

ORDINANCE 2908

AN ORDINANCE OF THE CITY OF LAKE OSWEGO AMENDING LOC 50.06.008 UTILITIES, LOC 50.07.003 REVIEW PROCEDURES, LOC 50.07.004 ADDITIONAL SUBMITTAL REQUIREMENTS; AND ADOPTING FINDINGS (LU 22-0031).

WHEREAS, notice of the public hearing for consideration of this Ordinance was duly given in the manner required by law; and

WHEREAS, development mitigation requirements are based on legal principles and consideration of both policy and site-specific factors, and any required public improvements must be reasonably related and roughly proportional to the anticipated impact of the proposed development; and

WHEREAS, *ministerial* development decisions are currently not subject to mitigation requirements or conditions of approval under LOC 50.07.003.5, and there is currently no opportunity in the Community Development Code (“code”) to require mitigations or offsetting public improvements for ministerial residential development; and

WHEREAS, in June 2022, the Lake Oswego City Council adopted code amendments in order to comply with House Bill 2001 (2019) by allowing the development of “middle housing” – including duplexes, triplexes, quadplexes, townhomes and cottage clusters – within zones that previously were limited to development of detached single-family dwellings (LU 21-0007); and

WHEREAS, prior to adoption of the middle housing code amendments, the development of middle housing types with three-or-more units was classified as a *minor* development decision, which allows the City to require mitigation of impacts on public infrastructure by public improvements to offset the impacts of development through conditioning authority; and

WHEREAS, the code amendments proposed to the City’s development review processes would allow mitigation of impacts on public infrastructure to be required as a part of a *ministerial* development decision for detached single-family dwellings and, similarly, for middle housing, which would therefore be under the same process used for detached single-family dwellings, as required under Division 46 of Chapter 660 of the Oregon Administrative Rules; and

WHEREAS, ORS 197.307(4) requires that all standards and criteria applicable to housing be “clear and objective,” while also permitting the use of an alternative, discretionary optional track; and

WHEREAS, a public hearing before the Planning Commission was held on October 10, 2022, at which the staff report, testimony, and evidence were received and considered; and

WHEREAS, the Planning Commission has recommended that LU 22-0031 be approved by the City Council; and

WHEREAS, a public hearing on LU 22-0031 was held before the City Council of the City of Lake Oswego on May 16, 2023, at which the staff report, testimony, and evidence were received and considered; and

WHEREAS, the Council finds that the Community Development Code should be amended to establish a new process to require mitigation for ministerial residential development through the provision of public improvements to offset the impacts of the development on public infrastructure;

The City of Lake Oswego ordains as follows:

Section 1. The City Council hereby adopts the Findings and Conclusions (LU 22-0031), attached as Attachment 1.

Section 2. The Lake Oswego Code is hereby amended by adding the new text shown in double underlined type and deleting text shown in ~~striketrough~~ type in Attachment 2, dated 10/7/22.

Section 3. Severability. The provisions of this ordinance are severable. If any portion of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance.

Enacted at the meeting of the Lake Oswego City Council of the City of Lake Oswego held on the 6th day of June, 2023.

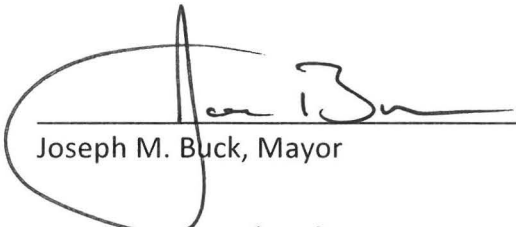
AYES: Mayor Buck, Rapf, Corrigan, Wendland, Mboup, Verdick

NOES: None

ABSENT: None

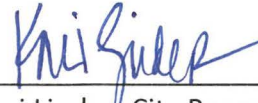
ABSTAIN: None

EXCUSED: Afghan




Joseph M. Buck, Mayor
Dated: June 7, 2023

ATTEST:



Kari Linder, City Recorder

APPROVED AS TO FORM:



Ellen Osoinach, City Attorney

BEFORE THE CITY COUNCIL

OF THE CITY OF LAKE OSWEGO

A REQUEST FOR AMENDMENTS TO THE COMMUNITY DEVELOPMENT CODE FOR THE PURPOSE OF ESTABLISHING A NEW PROCESS TO REQUIRE MITIGATION FOR MINISTERIAL DEVELOPMENT THROUGH THE PROVISION OF PUBLIC IMPROVEMENTS AND ADOPTING ORDINANCE 2908.

LU 22-0031
CITY OF LAKE OSWEGO
FINDINGS AND CONCLUSIONS

NATURE OF PROCEEDINGS

This matter came before the Lake Oswego City Council on the recommendation of the Planning Commission for legislative amendments to the Community Development Code (CDC) for the purpose of establishing a new process to require mitigation for ministerial development through the provision of public improvements to offset the impacts of the development on public infrastructure. Proposed amendments are to:

- LOC 50.06.008 Utilities
- LOC 50.06.008.1 Applicability
- LOC 50.06.008.3 Standards for Approval
- LOC 50.06.008.4 Standards for Construction
- LOC 50.06.008.6 Cost of Improvements
- LOC 50.07.003.9 Review Procedures – Improvements and Security
- LOC 50.07.003.13.e.ii Review Criteria for Ministerial Developments
- LOC 50.07.003.14.a Minor Development Classification
- LOC 50.07.004.11 Additional Submittal Requirements – Utilities

HEARINGS

The Planning Commission held a public hearing and considered this application at its meeting on October 10, 2022. On October 18, 2022, the Council held a study session where they directed the Commission to delay their final recommendation and directed staff to gather additional information. On March 21, 2023, the Council held a subsequent study session,

1 received an update from staff, and directed staff to move forward with the proposed
2 amendments. The Commission adopted its Findings, Conclusion and Order recommending
3 approval of LU 22-0031 on April 24, 2023.

4 The City Council held a public hearing and considered the Commission’s
5 recommendation on May 16, 2023.

6

7 **CRITERIA AND STANDARDS**

8 A. Transportation Planning Rule (Chapter 660, Division 12)

9 OAR 660-12-0060(1)

10 B. City of Lake Oswego Comprehensive Plan Policies:

11 *Land Use Planning*

12 Policies A-1(e), A-2(c), B-2, B-3, B-4, B-7(a), and C-5

13

14 *Community Culture*

15 Policies B-2, B-3, C-1, and C-7

16 *Community Health and Public Safety*

17 Public Facilities and Services: Surface Water Management Policy 9

18 Public Facilities and Services: Water Treatment and Delivery Policies 2(a) and 2(b)

19 Public Facilities and Services: Wastewater Collection and Treatment Policy 2

20

21 *Glenmorrie Neighborhood Plan*

22 Open Spaces, Historic & Natural Areas Policy 4

23 *Lake Forest Neighborhood Plan*

24 Land Use Policy 3

25 Open Spaces, Scenic and Historic Resources and Natural Resources Policy 13

26 Air, Water and Land Resources Policy 2

27

28 *Lake Grove Neighborhood Plan*

29 Open Spaces, Scenic and Historic Resources and Natural Resources Policy 12

30 *Waluga Neighborhood Plan*

31 Open Spaces, Scenic and Historic Areas Policy 12

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33 C. City of Lake Oswego Community Development Code

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35 LOC 50.07.003.1.b

Burden of Proof

36 LOC 50.07.003.3.c

Notice of Public Hearing

LOC 50.07.003.4

Hearings before a Hearings Body

LOC 50.07.003.5

Conditions of Approval

LOC 50.07.003.7

Appeals

LOC 50.07.003.15

Major Development (excluding subsection d.ii)

LOC 50.07.003.16.a

Legislative Decision Defined (Quasi-judicial Comp. Plan)

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LOC 50.07.003.16.c
LOC 50.07.003.16.d
LOC 50.07.003.16.e

Map, Zone Map, and CDC Amendments to be processed
via Major Developments Procedures)
Required Notice to DLCD
Planning Commission Recommendation Required
City Council Review and Decision

FINDINGS AND REASONS

The City Council incorporates the Planning Commission Staff Report dated September 1, 2022 (Exhibit D-1) for LU 22-0031, with all exhibits, the Supplemental Staff Memo dated October 7, 2022 (Exhibit D-2), the Findings, Conclusions and Order approved on April 24, 2023 (Exhibit B-1), and the staff Council Report dated May 11, 2023, as support for the Council’s decision.

CONCLUSION

The City Council concludes that LU 22-0031, as recommended by the Planning Commission, complies with all applicable criteria and should be approved. The Council also concludes that proposed Ordinance 2908, which implements LU 22-0031, should be enacted.

LOC 50.06 DEVELOPMENT STANDARDS

50.06.008 UTILITIES; STREETS / SIDEWALKS (PATHWAYS) AND OTHER PUBLIC INFRASTRUCTURE

1. APPLICABILITY

All development that:

a. requiring For Residential and Non-residential Development: Requires connection to utilities or connection to utilities is elected; or,-

b. For Residential Development: Increases residential density by additional dwelling units or creates lots by land division or lot line adjustment, or street / sidewalk (pathway) or other public infrastructure is required or elected; or

Exception: Residential density not applicable when the additional density is limited to either one detached dwelling unit on a vacant lot, an accessory dwelling unit or a duplex on an existing lot), or middle housing created through the addition to, or conversion of, an existing detached single-family dwelling. "Conversion" means a remodel of an existing single-family dwelling that creates middle housing but does not involve "demolition" as defined in LOC 45.12.100.

c. For Non-residential Development – Minor or Major Development: See LOC 50.07.003.5.a.iii.

2. DEVELOPMENT REVIEW

The review procedures ~~for utilities~~ are located in LOC 50.07.004.11, Utilities; Streets / Sidewalks (Pathways) and Other Public Infrastructure.

3. STANDARDS FOR APPROVAL

a. Dedication Required: Dedication of Easements-easements or right-of-way for utilities-, streets / sidewalks (pathways) and other public infrastructure, and associated and related facilities, shall be provided by the property owner. Easements for anticipated future utilities or extensions may be required by the City Manager. See subsection 3.d.ii for additional dedication requirements relating to Streets / Sidewalks (Pathways) and Other Public Infrastructure

b. Designs and Specifications Required:

i. Source of Design and Specifications: All designs and construction specifications shall be prepared by a registered engineer, unless waived by the City Engineer or Public Works Director, in which case the applicant shall comply with the City's design plans, specifications and details. The City's design plans and specifications on file with the Engineering Dept. and Public Works Dept. include:

(1). Design standards within Transportation System Plan and Comprehensive Plan

(2). LOC Chapters 50 and 42.

(3). Engineering Design Standards, or other Engineering and Public Works Depts. Plans, Specifications (including technical specifications and standard details) and Policies.

(4). Rules and regulations of the Public Utility Commissioner of the state relating to the installation and safety of underground lines, plant, system, equipment and apparatus.

(5). Other applicable standards.

ii. Sanitary Sewer:

(1). Design shall take into account the capacity and grade to allow for future extension beyond the development, and where required by the City Manager, shall be extended to the upstream property line to allow for such future extension unless waived by the City Manager upon a finding that future extension is not likely to occur because of topography, existing development patterns, sensitive lands, or other barriers to extension.

(2). Sanitary sewers shall be designed to serve the development and to connect the development to existing mains.

(3). Upsize inadequate sewer lines when needed for adequate sewage flow from the development per accepted Engineering standards.

(4). All sanitary sewer designs shall include appurtenant structures, such as:

(a). Pipe size and materials;

(b). Manholes;

(c). Cleanouts;

(d). Backfill requirements;

(e). Service laterals.

iii. Water System

(1). Design shall provide for extension beyond the development to adequately grid or loop the City system unless waived by the City Manager upon a finding that gridding or looping is not feasible because of topography, existing development patterns, sensitive lands, or other barriers.

(2). Design shall include materials, size and location of water mains, service lines, valves and hydrants. Hydrants shall be located as required by the Oregon Fire Code.

(3). Upsize inadequate water lines when needed for adequate water flow to the development per accepted Engineering standards.

iv. Streets, Sidewalk (Pathways) and Other Street Public Infrastructure

Design Streets, Sidewalk (Pathways) and other Street Public Infrastructure in accordance with subsection 3.b.i:

- (1). Any special pedestrian ways and bicycle paths;
- (2). Street name signs;
- (3). Traffic control signs and devices;
- (4). Street lights, which shall be served from a source of power; and
- (5). Streets, Sidewalks (Pathways), Curb and Gutters or Other Street Improvements.

Where sidewalks (pathways), and curbs and gutters or other street improvements, (e.g., gravel shoulders, drainage swales) are required, they shall be designed to be on the site's frontage that abuts the street(s), or across the street from the site if City Public Facility Master Plans direct that they be across the street from the development.

v. Additional Public Infrastructure. Additional or alternative public infrastructure shall be designed in accordance with applicable Plans and Specifications referenced in subsection 3.b.i.

ac. Utilities Required

The following utilities, whether on- or off-site, are required when this standard is applicable per subsection 1. shall be provided to all development in the City of Lake Oswego, in accordance with City Engineering Division's policies, design standards, technical specifications and standard details:

- i. Sanitary sewer systems;
 - (1). Sanitary sewers shall be installed to serve the development and to connect the development to existing mains.
- ii. Water distribution systems;
 - (1). All development shall be served by service lines, main water lines, valves and fire hydrants which are connected to City mains or the water mains of water districts which provide service within the City.
 - (2). One water service line shall be provided to each lot in a development. Each structure with plumbing shall connect to the water system. The system shall be designed to supply fire flow requirements of LOC Chapter 45.
- iii. Sidewalks and any special pedestrian ways and bicycle paths;
- iv. Street name signs;
- v. Traffic control signs and devices;
- vi. Street lights, which shall be served from an underground source of power;
- viii. Underground utility and service facilities, as required;

Utility easement widths shall be to the satisfaction of the franchise utility companies. For City utilities, the utility easements shall be a minimum of 15 ft. (seven and one-half ft. on each side) in width on easements not adjacent to a street right-of-way per LOC 42.18.1030(1)(c), unless otherwise approved by the City Engineer. A greater width is required when necessary to facilitate utility installation and maintenance, as determined by the City Manager.

~~viii. — Streets;~~

~~ix. — Provision for underground T.V. cable.~~

~~The City Manager may require that utility designs be prepared by a registered engineer.~~

~~b. — Easements or right-of-way for utilities and associated and related facilities shall be provided by the property owner. Easements for anticipated future utilities or extensions may be required by the City Manager.~~

~~c. — Sanitary sewers shall be installed to serve the development and to connect the development to existing mains.~~

~~d. — Design shall take into account the capacity and grade to allow for desirable future extension beyond the development, and where required by the City Manager, extended to the upstream property line to allow for such future extension.~~

~~e. — All sanitary sewers and appurtenant structures shall be designed and constructed in conformance with City Engineering Division's policies, design standards, technical specifications and standard details, and shall include, but not be limited to, such items as:~~

~~i. — Pipe size and materials;~~

~~ii. — Manholes;~~

~~iii. — Cleanouts;~~

~~iv. — Backfill requirements;~~

~~v. — Service laterals.~~

~~f. — All development shall be served by service lines, main water lines and fire hydrants which are connected to City mains or the water mains of water districts which provide service within the City.~~

~~g. — Design of water system improvements shall take into account provision for extension beyond the development to adequately grid or loop the City system.~~

~~h. — One water service line shall be provided to each lot in a development, or if the development does not include lots, to each building in the development. Each structure with plumbing shall connect to the water system. The system shall be designed to supply fire flow requirements of LOC Chapter 45.~~

d. Streets, Sidewalk (Pathways) and Other Street Public Infrastructure; Additional Public Infrastructure.

i. The following streets, sidewalks (pathways), other street public infrastructure, and additional public infrastructure shall be installed, when required by City codes or plans referenced in subsection 3.b.i, whether on- or off-site, when this standard is applicable per either subsection 1.b or 1.c.

(1). Any special pedestrian ways and bicycle paths;

(2). Street name signs;

(3). Traffic control signs and devices;

(4). Street lights, which shall be served from a source of power; and

(5). Streets, Sidewalks (Pathways), Curb and Gutters or Other Street Improvements (e.g., gravel shoulders, drainage swales).

(6). Additional Public Infrastructure.

ii. Additional Street Right-of-Way Dedication Requirements. If existing rights-of-way for streets contiguous to the property are not adequate in width to meet the referenced standards in subsection 3.b.i, the applicant shall dedicate right-of-way sufficient to allow streets that are adequate in width and that connect to existing public streets and sidewalks/pathways and related public infrastructure.

Dedication of the minimum right-of-way is to that required for the minimum width necessary as provided in the referenced Plans and Specifications in subsection 3.b.i. for streets where the City is the road authority. For streets where another governmental entity is responsible for the design and construction standards of a street, e.g., road authority per ORS 810.010 or county authority over county roads per ORS 368.016, then dedication to the minimum width is that required by the applicable governmental standards.

The following Editor's Note and associated map are NOT part of the adopted Ordinance but will be included in the online code version for the reader's convenience.

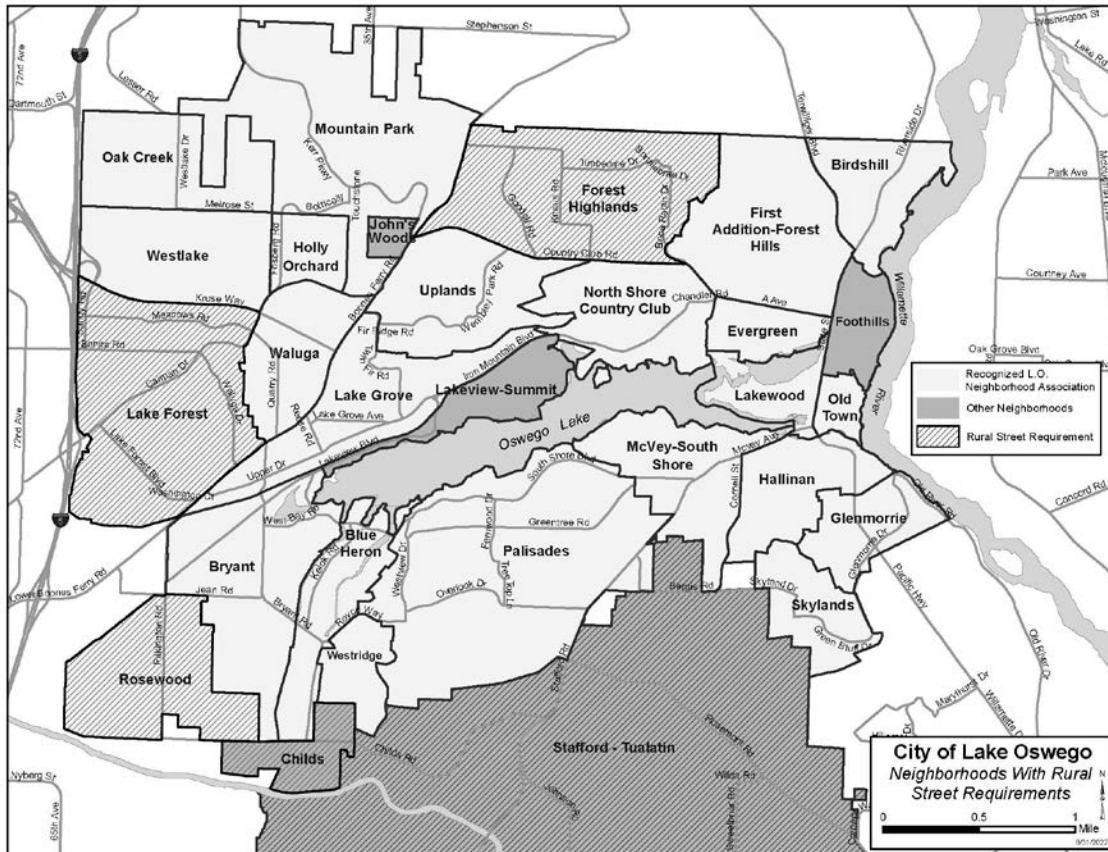
Editor's Note: The Engineering Dept.'s Urbanizing Rural Fringe and Transition Neighborhoods Policy is presently applicable to the area shown below, except for streets where the County is the road authority.

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Urbanizing Rural Fringe and Transition Neighborhoods



End of Editor's Note

iii. Street Paving. Streets shall be designed and pavement installed from the continuation of the roadway centerline out to the applicable stated distance as provided in the relevant Plans and Specifications.

e. City Engineer Reduction or Elimination. The City Engineer may reduce or eliminate the specific utilities, streets / sidewalks or other public infrastructure requirements of this subsection 3 upon a finding that:

i. Existing infrastructure meets the standard,

ii. It is not the appropriate time to connect the required utilities, streets / sidewalks or other public infrastructure with other nearby utilities, streets / sidewalks or other public infrastructure. In that event, the owner shall execute and record a covenant that the owner shall construct the specific utilities, streets / sidewalks or other public infrastructure upon notice by the City Manager, or if permitted by the City Manager, in lieu of a covenant, the owner shall execute a waiver of remonstrance for the formation of a local improvement district for said utilities, streets / sidewalks or other public infrastructure, or

iii. The required utilities, streets / sidewalks (pathways) and other public infrastructure must be reduced because the requirement would exceed the rough proportionality legally permissible, considering the factors listed in subsection 7.b, to the extent stated in subsection 7.c.

4. STANDARDS FOR CONSTRUCTION

~~a. Utility easement widths shall be the minimum width possible to facilitate utility installation and maintenance, and shall be a minimum of 15 ft. (seven and one-half ft. on each side) in width on easements not adjacent to a street right-of-way per LOC 42.18.1030.1.c, unless otherwise approved by the City Engineer.~~

~~ba.~~ Utility construction within easements shall minimize disturbance to existing conditions, especially trees and other vegetation.

~~cb.~~ Any disturbed areas within easements shall be restored to a condition similar to the condition prior to construction, including the replacement of plants of similar species as those removed or damaged. Replacement trees shall be of similar species and be a minimum of one and one-half in. caliper.

~~cc.~~ Utilities to the development and existing utilities along the development's street frontage shall be installed underground unless exempted by the City Manager for any of the following reasons:

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~~cd.~~ Sanitary Sewers. Capacity, grade and materials shall be as approved by the City Manager. Minimum size shall be eight in. diameter with six in. diameter allowed at the terminus of a sewer line.

~~f. All sanitary sewers and appurtenant structures shall be designed and constructed in conformance with City Engineering Division's policies, design standards, technical specifications and standard details, and shall include, but not be limited to, such items as:~~

~~i. Pipe size and materials;~~

~~ii. Manholes;~~

~~iii. Cleanouts;~~

~~iv. Backfill requirements;~~

~~v. Service laterals.~~

~~ge.~~ Service Laterals. One service lateral shall be provided to each lot in a development, or if the development does not include lots, to each occupied building in the development.

~~h. Design, including materials, size and location of water mains, service lines, valves and hydrants, shall be in accordance with City Engineering Division's policies, design standards, technical specifications and standard details and be approved by the City Manager. Hydrants shall be located as required by the Oregon Fire Code.~~

~~ie. All facilities as described in this section shall be constructed in compliance with the rules and regulations of the City Manager, and the rules and regulations of the Public Utility Commissioner of the state relating to the installation and safety of underground lines, plant, system, equipment and apparatus.~~

5. STANDARDS FOR MAINTENANCE

None.

6. COST OF IMPROVEMENTS

The cost of all utility, street / sidewalk (pathway) and other public infrastructure improvements shall be borne by the developer.

[Cross-Reference: See also LOC Chapter 39 – System Development Charges.]

7. LIMITATION TO REQUIREMENT TO DESIGN AND INSTALL REQUIRED UTILITIES; STREETS / SIDEWALKS (PATHWAYS) AND OTHER PUBLIC INFRASTRUCTURE.

a. Application for Limitation. If the applicant asserts that the required Utilities; Streets / Sidewalks (Pathways) and Other Public Infrastructure cannot legally be required, as a requirement or condition of structural permit or development review approval, to provide dedications or improvements at the level otherwise required by this LOC 50.06.008, then the applicant shall file a minor development application to seek a limitation on the requirement for installation of Utilities; Streets / Sidewalks (Pathways) and Other Public Infrastructure.

b. Rough Proportionality Report. In addition to the requirements for a minor development application per LOC 50.07.003.1 and .14, the structural permit or development review application shall include a rough proportionality report, prepared by a qualified civil or traffic engineer, as appropriate, showing:

i. The estimated extent, on a quantitative basis, to which the improvements will be used by persons served by the building or development, whether the use is for safety or for convenience;

ii. The estimated level, on a quantitative basis, of improvements needed to meet the estimated extent of use by persons served by the building or development;

iii. The estimated impact, on a quantitative basis, of the building or development on the public infrastructure system of which the improvements will be a part;

iv. The estimated level, on a quantitative basis, of improvements needed to mitigate the estimated impact on the public infrastructure system; and

c. Amount of Limitation. If the reviewing authority concludes that the required utilities, streets/sidewalks (pathways) and other public infrastructure must be limited because the requirement would exceed the rough proportionality legally permissible, the applicant shall, instead, be required to provide dedications and improvements on-site or off-site that are roughly proportional to what is needed to mitigate the impacts of the building, structure or development upon the public infrastructure system, and for the convenience of persons served by the building, structure, or development.

LOC 50.07.003 REVIEW PROCEDURES

9. IMPROVEMENTS AND SECURITY

a. **Obligation to Construct Public Facilities; Security; Acceptance of Improvements**

i. When an applicant for a development permit has an obligation to construct or improve public facilities imposed by a standard or criteria or as a condition of the permit, the obligation shall be fulfilled prior to the issuance of a permit for building construction on the site unless the City Manager has granted a waiver in writing of this requirement and the applicant has filed with the City Manager an acknowledgment of the obligation. The acknowledgment shall state the nature of the obligation, the time within which the obligation is to be met, identify the property subject to the obligation and contain a security deposit in a form acceptable to the City Manager and in an amount equal to 120% of the cost of fulfilling the obligation as estimated by the City Manager for the year in which fulfillment of the obligation is anticipated. A sufficient performance bond, cash deposit, or letter of credit are acceptable forms of security. Return of the security deposit shall be conditioned upon the applicant carrying out the obligation.

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13. **MINISTERIAL DEVELOPMENT DECISIONS**

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e. **Review and Decision**

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ii. **Review Criteria for Ministerial Developments**

A ministerial development shall comply with the requirements of the zone, including overlay zones, in which the subject lot or parcel is located, the Stormwater Management Code (LOC Article 38.25) and, other than development that is classified as ministerial development per subsection 13.a.ii.(20) of this section, shall comply with the following sections of the development standards:

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(8) Utilities; Streets / Sidewalks (Pathways) And Other Public Infrastructure, LOC 50.06.008

14. **MINOR DEVELOPMENT DECISIONS**

a. **Minor Development Classification**

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ii. "Minor development" under subsection 14.a.i(1) of this section includes:

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(30) Limitation to Requirement to Design and Install Required Utilities; Streets /
Sidewalks (Pathways) and other Public Infrastructure. (LOC 50.06.008.7).

LOC 50.07.004 ADDITIONAL SUBMITTAL REQUIREMENTS

11. UTILITIES; STREETS / SIDEWALKS (PATHWAYS) AND OTHER PUBLIC INFRASTRUCTURE

For all applicable development or construction, the applicant shall submit:

a. A scaled utility plan of existing and proposed utilities shall be furnished to the City as part of any ~~major~~ development plan application ~~and shall include at least the following at 1" = 100' scale.~~

b. A scaled site plan showing the existing and proposed nature, size, and location of:

i. Street right-of-way and of street and sidewalk (pathways) paving or other suitable surface, curbs, gutters, drainage swales, as required by LOC 50.06.008.

ii. Other public infrastructure as required by LOC 50.06.008.

b. Easements and dedications shall be recorded in the final plat or plan or by separate instrument to serve the development ~~and each lot therein.~~