

Section 801 – Driveway Access Onto Public Right-of-Ways

Section 801:00. Definitions.

The following words and terms, when used in this Article, shall have the following meanings, unless the context clearly indicates otherwise:

Subd. 1. Business Driveway Approach. A driveway approach providing ingress and egress to any property other than residential property.

Subd. 2. Corner. The point of intersection of the lines of two street curb faces extended into the street intersection.

Subd. 3. Curb Cut. The driveway area providing access to the property of an owner or occupant extending from the traveled surface of the road to the limit of the right-of-way or road easement on the property of an owner or occupant.

Subd. 4. Curb Return. That portion of a curb next to a driveway approach which includes the radius of curvature of the apron or driveway which connects the driveway approach to the street curb.

Subd. 5. Driveway. A place on private property for the operation of automobiles and other vehicles, providing ingress and egress from the public right-of-way.

Subd. 6. Driveway Approach. An area, construction or facility between the roadway of a public street and private property intended to provide access for vehicles from a roadway or a public street to private property. For clarification, a driveway approach must provide access to something definite on private property such as a parking area, a driveway, or a door intended and used for the entrance of vehicles.

Subd. 7. Parcel of Land. A lot or lots or a tract officially registered under one ownership.

Subd. 8. Residential Driveway Approach. A driveway approach providing ingress and egress to residential property.

Section 801:01. Classification.

Driveway approaches shall be of two classes: Namely, residential driveway approaches and business driveway approaches.

Section 801:02. Construction Permit Required.

Subd. 1. It shall be unlawful for any person to construct or alter a driveway or driveway approach accessing a public right-of-way, or cut, break out or remove any curb along a street, alley, curbing, parking, sidewalk or sidewalk space without first obtaining a permit for a driveway approach as hereinafter provided. The aforementioned notwithstanding, a permit shall not be required if the proposed construction regulated by this Chapter occurs in connection with an approved building permit for new home construction or commercial construction for which site plan approval is required, provided the information required by Section 4 is submitted for review. The approval by the City Building Official of the building permit for new home construction and the City Council's approval of the site plan for commercial construction shall constitute the issuance of a permit under this Ordinance. Any person convicted of violating this Chapter shall be guilty of a misdemeanor.

Subd. 2. In the event a person shall construct or alter a driveway or driveway approach accessing a public right-of-way, or cut, break out or remove any curb along a street, alley, curbing, parking, sidewalk or sidewalk space within the City without obtaining a permit or other governmental approval as required in this Chapter, the fee for such permit shall be doubled, in addition to other penalties provided.

Section 801:03. Application for Permit.

Any person desiring to construct or alter a driveway or driveway approach accessing a public right-of-way, or cut, break out or remove any curb along a street, alley, curbing, parking, sidewalk or sidewalk space, shall first make application for a permit therefore to: 1) the City Building Official in connection with new construction or any building permit, or, in all other cases, 2) the Public Works Director. Such application shall be in writing upon a form provided by the City, and made available through the City Building Official or at City Hall. Such application states the following:

1. The legal description, address, and owner's name of the premises involved.
2. The exact location, or locations, upon which it is proposed to construct, repair or rebuild any driveway, driveway apron, sidewalk, carriage walk, curb or gutter, or parking lot.
3. The size in square feet or square yards of such proposed construction, alteration or repair.
4. A description of the types of materials proposed to be used in the construction.
5. The date on which such improvement is proposed to be commenced.
6. The name and address of contractor who it is proposed will construct, alter or repair, remove or demolish such driveway, driveway apron, sidewalk, carriage walk, curb or gutter, or parking lot.

In the event the construction activity regulated by this Chapter occurs in connection with a building permit for new home construction or commercial construction for which site plan approval is required, the information required by this Section 4 shall be submitted with the application for the building permit or site plan approval.

Section 801:04. Issuance of Permit.

Except as provided in Section 801:03, a permit shall be issued by the City Building Official or the Public Works Director after determining that the applicant has complied with the terms of this Chapter and paid the permit fee hereinafter specified.

Section 801:05. Authority of City and Revocation.

Subd. 1. All work done under a permit issued in compliance with this Chapter shall be under the direction and supervision of the City Building Official and/or the Public Works Director, who are hereby authorized to make the necessary rules, regulations and specifications with respect to materials for and method of construction of such driveway approaches to the extent consistent with applicable laws, rules, ordinances, and generally accepted construction practices. A permit issued under the provisions of this Chapter may be revoked by the issuing official at any time he or she is satisfied that the work is not being performed according to the provisions hereof. The Public Works Director, subject to the City Council, shall make the final determination on all rules, regulations, specifications, and permit decisions.

Subd. 2. All permits granted for the use of public property under the terms of this Chapter shall be revocable at the will of the City Council.

Section 801:06. Permit Fees.

The fee for the permit is set by City Council and payable upon and as a condition of issuance. In the event the construction activity regulated by this Chapter is to occur in connection with new residential construction, or commercial construction for which site plan approval is required, no additional fee shall be required.

Section 801:07. General Requirements and Restrictions.

In addition to the rules, regulations and specifications promulgated by the City Building Official and the Director of Public Works with respect to driveway approaches, the following requirements shall be complied with in the work done under the provisions of this Chapter:

Subd. 1. All lots or parcels shall have direct, adequate physical access for emergency vehicles along the frontage of the lot or parcel from either an existing dedicated public roadway or an existing private roadway constructed at a road strength capable of supporting emergency and fire vehicles and approved by the City Council.

Subd. 2. No curb cuts normal to the right-of-way shall be made beyond any property line as projected, except upon execution of an easement by the adjacent property owner in a form approved by the City.

Subd. 3. Driveway approaches shall be no closer than five (5) feet to any side or rear lot line. The number, types, and locations of driveway approaches onto major streets may be controlled and limited in the interests of public safety and efficient traffic flow.

Subd. 4. Except as otherwise provided herein, all residential driveway approaches shall have a maximum width of 36 feet at the point of intersection with the traveled surface of the public road. The minimum width for business driveway approaches shall be established in the discretion of the City based on location, type of vehicular use, proximity to intersections, and other factors related to public safety.

Subd. 5. The top of the paving of the driveway slab at the curblines shall be 1-5/8 inches above the flowline of the gutter, and shall not extend into the gutter beyond the face of the curb, and shall not be constructed in a manner that will in any way interfere with or obstruct the drainage of the street, or interfere with the use of the street for the purpose of travel.

Subd. 6. Where the frontage of the parcel of land does not exceed 75 feet in width, there may be constructed only one driveway approach. In the event more than one side of a property abuts a public right-of-way or existing private roadway approved by the City, each side must be considered separately.

Subd. 7. Where the frontage of the parcel of land exceeds 75 feet in width, the curb cuts for driveway approaches shall not exceed 60 percent of the frontage of such parcel of land and all driveway approaches shall not be closer than eighteen (18) feet as measured at the intersection of the driveway approach with the traveled surface of the public road.

Subd. 8. No portion of a driveway approach except the curb return shall be constructed within 20 feet of a corner.

Subd. 9. Driveway approaches onto county roads shall require a review by the county engineer. The county engineer shall determine the appropriate location, size, and design of such access drives and may limit the number of access drives in the interest of public safety and efficient traffic flow.

Subd. 10. Driveway approaches to principal structures which traverse wooded, steep, or open field areas shall be constructed and maintained to a width and base material depth sufficient to support access by emergency vehicles.

Subd. 11. The Public Works Director or the City Building Official shall review all driveway approaches for compliance with accepted community driveway approach standards.

Subd. 12. The owner and contractor shall protect the public from injury or damage during the construction of driveway approaches and it is herein stipulated, as an essential condition of the issuance of a permit, that the City shall not be liable for damage which may arise from the prosecution of work.

Section 801:08. Nonconforming Uses.

Any driveway approach not conforming to the requirements of this Chapter as of the date of its adoption, shall be considered non-conforming uses. Any improvements to or upon such non-conforming driveway approaches shall be by issuance of a permit by the City for such improvements and pursuant to a separate agreement with the City setting forth the specific terms and conditions to accomplish the purpose of remedying non-conforming driveway approaches. The separate agreement with the City shall be recorded with the Benton County Recorder or Registrar of Titles.

Section 801:09. Maintenance, Discontinued Use, and Removal.

Subd. 1. Every driveway approach or entrance to abutting property shall be maintained and kept in a safe condition by the owner of the abutting property, and any such driveway approach which shall not be so maintained and kept or which shall interfere with or obstruct the drainage carried by such street or the use of such street for the purpose of travel shall be repaired to conform with the specifications of this Chapter and the Public Works Director or be removed. Upon the removal of any such driveway approach, that portion of the street occupied by the same shall be restored as nearly as practicable to its former condition and all curbing shall be replaced, all by and at the expense of the owner of the abutting property.

Subd. 2. Change in Use. Upon application of an owner or occupant to improve or convert a garage or other legally situated parking area serving residential property to a use inconsistent with the storage of an automobile in those instances where access to the garage or parking area is across the front yard of such property, the driveway and its use thereof for parking or storage of vehicles shall cease and be removed as part of the improvement or conversion applied for, and that portion of the street occupied by the driveway approach shall be restored as nearly as practicable to its former condition and all curbing shall be replaced, all by and at the expense of the owner of the abutting property.

Subd. 3. Discontinued Use. Whenever any driveway approach constructed under the provisions of this Chapter no longer provide access for vehicles to something definite

on private property, such as a parking area, a driveway or a door intended and used for the entrance of vehicles, such driveway approach shall be removed forthwith, and that portion of the street occupied by the driveway approach shall be restored as nearly as practicable to its former condition and all curbing shall be replaced, all by and at the expense of the owner of the abutting property.

Section 801:10. Variance.

Any person for which the strict enforcement of this Chapter will result in undue hardship may apply for a variance.

1. Application Filing Required. A person applying for a variance must fill out and submit to the City Clerk a Variance Application form, accompanied by the required fee and detailed material fully explaining the specific variance request. The application must include a site plan showing the following, as applicable:
 - A. Site description (legal description).
 - B. Site plan drawn to scale showing the parcel and building dimensions, area and setbacks.
 - C. Location of all existing and proposed buildings and their square footage.
 - D. Existing curb cuts, driveways, access roads, parking spaces, off-street loading areas, sidewalks, vehicular circulation, and snow storage locations.
 - E. Drainage and grading plan.
 - F. Any additional written or graphic information reasonably required by the City Clerk, Public Works Director, or City Engineer.
2. Application Deadline. The City Clerk must receive completed applications at least seven (7) days prior to the City Council's next scheduled meeting.
3. Fees. A fee the City Council shall establish by resolution must accompany the application. An additional fee may be charged for atypical projects, which in the opinion of the City Clerk will require additional staff time and/or City expenditures. In such case, the applicant must reimburse the City for administrative time and professional services and costs incurred by the City.
4. Hearing. The City Clerk shall set a date for the hearing and notify the applicant by mail.
5. Review by Public Works Director. The application shall be forwarded to the Public Works Director for his/her review and recommendation.

6. Decision by Council. Upon receiving the Public Works Director's recommendation, the Council shall hold a hearing on the matter and the Council will either grant or deny the Variance.
 - A. Appearance by Applicant. The applicant or applicant's representative(s) must appear before the Council in order to answer questions concerning the variance application.
7. Vote Required. Approval of any Variance to this Ordinance will require passage by a majority of the votes cast.
8. Conditions and/or Revisions. If the Council grants the Variance, it may impose conditions it considers necessary to protect public health, safety and welfare. The Council may also revise the variance to ensure that it is the minimum variance required.
9. Written Findings. The Council will issue written findings stating the reasons for its decision and any conditions imposed, and will serve a copy if its decision on the applicant by U.S. mail, within ten (10) days after its decision.
10. Recording. A certified copy of every Variance to abstract or registered property shall be filed with the Benton County Recorder. The variance shall include the legal description of the property involved.
11. Resubmission. No application, which is substantially the same as an application of a denied Variance, shall be resubmitted for a period of one (1) year from the date of the denial. The Council may permit a new application if, in its opinion, new evidence or a change in circumstances warrant reconsideration.
12. Expiration of Variance. If within one (1) year after granting a Variance the work permitted is not started, such variance shall become null and void unless a petition for an extension has been approved by the City Council.

Section 801:11. Effective Date.

This ordinance shall be effective immediately upon its passage.

Chapter VIII of the 1974 Code of Ordinances was amended by adding Section 801:00 by Ordinance Number 351, passed, adopted and effective June 15, 2004.

Section 801:04 – Issuance of Permit and 801:07 – General Requirements and Restrictions, Subd 4 was amended by Ordinance Number 459, passed, adopted and effective July 13, 2021.