

## ARTICLE 17

**PUBLIC RIGHTS OF WAY IMPROVEMENTS**

## SECTION:

- 12-17-01: Legislative Purpose
- 12-17-02: Minimum Improvements Required
- 12-17-03: Rules And Regulations
- 12-17-04: Deferral Standards
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- 12-17-06: Financial Guarantee Requirements
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12-17-01: **LEGISLATIVE PURPOSE:** The city council finds that the improvement of previously unimproved real properties increases pedestrian and vehicular traffic to and from said properties, necessitates a provision for the delivery of water and disposal of sanitary sewage, necessitates the provision for the control of stormwater, surface water and other drainage to ensure the orderly flow of surface waters for the protection of adjoining properties and the protection of roads and streets servicing said property; and therefore it is hereby found to be in the best interest of the health, safety and welfare of the citizens of Caldwell to require certain minimum road improvements and right of way dedication, the installation of curbs, gutters and sidewalks, and to require a connection to the city sewer and water systems (when available) and to facilitate ready connection to city services (when not presently available) as a condition precedent to obtaining a building permit and in this regard to regulate the placement of underground utilities. (Ord. 2794, 7-20-2009)

12-17-02: **MINIMUM IMPROVEMENTS REQUIRED:** It shall be unlawful and there shall be no development and/or construction and/or special use permit upon any land located adjacent to or adjoining unimproved, partially improved, or master planned public rights of way, nor shall there be issued a building permit to any person who seeks development or construction upon said lands unless the owner and/or the developer of such land constructs minimum improvements upon public

rights of way located adjacent to or adjoining such land as are specified and provided for in the rules and regulations for minimum construction requirements provided herein.

- (1) This section does not apply to any residential premises having existing development with an existing structure of over four hundred (400) square feet of floor area, nor does this section apply to any commercial and/or industrial premises wherein there is proposed construction development which is either an enlargement or an extension of floor area of less than forty percent (40%) of an existing structure.
- (2) Any owner and/or developer claiming an exemption pursuant to subsection (1) of this section must file an application with the Caldwell city engineer for an exemption together with sufficient proof to establish the owner's and/or developer's right to the exemption.
- (3) This section does not apply to any development which qualifies as a subdivision under the Caldwell subdivision ordinance (chapter 11 of this code). (Ord. 2794, 7-20-2009)

12-17-03: **RULES AND REGULATIONS:** Rules and regulations for minimum construction requirements and right of way widths are required by this article as follows:

- (1) Minimum right of way widths for each classification of street shall be as required under the Caldwell subdivision ordinance (chapter 11 of this code). At the discretion of the Caldwell city engineer, the right of way required for dedication may be reduced to half minimum right of way width, on the side of centerline for which the building permit is being applied, less already existing dedicated right of way, and provided sufficient right of way exists on the opposite side of centerline to construct half of design street section plus seven and one-half feet (7 $\frac{1}{2}$ ').
- (2) Improvements within right of way or site adjacent master planned right of way shall be constructed in compliance with the current city of Caldwell supplemental specifications to the Idaho standards for public works construction and applicable sewer, water, trails/pathways, and transportation master plans (detached single-family residential may not be required to comply with sewer and water master plans if waived by the city engineer).

- (3) Sidewalk and curb and gutter shall be provided on the street frontage on the side of centerline for which the building permit is being applied, and shall be constructed in compliance with the current city of Caldwell supplemental specifications to the Idaho standards for public works construction.
- (4) Building permits shall only be issued for parcels or lots conforming to chapters 10 and 11 of this code.
- (5) Structures being constructed pursuant to a building permit shall be connected to public sewer and/or water in conformance with the rules for such connections as prescribed in chapter 4 of this code.
- (6) Structures being constructed pursuant to a building permit shall be served by a storm disposal system designed and constructed in conformance with the current city of Caldwell "Storm Water Management Manual". (Ord. 2794, 7-20-2009)

12-17-04: **DEFERRAL STANDARDS:** The Caldwell city council may, upon recommendation from the city engineer, defer the requirement for sidewalk, curb and gutter, and/or street construction for an unspecified period of time providing all of the following conditions are met:

- (1) The property is not located on an existing arterial street;
- (2) There is no paved street and/or curb and gutter located within three hundred feet (300') of the building footprint's closest edge projected perpendicular to the right of way line. Cases may be escalated by the city engineer to the city council for consideration in instances where the city engineer deems it commendable to allow deferral for businesses or residences subject to this section closer to non-adjacent curb and gutter or pavement improvements than three hundred feet (300'), provided the city engineer finds, on a case by case basis, that hardship or good cause exists for such allowance;
- (3) An agreement by and between the city and the owner is recorded at the developer's expense wherein the owner agrees as follows:
  - A. To voluntarily annex when legally able to do so (if not in corporate limits).
    - 1. Submit an application for annexation with applicable fees to be held until such time as annexation becomes available.

B. To the installation of the sidewalk, curb and gutter, and street improvements at the expense of the owner after annexation (if annexation is applicable) and upon sixty (60) days' notice by the city.

C. That no temporary or permanent structure or landscaping will be added which shall impede pedestrian access in the area of the future sidewalk.

D. To participate in any local improvement district (LID) formed for the purpose of completing any or all such improvements upon subject frontage.

E. To compliance with the terms of this section, the violation of which shall be subject to penalty as outlined in section 01-01-05 of this code. (Ord. 2794, 7-20-2009)

12-17-05: **IMPROVEMENT PLANS:** The owner and/or developer of any lands governed by this article shall submit three (3) sets of all on and off site improvement plans, as prepared and stamped by a professional engineer licensed in the state of Idaho, which plans shall include plans and profiles for street improvements, sidewalk, curb and gutters, sewer system, water system, and/or storm sewers which shall be filed with the city engineer along with any applicable plan review fees; and which plans shall be reviewed by the city engineer for compliance with this article and any rules and regulations set forth herein. In the event the city engineer finds that the plans are in compliance, the city engineer shall so certify to the building official. In the event the city engineer finds that the plans are not in compliance, he shall so state and advise the owner and/or developer of the specifics of the failure of compliance. Once the city engineer has approved said plans, a preconstruction meeting shall be held prior to commencement of any construction on site. Preconstruction meetings, construction, and inspections shall take place as outlined in section 11-04-04 of this code. (Ord. 2794, 7-20-2009)

12-17-06: **FINANCIAL GUARANTEE REQUIREMENTS:** Prior to the city engineering department's signature on a permanent certificate of occupancy, all improvements by the owner and/or developer as required herein shall be required to be completed prior to the final inspection by and subsequent approval of the city engineering department. The owner and/or developer may, in lieu of actual construction, file with the city a financial guarantee.

- (1) Financial guarantees shall be in the form of:
  - A. Cash deposited with and held by the city pending final completion of the improvements as required in this article; or
  - B. Cash backed irrevocable letter of credit, drawn from a financial institution located within fifty (50) miles of the city, that has been submitted to and accepted by the city engineer and is irrevocable until final completion of all required improvements as stated within this article;
  - C. Alternate forms of financial guarantee may be accepted by the city upon a finding by both the city attorney and the city engineer that such alternate form of financial guarantee is in the best interest of the city.
- (2) Financial guarantees shall be submitted to and accepted by the city engineer prior to the city engineering department's signature on the permanent certificate of occupancy.
- (3) The financial guarantee shall be an amount equal to one hundred ten percent (110%) of the city engineer's estimate of cost on the remaining work as required in this article and shall include inflation, city bidding disadvantage and city project management.
  - A. Estimated cost on remaining work as required in this article shall be determined in part by detailed bids from the owner/developer's contractors as issued on said contractors' letterhead and submitted to the city engineer and totaled. To that total, an allotment of five percent (5%) for inflation, ten percent (10%) for city bidding disadvantage, and twelve percent (12%) for city project management is figured and then added to the total bid amounts. Then one hundred ten percent (110%) is calculated and that is the financial guarantee amount.
  - B. Remaining work as required in this article shall be determined by the engineering department in the form of a punchlist which shall be compiled by the engineering department following an inspection by the engineering department. Remaining work shall not include anything other than what is required in this article.
- (4) The financial guarantee is good for twelve (12) months only. If construction of improvements as required in this article has not been completed within twelve (12) months of submittal of the financial guarantee, remaining work as required in this article shall be

completed by the city and the construction costs recovered from the financial guarantee.

- (5) Financial guarantees shall be written to allow the city to draw upon the financial guarantee at any time at the discretion of the city engineer as well to allow multiple draws by the city.
- (6) Financial guarantees shall not be released by the city unless and until all of the improvements as required in this article (including required dedications) have been completed by the owner/developer and accepted by the city engineer and by any other applicable agencies or city departments responsible for acceptance and maintenance. (Ord. 2794, 7-20-2009)

12-17-07: **NUISANCE:** Any improvements placed upon real property subject to this article without the developer and/or owner having complied with the terms and conditions of this article shall be considered a nuisance and the city may apply to the district court for an injunction ordering the cessation of all construction activity and/or the removal of all construction which occurred in violation of this article. (Ord. 2794, 7-20-2009)