

**ORDINANCE NO. 461**

**A GENERAL ORDINANCE DELEGATING TO THE CITY MANAGER THE AUTHORITY TO ACCEPT CERTAIN DEVELOPMENT-RELATED DOCUMENTS FOR RECORDING ON BEHALF OF THE CITY WITHOUT FORMAL CITY COUNCIL ACTION, PROVIDING STANDARDS AND APPEAL TO THE CITY COUNCIL.**

WHEREAS, the land use decision and development review processes of the City frequently involve a permit applicant transferring or dedicating real property interests to the City or to the public or entering into agreements with the City for future development-related obligations and other covenants and restrictions; and

WHEREAS, the documents which fulfill these development-related obligations oftentimes involve routine items which must be promptly recorded in the public records, which necessitates official City, and therefore City Council, acceptance; and

WHEREAS, official City Council acceptance of development-related documents frequently involves delays in recording and permit issuance, which may result in unnecessary delays in the start of private development; and

WHEREAS, the City must exercise caution in officially accepting documents so as to avoid injury to others and possible exposure of the City to liability;

NOW, THEREFORE, THE CITY OF WILSONVILLE ORDAINS AS FOLLOWS:

Section 1. Purpose

(1) The purpose of this ordinance is to establish standards and expedite review and official acceptance and recording of documents submitted to the City as part of development-related obligations or conditions, so that recording of documents which require public notice will occur in a timely manner, City Council meetings can be devoted to policy making and other City obligations without the interruption of routine administrative tasks, delays which relate to awaiting official City Council approval of routine items may be reduced, and staff review of such documents will be thorough and systematized.

(2) This ordinance is also designed to assure that those documents and contracts, submitted to the City to fulfill development-related obligations are in acceptable form and minimize the City's exposure to liability.

(3) Nothing contained herein is intended to limit the City Council's authority to enter into or refuse agreements or accept or reject written instruments which do not strictly comply with the standards set forth in this ordinance, or which are not in the best interests of the City. Rather the standards set forth herein are intended to guide the City Manager in exercising authority to accept certain documents on behalf of the City without formal City Council action.

(4) This ordinance shall not apply to dedications of right-of-way or other property interests as part of a partition or subdivision plat or replat, which are otherwise required to be considered by the Planning Commission. Documents which fulfill conditions and dedications placed on such development approvals may be approved under the provisions of this ordinance.

(5) This ordinance is not intended to affect the rights of private individuals to enter into agreements with respect to real property.

Section 2. Definitions.

Unless the context clearly indicates a different meaning, the following definitions shall apply:

(1) City Engineer. The person appointed by the City Manager to perform the functions of the City Engineer as described in this ordinance or the City Engineer's designee.

(2) City Manager. The person appointed by the City Council as City Manager or the Manager's designee. Designation by the City Manager shall be by express appointment of the City Manager or the City Council, but need not be in writing.

(3) Conveyance. The transfer of land, or any estate or interest therein, made by deed or other instrument, signed by the person of lawful age from whom the estate or interest is intended to pass, or by the lawful agent or attorney of the person, and acknowledged or approved, and recorded without any other act or ceremony. (ORS 93.010)

(4) Dedication. A grant or appropriation of real property for or to a public use by the owner or the owner's authorized agent and accepted for such public use by or on behalf of the public wherein title to the property remains with the owner. For purposes of this ordinance, a dedication shall be considered valid only if written and signed by the owner or their agent and accepted by the City Manager or the Manager's designee.

(5) Deed. A written instrument signed by a grantor and delivered to the grantee whereby a present interest in specific real property is conveyed to the City or dedicated to the public.

(6) Developer. A person who applies to the City and obtains a permit to construct a permanent building or structure or to divide property for purposes of disposition of separate parcels, and either owns the affected property or acts as agent for the owner in the construction on or division of the property. Developer includes agents acting on behalf of the developer.

(7) Development. The act of applying for, obtaining and exercising a permit issued by the City to construct a permanent building or structure, or to divide property.

(8) Development Agreement. A written agreement, which is entered into with the City, is required by the City to be submitted as a condition of a development approval or permit, and is signed by the developer, and under which the developer agrees to cause specified public improvements to be constructed, to contribute a share of the construction costs for such improvements if they are constructed by the City or another, and to impose like obligations on future owners of the property, which is the subject of the development approval or permit.

(9) Document. An agreement between the City and a developer or a representation, acknowledgment, assurance or guarantee from a developer, or a deed or easement, submitted to the City in fulfillment of a development approval, by which a developer complies with a particular standard or condition imposed by the City pursuant to the City of Wilsonville Zoning and Development Code or an ordinance which implements the City of Wilsonville Zoning and Development Code. For purposes of this ordinance, documents include, but are not limited to, interim access agreements, acknowledgment of acceptance of conditions of approval, agreements to dedicate right-of-way in the future, subdivision compliance agreements, escrow agreements in lieu of corporate surety bonds, surety bonds and performance bonds.

(10) Easement. A non-possessory, irrevocable interest in the land of another which entitles the owner of the interest or the public to a limited use or enjoyment of the other's land and to protection from interference with this use. An easement may include, but is not limited to, the use of the property as right-of-way, greenway, slope or lateral or subjacent support, or for utility purposes, including, but not limited to, sanitary sewer, storm sewer and drainage, water, and roads; and unless indicated as temporary will be treated as permanent.

(11) Level 1 Environmental Assessment. Environmental Site Assessment Phase I ESA involves a detailed paper trail search where historic documents, city directories, historical topography, aerial photography, buildings and planning files are investigated to acquire all pertinent information that can be reasonably ascertained with no sampling of soil or groundwater. Also referred to as a limited environmental survey.

(12) Level 2 Environmental Assessment. Phase II ESA involves subsurface investigation in the form of boring or drilling into the soil and groundwater to determine what elements (contamination) may be present. Analytical testing of the samples is involved, hiring subcontractors and lab scientists to collect and analyze the samples is also required.

(13) Signature. The original, handwritten name of a natural person, and not a photocopy, facsimile or stamp thereof. For purposes of partnerships, corporations, limited liability companies, and other legal entities, the signature shall be that of the duly authorized partner, representative, member or official. Documents for recording shall clearly identify the name of the owner, the authorized signator and shall have the execution and signature thereto notarized.

(14) Title Report. A written report prepared by a title insurance company, authorized to transact business in the State of Oregon, showing the fee ownership of the property which is the subject of the report and, subject to certain standard printed exceptions, giving detailed information concerning apparent encumbrances, judgments, liens and unpaid taxes on the property.

Section 3. City Manager Authority to Accept Documents.

(1) The City Manager is authorized to accept and, where necessary, record in the Recorder's office of the appropriate county any documents submitted to the City which conform to the requirements of this ordinance and, where relevant, to the particular development approval or condition. Where the City Manager has accepted a document which conforms to the requirements of this ordinance, the City Manager shall cause the Manager's signature or initials to be affixed to the document along with a reference to the Manager's authority to accept such document on behalf of the City. The City Manager's acknowledgment and signature shall constitute official and final acceptance of such documents without further action by the City Council.

(2) Prior to the City Manager accepting documents submitted in accordance with this ordinance, the document and any supplementary information shall be examined to determine whether it conforms with the requirements of this ordinance, the Codes and

Ordinances of the City and the general laws of the State. Except as otherwise provided in subsection (3) of this section, where it is determined that a document which has been submitted for official City acceptance does not conform with the requirements of this ordinance, the Codes and ordinances of the City, and the general laws of the State, it shall not be accepted by the City Manager. The reason for rejecting such document shall be communicated in writing to the person submitting it.

(3) Where the City has negotiated the acquisition of property, has been tendered real property, or property interest, as a gift, or has taken action to acquire property, or property interest, by condemnation, the City Manager may determine the requirements of this ordinance have been satisfied by the City or another person who is not the property owner, but prior to official acceptance of such a conveyance on behalf of the City shall obtain City Council approval therefore.

Section 4. Document Submittal Requirements.

In order to be effective, any person who submits any deed, easement, conveyance, street improvement agreement or other document which must be officially accepted by the City shall submit such document together with supplementary information required by this ordinance to the City Engineer. Conveyances shall satisfy the requirements of ORS Chapter 93 as now or hereafter constituted.

(1) Whenever it is necessary by the provisions of any ordinance, resolution, agreement or determination of the City, that an interest in land by conveyed to the City or dedicated to the public, the person or legal entity conveying such interest shall cause a preliminary title report evidencing ownership, encroachments, encumbrances, security interests and other legal and equitable interests of record for the property to be filed with the City. The report shall be dated or supplemented to the date of the recordation of the required conveyance of land.

(2) Whenever a preliminary title report evidencing ownership of property, or any other information concerning such property, a portion or interest of which is sought to be conveyed, dedicated or encumbered by agreement to the City, shows that the property is subject to one or more encroachments, encumbrances, security interests or other legal or equitable interests, the owners of which could be expected to object to such conveyance, dedication or encumbrance, the person submitting such document for City acceptance shall obtain and submit to the City at the expense of the person submitting the document a release, subordination agreement or waiver of objection from the owner or owners of such other interests, prior to City acceptance. The form of release,

subordination agreement or waiver of objection shall be reviewed and accepted by the City Attorney. In addition to or in lieu of the foregoing, at the option of the City, the document shall include those warranties which apply in the case of a Statutory Warranty Deed, ORS 93.850.

(3) Except as otherwise expressly agreed by the City Manager, the person submitting a document, which affects title to the property proposed for City acceptance shall submit a legal description of the property prepared by a surveyor licensed in the State of Oregon. In addition to the legal description, such person shall submit a diagram drawn to scale on paper which is approximately 8 inches by 11 inches, showing the property which is affected by such document, both before and after City acceptance.

(4) Whenever a developer of property in the City is required under the terms of the development permit issued by the City to convey or dedicate property to the City or execute and deliver an agreement to the City which affects the property subject to the development approval, the developer shall submit an affidavit in a recordable form satisfactory to the City Manager, acknowledging the encumbrance or other interest which is subject to City acceptance and verifying that such developer has the express authority to execute and deliver such document on behalf of the owner thereof to the City. Such affidavit may be attached to and made a part of the document which is the subject of City acceptance. This requirement shall be considered satisfied, where the owner of record title to the property executes and delivers the document.

Section 5. City Engineer Authority.

(1) The City Engineer shall review documents submitted by developers in fulfillment of conditions or other requirements of the City's development approval for conformance with the requirements of this section and the terms and conditions of the development decision. Upon completion of review, the City Engineer shall advise the City Manager whether the document submitted for City acceptance complies with this ordinance and the applicable development decision. The City Engineer may request additional information be submitted in order to determine that the requirements of this ordinance and the relevant development decision are satisfied. In addition, the City Engineer may require that prior to City acceptance of a document, the person submitting such document shall cause appropriate monumentation to be established and permanently set, where existing monumentation is determined by the City Engineer to be inadequate or not in compliance with applicable standards. Review by the City Engineer shall at a minimum include the following:

(a) Conveyances, deeds, easements and street improvement agreement shall be examined for errors in the legal description of the property and any other technical descriptions contained in the document.

(b) Title reports submitted in connection with conveyances and dedications shall be examined for encroachments, encumbrances, security interests and any other legal and equitable interests whose owners might be expected to object to the transaction which is the subject of City acceptance.

(c) The City Engineer may physically inspect the property and any other sources of information about the property to determine whether City acceptance thereof would expose the City to potential liability for hazardous or toxic waste and clean-up and/or to parties who have not participated in the transaction. If the City Engineer determines a level 1 or level 2 environmental inspection and report is necessary, the Engineer shall obtain such inspection and report at the owner's or developer's expense.

(d) Before approving a document, the City Engineer shall determine whether the document which is submitted by a developer in order to comply with the requirements or conditions relating to a development permit granted by the City satisfies such requirements or conditions, and where real property or an interest in real property is intended to be conveyed or dedicated, that the location, dimensions and purpose of such conveyance or dedication are clearly shown on the document.

(e) The City Engineer in consultation with the City Attorney shall determine whether encroachments and encumbrances listed in a title report are subject to the requirement of a release, subordination agreement or waiver of objection from the owner of the encroachment or encumbrance.

(f) The City Engineer shall determine what, if any, tax liability the City will incur upon acceptance and report same to the City Manager.

(2) The City Engineer may create standard forms to be used in connection with documents, subject to the review and approval of the City Attorney.

Section 6. Appeals.

Any person who has been advised that a document which is subject to City Manager acceptance on behalf of the City, but has been refused such acceptance, may appeal such decision to the City Council. Appeals to the City Council shall be made only as provided in this section.

(1) An appeal shall be filed only by the person who offered the document and not less than ten (10) days following notification by the City that the particular document has been rejected.

(2) An appeal shall be submitted in writing, together with the filing fee as established by City Council resolution, and shall explain how the document submitted for acceptance purports to comply with the requirements of this ordinance and the decision which was the basis for submitting the document, if any.

(3) A developer or other person who wishes to appeal the requirements or conditions attached to a development decision shall appeal such matters only in accordance with the procedures set forth in the City of Wilsonville Zoning and Development Code or implementing ordinance.

(4) Upon receipt of such appeal, the City Council shall hold a hearing. Only the person submitting the appeal and their representative shall be permitted to testify; however, the City Council may inquire of the City Manager or of staff as to any matter which is relevant to the decision.

(5) After the close of the hearing, the Council shall deliberate and decide whether to accept or reject the document which is the subject of the appeal. If the document that was submitted for acceptance is finally refused by the City Council, a tentative oral decision shall be given and the final written decision stating the reasons therefor shall be prepared and approved by the Council.

Section 7. Fees.

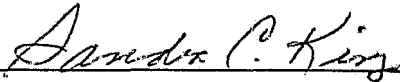
(1) Except as provided in subsection (2) of this section, any document which is submitted for acceptance under this ordinance shall be accompanied by a fee established by City Council resolution to cover the cost of staff examination and recording.

(2) The City Manager may waive the requirement of this section in cases where the City is acquiring the interest, which is the subject of the document, either by purchase or condemnation.

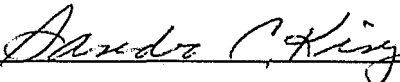
SUBMITTED to the Wilsonville City Council and read for the first time at a regular meeting thereof on the 15th day of July, 1996, and scheduled for the second



reading at a regular meeting of the Council on the 19th day of August, 1996, commencing at the hour of 7:00 o'clock p.m. at the Community Development Hearings Room.

  
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SANDRA C. KING, City Recorder

ENACTED by the City Council on the 19th day of August, 1996, by the following votes: YEAS: 4 NAYS: 0

  
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SANDRA C. KING, City Recorder

DATED and signed by the Mayor this 19th day of August, 1996.

  
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GERALD A. KRUMMEL, Mayor

SUMMARY of Votes:

Mayor Krummel	<u>Yes</u>
Councilor Hawkins	<u>Absent</u>
Councilor Leahy	<u>Yes</u>
Councilor MacDonald	<u>Yes</u>
Councilor Leahy	<u>Yes</u>