadvantage to attract new development.

Exhibits:

1. Proposed Amendment to MMC Section 17-3.6.100
2. Findings of Fact



ORDINANCE NO. 2024-02

AN ORDINANCE OF THE CITY OF MOLALLA, OREGON MMC and PW Standards Reconciliation of Performance Bond Assurance

WHEREAS, the Molalla Municipal Code requires an Applicant provide 150% of the improvement cost for performance bond assurances; and

WHEREAS, the Molalla Standard Specifications for Public Works Construction requires an Applicant provide 125% of the improvement cost for performance bond assurances; and

WHEREAS, the discrepancy between the two above standards makes creates a standard that is problematic to enforce; and

WHEREAS, Goal 11 of the City of Molalla Comprehensive Plan Oregon sets a goal to ensure that development pays its fair share for needed public facilities as called for in adopted plans; and

WHEREAS, A 125% assurance is adequate to cover improvement costs and is in line with industry standard for bond assurances;

Now, Therefore, the City of Molalla ordains:

Section 1. Molalla Municipal Code Table 17-2.2.030 is hereby amended consistent with Exhibit 1, which is incorporated herein and adopted by reference.

Section 2: The findings related to this amendment, attached as Exhibit 2, are incorporated herein and adopted by reference.

Section 3. Effective Date. This Ordinance shall take effect 30 days after enactment.

The First Reading was held on _____, and moved to a Second Reading by _____ vote of
the City Council.

The Second Reading was held on _____ and adopted by the City Council on _____.

Signed this ____ day of _____ 2024.

Scott Keyser, Mayor

ATTEST:

Christie Teets, CMC
City Recorder

EXHIBIT 1 – PROPOSED AMENDMENT

Key:

Existing Language – Black

Proposed Language – **Purple Bold**

Proposed Removals – ~~Red Strikethrough~~

Molalla Municipal Code 17-3.6.100, Subsection B

***Determination of Sum.** The assurance of performance shall be for a sum determined by the City Engineer as required to cover the cost of the improvements and repairs, including related engineering and incidental expenses, plus reasonable inflationary costs. The assurance shall not be less than ~~150~~ **125** percent of the estimated improvement costs.*

EXHIBIT 2 – FINDINGS OF FACT

MMC 17-4.6.020 Procedure. Except for corrections, amendments to Development Code Text are Legislative (Type IV).

Staff Response: The proposed ordinance is an amendment to Development Code Text and as such follows a Legislative Type IV planning process.

MMC 17-4.1.050(C) Type IV (Legislative Decisions) Procedure.

Proposed Finding: The proposed ordinance was properly and timely noticed in accordance with all applicable laws and regulations as follows:

- 1. The planning official shall notify in writing the Oregon Department of Land Conservation and Development (DLCD) of legislative amendments at least 35 days before the first public hearing.*

Staff Response: DLCD notice was provided on February 2, 2024, exceeding the 35-day requirement

- 2. At least 20 days, but not more than 40 days, before the date of the first hearing on an ordinance that proposes to amend the comprehensive plan or any element thereof, or to adopt an ordinance for any zone change, a notice shall be prepared in conformance with ORS 227.175 and mailed to:*
 - a. Each owner whose property would be directly affected by the proposal (e.g., rezoning or a change from one Comprehensive Plan land use designation to another), see ORS 227.186 for instructions;*
 - b. Any affected governmental agency;*
 - c. Any person who requests notice in writing; and*
 - d. For a zone change affecting a manufactured dwelling park, all mailing addresses within the park, in accordance with ORS 227.175.*

Staff Response: The proposed change ordinance does not modify the comprehensive plan, nor does it constitute a zone change or modify use allowances within any zone. Measure 56 noticing requirements do not apply.

- 3. At least 10 days before the scheduled City Council public hearing date, public notice shall be published in a newspaper of general circulation in the city and the City's website.*

Staff Response: This proposed ordinance was appropriately and timely noticed in the paper and online on 3/27/24, and 03/29/2024 respectively; more than 10 days prior to the City Council Public Hearing date of 4/10/24.

MMC 17-4.6.030 Amendments to Code; Criteria

Planning Commission review and recommendation, and City Council approval, of an ordinance amending the Zoning Map, Development Code, or Comprehensive Plan shall be based on all of the following criteria:

- A. *If the proposal involves an amendment to the Comprehensive Plan, the amendment must be consistent with the Statewide Planning Goals and relevant Oregon Administrative Rules;***

Proposed Finding: The proposal does not involve an amendment to the Comprehensive Plan.

This criterion is not applicable.

- B. *The proposal must be consistent with the Comprehensive Plan (the Comprehensive Plan may be amended concurrently with proposed changes in zoning);***

Proposed Finding: Goal 11 in the Molalla Comprehensive Plan addresses public facilities. Public Facilities Goals within Goal 11 are as follows:

- *To plan and develop a timely, orderly, and efficient arrangement of public facilities and services to serve as a framework for urban development.*
- *To ensure livable and complete neighborhoods – with adequate sanitary sewer, water, storm drainage, transportation, park and school facilities.*
- *To ensure that development pays its fair share for needed public facilities as called for in adopted plans.*

The proposed change to the Molalla Municipal Code changing the required performance bond assurance from 150% of the improvement cost to 125% of the improvement cost still ensures that the City is covered for an amount substantially more than the proposed improvement costs should a developer fail to perform. As such, the proposed change does not impact the City's ability to meet the public facilities development goals within Goal 11 while reducing a cost burden to development consistent with Goal 9 Economic Development and Goal 10 Housing.

Goals 1-8 and Goals 12-14 do not apply.

This criterion is met.

- C. *The City Council must find the proposal to be in the public interest with regard to community conditions; the proposal either responds to changes in the community, or it corrects a mistake or inconsistency in the subject plan or code;***

Finding: This proposal corrects an inconsistency between the Municipal Code and Public Works Standards. There is currently a discrepancy between the Public Works Standards and Molalla Municipal Code for the amount that an applicant is required to provide for a performance bond assurance for public improvements. In the Molalla Public Works Standards the required assurance is 125% of the improvement costs and in the Municipal Code the requirement is 150% of the improvement costs. This ordinance serves to cure that discrepancy in a way that lowers development costs without compromising the City's ability to develop its infrastructure.

This criterion is met.

D. The amendment must conform to Section 17-4.6.050 Transportation Planning Rule Compliance

Finding: The Transportation Planning Rule applies to "Proposals to amend the Comprehensive Plan or Zoning Map." The subject proposal affects neither the Comprehensive Plan nor the Zoning Map.

This criterion does not apply.