



CITY of BEAVERTON

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**CITY ENGINEER'S INTERPRETATION NO. 10.20.04-03
PERTAINING TO
REVISED REQUIREMENTS FOR REQUESTING A CITY ENGINEER'S INTERPRETATION OR
REVIEW AND FOR APPEALING A PENALTY OR CITY ENGINEER'S ACTION, DECISION OR
INTERPRETATION REGARDING A SPECIFIC PROJECT TO THE CITY COUNCIL**

June 16, 2004

Revised October 20, 2004

Authority

This City Engineer's Interpretation is issued under the authority granted the City Engineer in sections 9.05.016 and 9.05.140 of the Beaverton City Code and shall become effective on the effective date given below.

Findings

1. As used herein, the term City Engineer is understood to include the City Engineer's designee, unless the context refers to a document that is to be addressed to the City Engineer or the term City Engineer is followed by the word "personally". On April 13, 2004, City Engineer's Interpretation (CEI) No. 02.13.04 – 01 pertaining to City of Beaverton requirements for "Requesting a City Engineer's Interpretation or Appealing a City Engineer's Decision" was issued. On June 16, 2004, a second version of this CEI, No. 06.16.04-02, was issued.
2. Recently, the City has emphasized the need for process improvements to make development processing more convenient and less confusing for the City's customers. On May 6, 2004, the City's Community Development Department issued a report on a "Development Services Division Organizational Assessment" with the title of Improvements in Development Services. One of the areas of improvement addressed in that report is the Site Development Permit processes. The report recommends measures for streamlining the process and the paperwork for that process, and making the process more customer-friendly and "collegial".
3. On May 11, 2004 Mayor Rob Drake signed Ordinance No. 4303 adopting the 2004 updated *Engineering Design Manual and Standard Drawings*, which includes new requirements for design and construction of public improvements, including new requirements for permitting, plan submittal, Design Modifications, Street Design Modifications, utility facility location, design and construction in existing public rights-of-way, and numerous other requirements. Ordinance No. 4303's effective date is June 10, 2004, thirty days after the Mayor signs the Ordinance.
4. On April 7, 2003, the City Council adopted Ordinance No. 4249, which allows reduced penalties for violations of the *Site Development Ordinance* (BC 9.05.005 - .170) and amended the appeal provisions of the *Site Development Ordinance*.
5. On October 18, 2004, the City Council adopted Resolution No. 3783, which established a filing fee for appeals to the City Council.
6. Any person may request a City Engineer's Interpretation or may appeal to the City Council per Section 9.05.091 of the Beaverton *City Code*. Any person may appeal a penalty imposed on that person for violating the *Site Development Ordinance* or the requirements of the *Engineering Design Manual and Standard Drawings* (the "*Manual*"), and may appeal an action, decision or interpretation of the City Engineer to the City Council.

7. The City Engineer has determined that City Engineer's Interpretation No. 02.13.04 – 01 should be updated to reflect the aforementioned emphasis on streamlining the Site Development Permit processes, reflect new requirements in the *Manual* and reflect the content of Ordinance No. 4249 and Resolution No. 3783.

Interpretation

To address the findings above, City Engineer's Interpretation No. 10.20.04-03 is hereby issued as follows, effective November 10, 2004.

- A. This *City Engineer's Interpretation (CEI)* supersedes *CEI No. 06.16.04-02* and contains detailed requirements for:
- Requesting a City Engineer's Interpretation,
 - Requesting a City Engineer's Review,
 - Appealing a penalty for violation of City codes or standards, and
 - Appealing an action, decision or interpretation of the City Engineer
- The requirements for applications/requests for appeals are in accordance with Ordinance No. 4249 and City Council Resolution No. 3783.
- B. The term "application" as used herein is used interchangeably with the term "request" and is not intended to carry with it any connotation that the application is associated with a land use process. Neither a City Engineer's Interpretation nor an appeal of a City Engineer's decision are land use actions and therefore do not require a formal notification process or a hearing.
- C. The term "applicant" as used herein means the person making a request and is not intended to carry with it any connotation that the request is an application in the sense of a formal land use process, legally or otherwise.
- D. For the convenience of the public, any person may request that the City Engineer review any prior action, decision or interpretation of the City Engineer (or designee), providing the matter to be reviewed meets one of the criteria in paragraphs A through L of Section 110.1 of the *Manual*. To request a City Engineer's Review, the applicant shall submit a "Request for a City Engineer's Review" to the City Engineer in the same format as an application for an appeal to the City Council, as prescribed in *City Engineer's Interpretation No. 10.20.04-03*. However, a City Engineer's Review is not a substitute for an appeal to the City Council, because such reviews are limited to relatively minor modifications of the *Manual* that may be acted on by the City Engineer without Council approval. Upon receiving a request for such a Review, the City Engineer may either deny the request or accept it and conduct the Review. If the City Engineer conducts a Review, s/he may either modify the pertinent requirement(s) of the *Manual* in favor of the applicant, may determine that the *Manual* should not be modified, or may determine that the *Manual* should be modified in favor of the City. Such decisions are project-specific and do not set a precedent for other projects unless the City Engineer decides the *Manual* should be modified in favor of the City, and thereafter it is modified in accordance with the *Manual's* requirements for such modifications.
- E. A person requesting a City Engineer's Interpretation or a City Engineer's Review, or appealing a penalty or appealing a City Engineer's action, decision or interpretation, shall submit to the City Engineer a written application for same. In order to simplify and expedite these applications, there is no formal application form or fixed format for them. Applicants may use any format they prefer so long as the format is well organized and reasonably clear. Applications shall contain at least the following information in the same order as listed below:
1. Title of the application, which shall identify the object of the request (i.e., application for a City Engineer's Interpretation or Review, or for an appeal, and if for an appeal, the type of appeal being requested, as noted in Finding No. 6 above). Applications should be titled as follows:
 - a. If the application is for a City Engineer's Interpretation, the title of the request should be "Request for City Engineer's Interpretation."

- b. If the application is for a City Engineer's Review, the title of the request should be "Request for City Engineer's Review."
 - c. If the application is for an appeal to the City Council, the title of the request should be "Request for Appeal to the City Council".
2. The date of the request.
3. Name of project and Permit No.
4. Address and location of project using names of nearest cross-streets.
5. Contact information for applicant:
 - a. Applicant's name and title
 - b. Applicant's affiliation (company/agency represented)
 - c. Applicant's address and zip code
 - d. Applicant's telephone number and extension, if applicable
 - e. Applicant's fax number
 - f. Applicant's email address
6. If a City Engineer's Interpretation or City Engineer's Review is being requested, reference to and citation of the City's engineering standard or other City document for which the interpretation or review is being requested (including citation of the relevant section number from the City Code or *Manual*, or the Standard Drawing number, and quotation of the specific *Manual* language or a photographic or electronic image of the specific part of a Standard Drawing that is the subject of the request, as applicable).
7. With each application for a City Engineer's Interpretation or Review, or for an appeal to the City Council for the purposes described in this Interpretation, pertinent documentation shall be attached to the application. (Some examples of such documentation are: A copy of a drawing bearing the City's review comments, a copy of a letter or email from the City Engineer, a copy of a log of a telephone call in which the City Engineer participated, or a copy of an inspector's daily report.)
8. If the application relates to a specific section of the Engineering Design Manual or related document, engineering/construction drawing, construction specification, contract document, legal document (deed, easement, legal description, right-of-way dedication, survey records, etc.), test report, assessor's map, topographic survey map or other document, the applicant shall submit two (2) copies of the section(s) of each such document with his/her application. In addition, the applicant shall highlight, circle or otherwise identify in colored pencil or pen on the copies of said document(s) the specific passages and/or parts of said documents that are pertinent to the application. Applicants are also encouraged to submit sketches, photographs, maps and other graphics with their applications that will clarify their requests.
9. The applicant's own interpretation, if any.
10. One or more reasons for requesting a City Engineer's Interpretation or Review, or appealing to the City Council. Some examples of reasons are as follows:
 - a. To eliminate or reduce unnecessary or unreasonable project costs.
 - b. To expedite construction to avoid oncoming inclement weather or other conditions.
 - c. To expedite the issuance of Certificates of Occupancy.
 - d. To avoid disruption of a neighborhood.
 - e. To avoid excessive disruption of traffic on a roadway.
 - f. To produce a more aesthetically pleasing product.
 - g. To meet current regional, state or federal law in a manner that is different from the City's method of doing so.
11. The applicant's justification(s) for requesting the City Engineer's Interpretation or Review, or appealing the City Council. The applicant's justification must meet two of the following criteria, one of which must be criterion "e":

- a. The standard is inapplicable to a particular situation.
 - b. Topography, right-of-way, or other geographical conditions or impediments impose an undue economic hardship on the applicant, and an equivalent alternative that can accomplish the same design objective is available and does not compromise public safety or accessibility.
 - c. The Interpretation or appeal is required to address a specific design or construction problem, and if not modified, the standard will impose an undue hardship on the applicant with little or no material benefit to the public.
 - d. In cases where the applicant is claiming an economic hardship relative to the City Engineer's Interpretation being requested or the appeal of the City Engineer's decision, and the applicant is proposing an alternative standard, design or interpretation that would reduce the applicant's costs for the work, the applicant's proposed standard, design or alternative interpretation can accomplish the same design objectives without compromising community esthetics, accessibility for the disabled, the stability of adjacent property, structures or property values, land use compatibility between proposed aboveground utility facilities and neighboring land uses, the capacity, structural integrity or service life of any part of the City's infrastructure, the cost-effective use of public rights-of-way, or the cost-effective construction, operation, maintenance and repair of the City's infrastructure.
 - e. The Interpretation, Review or appeal, or application of the applicant's own interpretation, would not materially compromise community esthetics, accessibility for the disabled, the stability of adjacent property, structures or property values, land use compatibility between proposed aboveground utility facilities and neighboring land uses, the capacity, structural integrity or service life of any part of the City's infrastructure, the cost-effective use of public rights-of-way, or the cost-effective construction, operation, maintenance and repair of the City's infrastructure.
12. With each justification for requesting a City Engineer's Interpretation or Review, or appealing to the City Council, the applicant shall:
- a. Indicate the applicable criteria from criteria "a" through "e" above (one of which must be criterion "e").
 - b. Provide an explanation of how each of the applicable criteria applies to the request in terms of pertinent project characteristics such as site conditions, including but not limited to natural and man-made features, traffic volumes and speeds, environmental constraints, and stage of construction; specific project costs; impediments to the project; project scheduling issues; alternative solutions; each of the factors listed in criterion "e"; and other pertinent factors.
 - c. Provide a detailed explanation of how each of the applicable criteria is met.
 - d. Provide a sketch or sketches illustrating the existing conditions, the approved design, if any, the proposed design if a design has not been approved, the distinguishing features that meet one or more criteria from criteria "a" through "e" above, proposed alternative designs or construction methods.
 - e. Provide comparative cost estimates for complying with the standard in question versus implementing each proposed alternative.
13. Optional: Documented examples of alternative interpretations/practices from other communities, if available, in sufficient detail for the City Engineer to evaluate. (The City Engineer may request additional detail/documentation.)
14. The date the Interpretation, Review or decision on an appeal is needed.
15. Applicant's signature and date signed.

D. All requests should be addressed to the City Engineer, Engineering Department, City of Beaverton, P.O. Box 4755, Beaverton, OR 97076.

- E. Requests may be submitted by regular mail, or by email to fharrington@beavertonoregon.gov
- F. Applicants requesting a City Engineer's Interpretation or Review should allow between 15 and 30 calendar days, depending on the complexity of the request, for the City Engineer to gather additional information as needed, respond to the request, and inform the applicant in writing. Applicants requesting an appeal to the City Council should allow up to 60 calendar days for the City Council to rule on their request and notify the applicant of their decision in writing, depending on the complexity of the request.
- G. All requests will be processed on a "first come, first serve" basis. (In cases where project financing is at a critical point, where construction is already underway, or where other exigencies exist, the City Engineer will expedite processing of the request as much as possible.)

Filing Fee

The filing fee for an appeal to the City Council is established by Council Resolution. The current fee, established by Resolution No. 3783, is \$1,750.00; however, this fee may be changed by future Council Resolution(s). There is no filing fee for a City Engineer's Interpretation or a City Engineer's Review, but the City Engineer may determine that the City Council should decide the matter and that an appeal is therefore required, in which case the appeal filing fee must be paid.

Respectfully,

Terry L. Waldele, P.E.
City Engineer