

ORDINANCE NO. 963

**AN ORDINANCE OF THE CITY OF BENTON CITY,
WASHINGTON AMENDING BCMC SECTION 12.05.110
"OPTIONAL STANDARDS FOR THE RESIDENTIAL
SUBURBAN (AS) ZONING DISTRICT" AND BCMC
SECTION 12.05.120 "SECURITY IN LIEU OF
COMPLETION OF SIDEWALK AND CURB"**

WHEREAS, the City of Benton City has recognized that there are situations when sidewalk construction at the time of building construction is not in the best interests of the City or the property owner, or may not be possible due to inclement weather or other circumstances, and may require a temporary deferral of the code requirements to build such sidewalk improvements; and

WHEREAS, the City of Benton City has recognized that there are situations where sidewalk construction may never be feasible for said property and code requirements to build such a sidewalk should be indefinitely waived; and

WHEREAS, the City of Benton City recently adopted amendments to the BCMC that provide for a deferral mechanism that will allow the City to defer the requirements of the BCMC Chapter 12.05.03 for an extended period of time; and

WHEREAS, the City of Benton City has realized through the practical application of its current deferral provisions, the necessity of certain amendments to the recently adopted deferral provisions, that would make the practical application of such provisions more feasible and has also realized the necessity of a discretionary provision allowing the City to issue a long-term sidewalk waiver; NOW, THEREFORE,

**THE CITY COUNCIL OF THE CITY OF BENTON CITY, WASHINGTON, DO
ORDAIN AS FOLLOWS:**

Section 1. That Section 12.05.110 of the Benton City Municipal Code entitled "Optional Standards for the Residential Suburban (AS) Zoning District" shall be and hereby is amended as follows:

12.05.110 **Optional Standards for the Residential Suburban (AS) Zoning District. Waiver of Sidewalk Construction Requirements. A waiver of sidewalk construction requirements within any zoning district may be granted on a case by case basis by the City Engineer with approval of the Mayor, when consistent with the criteria below. The requesting property owner shall be required to sign an Improvement Waiver Agreement supplied by the City, which shall provide that at any point in the future, should the City Engineer decide that the subject property no longer meets any of the criteria below, the property owner must install said improvements. Upon determination by the City Engineer that**

improvements must be constructed, the City shall provide the owner or their successors in interest, notice requiring the construction of the sidewalk, curb and gutter. The owner shall have ninety (90) days after final decision of the Mayor, within which to construct the improvements in accordance with City's standards and specifications. The construction period may be extended by the Mayor or the Mayor's designee for an additional period of ninety (90) days upon good cause such as inclement weather or the unavailability of materials or services. If the owner fails to construct the improvements within such period, including any extensions, the City may authorize the work to be completed and any and all costs to the City shall become a lien against the property. The property owner shall record the waiver form with the Benton County Auditor and supply a copy to the City within 30 days of its execution.

Within the Agricultural Suburban Residential Zoning District any zoning district, the installation of curbs and gutters may be waived upon the finding that there is:

- A. Inadequate right-of-way width to permit pedestrian traffic.
- B. No demonstrated need for safe walking distance for students walking to and from school.
- C. Sidewalks are not consistent with the general development and character of the neighborhood.

Any waiver under this section shall at all times be subject to the requirements of RCW 35.68. (Ord. 887, June 2011)

Section 2. That Section 12.05.120 entitled "Security in Lieu of Completion of Sidewalk and Curb" of the Benton City Municipal Code shall be and hereby is amended and shall read as follows:

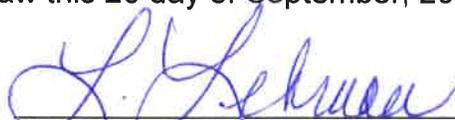
12.05.120 **Security in Lieu of Completion of Sidewalks and Curb. Temporary Deferral of Sidewalk Construction Requirements.** Whenever it is determined by the Mayor, or the Mayor's designee, that it is not practical or possible due to inclement weather or other extenuating circumstances for the construction of a sidewalk, curb, and gutter to be completed prior to the occupancy of a new or remodeled building as provided in Section 12.05.030 above, ~~due to the lack of contiguity with existing sidewalk,~~ the City may grant a ninety (90) day deferral to the requirements of this Section upon the deposit of \$1,000 ~~sufficient security~~ in the form of cash or check deposited with the City. ~~to cover the estimated cost of completing construction of the curb and sidewalk. The deferral shall not exceed five (5) years. Upon determination by the City that sidewalk contiguity is or may be available, or determines the public convenience or safety require that the sidewalk be constructed, the City shall provide the~~

~~owner or their successors in interest, notice requiring the construction of the sidewalk, curb and gutter. The owner shall have ninety (90) days within which to construct the sidewalk in accordance with City's standards and specifications, and receive a refund of the security deposit. The sidewalk construction period may be extended by the Mayor or the Mayor's designee upon good cause such as inclement weather or the unavailability of materials or services. The security deposit shall be refunded upon satisfactory completion of the improvements and inspection by the City. Completed construction must pass all City inspections and meet all City standards. The ninety (90) day sidewalk construction deferral period may be extended for one (1) additional ninety (90) day period by the Mayor or the Mayor's designee upon good cause such as inclement weather or the unavailability of materials or services.~~

If the owner fails to construct the sidewalk after the ninety (90) day period, including any extensions, the City may authorize the work to be completed and shall apply the security deposit to the costs of the installation. The deposit shall be used by the City to pay the costs of completing the construction of the curb and sidewalk to meet City standards and to pass City inspection. The City does not warrant that the amount accepted as security necessarily will be sufficient to pay the full costs of construction by accepting the deposit. The owner shall sign an Improvement Deferral Waiver which shall be recorded with the Benton County Auditor improvement deferral form provided by the City upon approval of the deferral request. By accepting the deposit, the City does not in any way waive any other remedies it may have to collect the costs of completing the construction by accepting the deposit. Costs to the City in excess of the deposit shall become a lien against the property. ~~The applicant for the building permit shall execute an agreement with the City on the terms as provided by this Section.~~ (Ord. 955, April 2016; Ord. 887, June 2011)

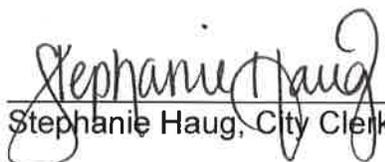
Section 3. This Ordinance shall take full force and effect five (5) days after its approval, passage, and publication as required by law.

PASSED by the City Council of the City of Benton City, Washington, and approved as provided by law this 20 day of September, 2016.



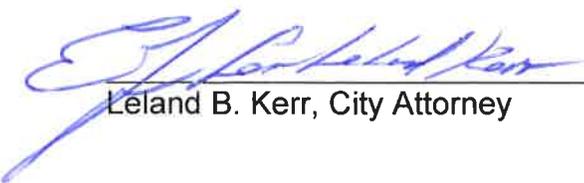
Linda Lehman, Mayor

ATTEST:



Stephanie Haug, City Clerk

APPROVED AS TO FORM:



Leland B. Kerr, City Attorney