Town of Milton
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ORDINANCE NO. 2023-010

AN ORDINANCE TO AMEND SECTION 183-20 OF THE TOWN CODE, ENTITLED "CURBS, GUTTERS AND SIDEWALKS," REGARDING EXCEPTIONS AND WAIVERS.

WHEREAS, the Charter of the Town of Milton vests power in the Mayor and Town Council to provide for and preserve the health, peace, safety, cleanliness, ornament, good order and public welfare of the Town and its inhabitants; and

WHEREAS, the Mayor and Town Council has the power to regulate the use and enjoyment of, improve, erect, remove, repair or replace any new or present street, alley, water course, sewer, drain, aqueduct, or pipeline or portion thereof, or any new or present sidewalk, curb, or gutter or portion thereof within the Town, and to specify the grade thereof, the materials to be used in doing thereof and the manner in which the same shall be done; and

WHEREAS, the Mayor and Town Council has the power to determine that any sidewalk, curbing or paving adjacent to private property shall be constructed, replaced or repaired, or any or all of them, with the Town causing a notice to be sent to the owner along or in front of whose premises the same is to be done, particularly designating the nature and character thereof, thereby requiring the owner to cause such construction, repair or replacement, or any of them, to be done in conformity with said notice and according to Town specifications; and

WHEREAS, the Mayor and Town Council of the Town of Milton has previously found it necessary for furthering the aforementioned purposes to enact an ordinance regulating streets and sidewalks, codified as Chapter 183 of the Town Code, entitled "Streets and Sidewalks"; and

WHEREAS, the Mayor and Town Council of the Town of Milton may, from time to time, amend, supplement, or change the regulations codified in said chapter; and

WHEREAS, the Mayor and Town Council has received numerous requests for sidewalk waivers, notwithstanding a goal of creating a more "walkable" town that is friendly and safe for pedestrians; and

WHEREAS, the Mayor and Town Council received a recommendation from the Streets and Sidewalks Committee unanimously approved at its July 26, 2022 meeting to remove Subsection E of Section 183-20; and

WHEREAS, the Mayor and Town Council discussed the aforementioned recommendation at its November 7, 2022 meeting; and

WHEREAS, the Mayor and Town Council passed Ordinance No. 2022-016 at its December 5, 2022 meeting, with said ordinance removing the waiver provision of Section 183-20 of the Town Code; and

WHEREAS, the Mayor and Town Council have determined it more appropriate to allow for the possibility of a waiver, but in more defined, limited circumstances;

NOW THEREFORE, BE IT ENACTED AND ORDAINED, by the Mayor and Town Council of the Town of Milton, a majority thereof concurring, that the following revisions hereby be incorporated into Chapter 183 of the Town Code, entitled "Streets and Sidewalks," in Article I, entitled "Sidewalk Construction Standards":

Section 1. Amend § 183-20 with deletions shown by strike-through and additions shown by underline as follows:

Chapter 183. Streets and Sidewalks

Article I. Sidewalk Construction Standards

§ 183-20. Curbs, gutters and sidewalks.

A. Definition of new construction when applied to curbs, gutters and sidewalks. "New construction" is the improvement of a vacant parcel with a primary permitted structure, or if, in the opinion of the Code Officer, there is over 50% of alterations done on the existing primary structure or addition to the existing floor space of the primary structure equal to or greater than 25%, or the change of use of the property from a low- to no-volume pedestrian use to a higher volume pedestrian use (i.e., office to a coin-operated laundry mat, a single business in a structure to multiple businesses in the same structure).

B. Subdivisions and new construction. As a condition of approval or issuance of a building permit, all subdivisions and new construction shall be required to install curbs, gutters and sidewalks where no such improvements exist or where such improvements are in need of repair.

C. Specifications. Installation of curb, gutter and sidewalk improvements shall be in accordance with specifications as determined by the Town Council.

D. Repair. It shall be the responsibility of the owner to repair all sidewalks within, adjacent to or approximately parallel to the owners' property line although it may be situated wholly or partially in the Town right-of-way. The Town of Milton shall have oversight responsibilities, but not financial responsibilities for all curbs and gutters wherever situated within the Town limits.

<u>E. Exceptions. Waiver of the requirement for installation of curbs, gutters and sidewalks may be granted by the Town Council upon the property owner's showing that strict compliance with the requirements of this article or Article II of this chapter would result in extraordinary hardship to the owner because of unusual topography, drainage, lot size or shape, street width, right of way width, or other conditions that are not self-imposed, provided substantial justice may be done and the public interest secured. In no case shall any waiver be more than a minimum easing of the requirements, and in no instance shall it result in any conflict with Chapter 220, Zoning. Application shall be made on the prescribed form to the Town of Milton and submitted with supporting documentation, subject to any fee established in the currently effective Town Fee Schedule. Waiver may be conditioned on the requirement of future construction of the improvements when deemed appropriate by the Town Council.</u>

Section 2. This ordinance shall apply prospectively as of the date of its passage. This ordinance shall not have any effect on previously issued waivers under Section 183-20E, including the Town

Council's ability to require construction of the improvements when deemed appropriate by the Town Council.

I, **JOHN R. COLLIER** Mayor of the Town of Milton, hereby certify that the foregoing is a true and correct copy of the Ordinance adopted by the Town Council of the Town of Milton at its meeting held on the 9th day of October, 2023, at which a quorum was present and voting throughout and that the same is still in full force and effect.

MAYOR

SYNOPSIS

This ordinance amends Section 183-20 of Town Code, thereby returning the ability of property owners to request directly from Town Council a waiver from installing curbs, gutters and sidewalks when required under Chapter 183, provided the applicant demonstrates the codified standard. The Town may also elect to charge an application fee via the Fee Schedule. The standard largely tracks with the standard for the Council granting a waiver in the subdivision/land development context, and that in turn contains terms similar to variances in the zoning context. See § 188-34. The ordinance recognizes the validity of previously granted "sidewalk waivers," and continues to provide that any such waiver may include the condition that the Town Council require the improvements' construction in the future.