

ARTICLE 2 REVIEW CRITERIA

2.010 Overview. The Development Code provides a combination of nondiscretionary and discretionary standards for the City to use in evaluating land use proposals for compliance with the use and development requirements of the Code. The nondiscretionary criteria provide the certainty needed in most situations by providing straightforward, clear and objective standards. Discretionary criteria provide needed flexibility by allowing more subjective standards and objectives, and providing for the modification of regulations in response to specific site conditions. This chapter contains the criteria for evaluation of the following land use applications:

- Adjustments
- Annexations
- Comprehensive Plan Amendments
- Conditional Uses
- Development Code Amendments
- Nonconforming Situations
- Site Plan Review
- Vacations
- Variances
- Zoning Map Amendments

[Ord. 5445, 4/12/2000]

2.020 Function of Review Criteria.

- (1) Review criteria set the bounds for the issues that must be addressed by the applicant and which may be raised by the City or affected parties.
- (2) The review criteria have been derived from and are based on the Comprehensive Plan. Reviews against the goals and policies of the Comprehensive Plan are not required unless specifically stated. Fulfillment of all requirements and review criteria means the proposal is in conformance with the Comprehensive Plan.
- (3) When review criteria refer to the request's meeting a specific threshold, such as adequate services or no significant detrimental environmental impacts, the threshold includes any proposed improvements, mitigation measures, or limitations. All proposed improvements, mitigation measures, and limitations must be identified prior to a final decision by a review body.

2.030 Burden of Proof. The burden of proof is on the applicant to show that the review criteria are met. The burden is not on the City or other parties to show that the criteria have not been met.

2.040 Conditions of Approval. The City may attach conditions to the approval of a land use decision in order to ensure that the proposal will conform to the applicable review criteria.

2.050 Relationship to Other Regulations. Approval of a land use application based on review criteria in this Code does not relieve the applicant of responsibility for compliance with other applicable codes, ordinances, statutes or regulations.

ADJUSTMENTS

- 2.060 Purpose. The adjustment review process provides a mechanism by which the Director may make limited modifications to the application of regulations in the Development Code. Adjustment reviews provide limited flexibility for unusual situations, while continuing to provide certainty and rapid processing for land use applications. Requests for changes from a numerical development standard of 10 percent or less of the standard are processed as adjustments. Requests for changes to standards which are not numeric or which are for more than 10 percent of the standard are processed as variances.
- 2.070 Procedures. Adjustment requests are processed through a Type I procedure.
- 2.080 Review Criteria. Alternative setbacks in developed areas are addressed in Sections 3.240, 4.130, and 5.130. All other adjustment requests will be approved if the Director finds that the applicant has shown that the following criteria have been met:
- (1) The requested adjustment is for 10 percent or less of the numerical development standard.
 - (2) The need for the requested adjustment is created by the configuration of an existing or proposed structure on the site. [Ord. 5338, 1/28/1998]

COMPREHENSIVE PLAN AMENDMENTS

- 2.090 Purpose. The Comprehensive Plan is the official and controlling land use document of the City, providing guidance to both public and private activities which affect the growth, development, and livability of the community. The Plan is intended to be a flexible document, reflecting changing circumstances and community attitudes through occasional amendments. This section provides a process whereby the Comprehensive Plan may be amended without violating the integrity of the Plan or frustrating its basic purposes. This process applies to proposed changes to the Comprehensive Plan map designations, text and the Urban Growth Boundary.
- 2.200 Frequency of Plan Amendments. Applications for Comprehensive Plan amendments submitted by property owners shall be reviewed semi-annually in April and October by the Planning Commission. The City Council, Planning Commission, or Director may also initiate Plan amendments. Such initiations are made without prejudice towards the outcome.
- 2.210 Procedure. Requests for Plan amendments determined by the Director to be legislative in nature are reviewed through the legislative procedures stated in Section 1.590. Quasi-judicial requests are reviewed through the Type IV procedures of Section 1.370. Area specific amendments, including map amendments outside of the city limits, are processed in accordance with the City-County Urban Growth Management Agreement.
- 2.220 Review Criteria. Amendments to the Comprehensive Plan will be approved if the Council finds that the applicant has shown that the following applicable criteria are met:
- (1) A legislative amendment is consistent with the goals and policies of the Comprehensive Plan, the statewide planning goals, and any relevant area plans adopted by the City Council.
 - (2) A legislative amendment is needed to meet changing conditions or new laws.
 - (3) The requested designation for a quasi-judicial map amendment meets all of the following tests:
 - (a) The requested designation for the site has been evaluated against relevant Comprehensive Plan policies and on balance has been found to be more supportive of the Comprehensive Plan as a whole than the old designation.
 - (b) The requested designation is consistent with any relevant area plans adopted by the City Council.
 - (c) The requested designation is consistent with the Comprehensive Plan map pattern.
 - (d) The requested designation is consistent with the Statewide Planning Goals.
 - (4) The Director may initiate a review through the Type I procedure for the types of corrections to the Comprehensive Plan Map listed below:
 - (a) The correction may be made for mapping errors such as:
 - (1) A map line that was intended to follow a topographical feature does not do so. Topographical features include the tops and bottoms of hillsides, the banks of water bodies, and center lines of creeks or drainage ditches;
 - (2) The line on the map does not match the legal description or map shown or references in the ordinance which applied the designation; or
 - (3) When there is a discrepancy between maps and there is clear legislative intent for where the line should be.
 - (b) The correction may be made when a map line is based on the location of a reference item that has since been moved. Reference items are rights-of-way, tentative rights-of-way, utility easements and similar items. Map line changes in these cases must not be more than a minor change to the map pattern and must not result in any significant impacts to abutting lots.

CONDITIONAL USES

2.230 Purpose. Certain uses are Conditional Uses instead of being allowed outright, although they may have beneficial effects and serve important public interests. They are subject to the Conditional Use regulations because they may, but not necessarily do, have significant adverse effects on the environment, overburden public services, change the desired character of an area, or create major nuisances. A review of these proposed uses is necessary due to the potential individual or cumulative impacts they may have on the surrounding area or neighborhood. The Conditional Use process provides an opportunity to allow the use when there are minimal impacts, to allow the use but impose conditions to address identified concerns, or to deny the use if the concerns cannot be resolved.

Uses identified as requiring Conditional Use approval may be permitted, enlarged or altered in accordance with the provisions of this section. In addition, where a use is not authorized in any district or where ambiguity exists concerning the appropriate classification of a particular use or type of development within the intent of this Code, the use or type of development may be established by a Conditional Use approval in accordance with this section.

2.240 Procedure. Conditional Use applications are reviewed as either a Type II or a Type III procedure, according to the Schedule of Permitted Uses. [Ord. 5446, 5/10/00, Ord. 5673, 6/27/2007]

2.250 Review Criteria. Requests for Conditional Uses will be approved if the review body finds that the applicant has shown that all of the following criteria have been met, either outright, or with conditions that bring the proposal into compliance:

- (1) The proposed use is consistent with the intended character of the base zone and the operating characteristics of the neighborhood.
- (2) The proposed use will be compatible with existing or anticipated uses in terms of size, building scale and style, intensity, setbacks, and landscaping or the proposal calls for mitigation of difference in appearance or scale through such means as setbacks, screening, landscaping or other design features.
- (3) The transportation system is capable of supporting the proposed use in addition to the existing uses in the area. Evaluation factors include street capacity and level of service, on-street parking impacts, access requirements, neighborhood impacts and pedestrian safety.
- (4) Public services for water, sanitary and storm sewer, water management and for fire and police protection are capable of servicing the proposed use.
- (5) The proposal will not have significant adverse impacts on the livability of nearby residentially zoned lands due to:
 - (a) Noise, glare, odor, litter, and hours of operation.
 - (b) Privacy and safety issues.
- (6) Any special features of the site (such as topography, floodplains, wetlands, vegetation, historic sites) have been adequately considered and utilized. [Ord. 5265, 12/18/1996]

2.260 Conditions of Approval. The review body may attach conditions to a conditional use approval to ensure that the proposal will conform to the applicable review criteria.

Some of the most frequently imposed conditions relate to the following: uses; special yards, and spaces; fences and walls; street dedications and improvement petitions (or bonds); ingress and egress; signs; building textures, colors, architectural features and height; landscaping, screening and buffering; noise, vibration, odors or other similar nuisances; hours for certain activities; time period within which the proposed use shall be developed; duration of use; and preservation of natural vegetative growth and open space.

DEVELOPMENT CODE AMENDMENTS

- 2.270 Purpose. The Development Code is designed to implement the goals and policies of the Comprehensive Plan, which is a reflection of community values and needs. Because these values may change with time and because new techniques for implementing the Plan may be appropriate, the Code must have some mechanism for response to those changes. Amendments to the Code should occur as needed in order to maintain a close relationship between the Development Code and the Comprehensive Plan.
- 2.280 Procedures. Code amendments shall be processed as a Type IV procedure in accordance with the legislative procedures of Sections 1.580-1.660. Exception: The Director may initiate and approve amendments for the following types of corrections through a Type I procedure: typographical, grammatical, and cross-referencing errors. [Ord. 5635, 1/11/2006]
- 2.290 Review Criteria. The request may be approved if the Council finds that the applicant has shown that all of the following criteria are met:
- (1) The proposed amendments better achieve the goals and policies of the Comprehensive Plan than the existing regulatory language.
 - (2) The proposed amendments are consistent with Development Code policies on purpose and with the purpose statement for the base zone, special purpose district, or development regulation where the amendment is proposed.

NONCONFORMING SITUATIONS

- 2.300 Purpose. Within the City there are lots, developments, and uses which were lawful before this Code was adopted or amended, but which would no longer be allowed under the current terms of this Code. It is the intent of these provisions to permit such nonconformities to continue, but not to encourage their perpetuation. All nonconformities are referred to as “nonconforming situations.”
- 2.310 Status and Documentation of a Nonconforming Situation. The nonconforming situation regulations apply only to those situations which were allowed when established or which were approved through a land use review. Nonconforming situations which were not allowed when established have no grandfather rights and must be removed. The burden of proof is on the property owner or applicant to document that a nonconforming situation was allowed when established and was maintained over time. Satisfactory evidence of the nonconforming situation must be provided by the applicant. Evidence might consist of building permits, utility hookups, tax records, business licenses, or telephone directory listings.
- 2.320 Types of Nonconforming Situations. A lot of record may be nonconforming because it does not meet the dimensional or area standards currently required in a particular zoning district. A specific site may be nonconforming because it contains either a nonconforming use, an allowed residential use that exceeds the allowed density, a nonconforming development, or a combination of these.
[Ord. 5338, 1/28/1998]
- 2.325 Certain Residential Uses Granted Special Status. Special status has been granted to existing single-family dwellings in commercial, office and industrial zones. Special status has been granted for two or more units constructed prior to November 20, 1996, in the Hackleman Monteith zoning district. Notwithstanding the restrictions or terms of any other section of the Albany Development Code (ADC), these properties shall be deemed to be conforming with the base zoning district. See Sections 3.060, 4.075 and 5.080. [Ord. 5555, 2/7/2003]
- 2.330 Regulations That Apply to All Nonconforming Situations.
- (1) The status of a nonconforming situation is not affected by changes in ownership.
 - (2) A nonconforming situation may be changed to a conforming situation by right. Once a conforming situation occupies the site, the nonconforming rights are lost and a nonconforming situation may not be re-established.
 - (3) A nonconforming use may change to a conditional use if approved through a conditional use review. Once a conditional use occupies the site, the nonconforming rights are lost and a nonconforming use may not be re-established.
 - (4) Normal maintenance and repair of nonconforming situations is allowed.
- 2.340 Loss of Nonconforming Status.
- (1) The nonconforming use of a building, structure, or land shall be deemed to have terminated if the building, structure, or land ceases to be occupied by a permitted or legally nonconforming use for any reason for a continuous period of one year. Extensions of up to two additional years may be granted under the Type II procedure if the Director finds that:
 - (a) Conversion to any conforming use will result in a substantial economic loss and that the proposed use will result in greater conformance with the development standards of the zone
 - OR
 - (b) Immediately surrounding land uses are similarly nonconforming and proposed use will be compatible with both the nonconforming and conforming uses in the review area.

- (2) Nonconformance with any development standard or condition other than building setback, coverage, or height shall be deemed terminated if the building, structure, or land ceases for any reason to be occupied by a permitted or legally nonconforming use for a continuous period of one year.
- (3) Any nonconforming use or development dependent upon a building or structure which is substantially damaged or becomes deteriorated to the extent that it has been declared a “dangerous building” and ordered demolished pursuant to the Albany Dangerous Building Code (AMC Chapter 18.16) shall be deemed terminated upon such destruction or declaration and order.
- (4) Any nonconforming use or development dependent upon a building or structure which is substantially damaged or destroyed by any cause to the extent that the cost of repair or restoration of the building or structure would exceed 70 percent of its fair market value shall be deemed terminated.
 - (a) Cost of repair or restoration shall be determined by the Building Official. Fair market value shall be determined by independent professional appraisal in a form satisfactory to the City. Such determinations of value and cost are appealable to the Building Board of Appeals. Exceptions to this standard may be applied for under the Type II procedure.
 - (b) The Director may allow additional degrees of reconstruction upon finding that:
 - (1) Conversion to any conforming use will result in a substantial economic loss, and
 - (2) The proposed use will result in greater conformance with the development standards of the zone, or
 - (3) Immediately surrounding land uses are similarly nonconforming and the reconstructed use will be compatible with both the nonconforming and conforming uses in the review area.
- (5) Rebuilding of structures which have been intentionally destroyed and which contained nonconforming uses is prohibited.

2.345 Nonconforming Lots of Record. Lots of record that do not meet the dimensional or area requirements of the zoning district in which they are located may be developed. Any new structure built on the lot must conform with the development standards for the zoning district in which the lot is located (such as setbacks, lot coverage, etc.). [Ord. 5338, 1/28/1998]

2.350 Nonconforming Uses.

- (1) Nonconforming uses may continue to operate. Changes in operations are allowed. However, nonconforming uses in residential zones may not extend their hours of operation into the period of 11 p.m. to 6 a.m.
- (2) A change to another use in the same use category is allowed by right. A change to a use in a different use category which is prohibited by the base zone may be allowed through a nonconforming use review.
- (3) Structural expansions shall be limited to the following:

<u>Existing Gross Floor Area</u>	<u>% of Expansion Allowed</u>
Building under 4,000 sq. ft.	25%
Building under 10,000 sq. ft.	20%
Building larger than 10,000 sq. ft.	15%

- (4) Nonconforming uses and buildings may expand one time only.

- (5) Expansion of the nonconforming use onto another site is prohibited, except in the following situation:
 - (a) The site is abutting the site of the nonconforming use; and
 - (b) The site was in the same ownership as the nonconforming site when it became nonconforming; and
 - (c) The prior zoning regulations on the expansion site would have allowed the use; and
 - (d) The expansion is approved through a nonconforming use review.
- (6) The addition of new residential units to a nonconforming residential use is prohibited.

2.360 Nonconforming Residential Densities.

- (1) Existing dwelling units may continue, may be removed or enlarged, and amenities may be added to the site. There may not be a net increase in the number of dwelling units and the building may not move further out of compliance with the base zone development standards.

2.370 Nonconforming Development. This section is primarily aimed at upgrading nonconforming development elements that affect the appearance and impacts of a site. Nonconforming developments may continue unless specifically limited by Subsection (2) below or other regulations in this Title.

- (1) Changes may be made to the site which are in conformance with the base zone development standards.
- (2) Development not complying with the following standards must be brought into compliance with the base zone standards to an extent commensurate with the proposed changes.
 - (a) Landscaped setbacks for surface parking and exterior development areas;
 - (b) Interior parking lot landscaping;
 - (c) Landscaping in existing building setbacks;
 - (d) Minimum landscaped area (where land is not used for structures, parking, or exterior improvements);
 - (e) Screening; and
 - (f) Paving of surface parking and exterior storage and display areas.

2.380 Sites That Are Nonconforming in Parking Spaces. When a site is nonconforming in the number of required parking spaces and changes to a use or building are made that increase the number of required parking spaces, only the number of spaces relating to the increase need to be provided.

2.390 Procedure. A nonconforming situation is reviewed through a Type II procedure.

2.400 Review Criteria. The request will be approved if the review body finds that the applicant has shown that all of the following criteria are met:

- (1) The nonconforming situation was not created unlawfully. See Section 2.310.
- (2) With mitigation measures, there will be a net decrease in overall detrimental impacts (over the impacts of the previous use or development) on the surrounding area taking into account factors such as:
 - (a) The hours of operation;
 - (b) Vehicle trips to the site and impact on surrounding on-street parking;
 - (c) Noise, vibration, dust, odor, fumes, glare, and smoke;
 - (d) Potential for increased litter; and
 - (e) The amount, location, and nature of any outside displays, storage, or activities; and either (3) or (4) below.

- (3) If the nonconforming use is in a residential zone, and if any changes are proposed to the site, the appearance of the new use or development will not lessen the residential character of the area. This is based on taking into account factors such as:
 - (a) Building scale, placement, and facade;
 - (b) Parking area placement;
 - (c) Buffering and the potential loss of privacy to abutting residential uses; and
 - (d) Lighting and signs.

- (4) If the nonconforming use is in a commercial or industrial zone, and if any changes are proposed to the site, the appearance of the new use or development will not detract from the desired function and character of the zone.

VACATIONS

- 2.410 Purpose. This section states the procedures and review criteria for the vacation of an easement, right-of-way, or plat.
- 2.420 Initiation. A vacation proposal may be initiated by the City Council or by petition of adjoining and area owners in accordance with ORS 271.080.
- 2.430 Procedure. Type IV procedures as outlined in Section 1.370 shall be used as supplemented by the provisions of ORS Chapter 271. State law defines the affected area and mandates notice requirements that are more stringent than the City's Type IV procedure.
- 2.440 Review Criteria. A vacation request may be approved if the review body finds that the applicant has shown that all of the following review criteria are met:
- (1) The requested vacation is consistent with relevant Comprehensive Plan policies and with any street plan city transportation or public facility plan.
 - (2) The requested vacation will not have a negative effect on access between public rights-of-way or to existing properties, potential lots, public facilities or utilities.
 - (3) The requested vacation will not have a negative effect on traffic circulation or emergency service protection.
 - (4) The portion of the right-of-way that is to be vacated will be brought into compliance with Code requirements, such as landscaping, driveway access, and reconstruction of access for fire safety.
 - (5) The public interest, present and future, will be best served by approval of the proposed vacation.
- 2.450 Zoning of Vacated Right-of-Way. Except as otherwise provided within the vacation ordinance or where the official City zoning map is not clear as to the zoning of vacated right-of-way, the zoning of each parcel of vacated territory shall be the same as the adjoining property to which the ownership of the parcel automatically reverts.
- 2.460 Conditions of Approval. The City may attach conditions to the approval of a vacation request to ensure that the proposal will conform to the review criteria.

VARIANCES

- 2.470 Purpose. Variances provide flexibility for unusual situations, while continuing to provide certainty and rapid processing for land use applications. Variances are necessary when the applicant requests a deviation from numerical standards of more than 10 percent, or a variation from non-numerical development standards. Requests for changes of less than 10 percent of a numerical standard are processed as adjustments.
- 2.480 Procedure. A variance requests shall be reviewed as a Type II procedure.
- 2.490 Regulations Which May and May Not Be Varied.
- (1) Unless listed in Subsection (2) below, all regulations in this Title may be modified using the variance process.
 - (2) Variances are prohibited for the following items:
 - (a) To allow a primary or accessory use that is not allowed by the regulations.
 - (b) As an exception to any restrictions on uses or development which contain the word "prohibited".
 - (c) As an exception to a threshold for a review, such as the size of accessory structures.
 - (d) As an exception to a definition or classification.
 - (e) As an exception to the procedural steps of a procedure or to change assigned procedures.
- 2.500 Review Criteria. The review criteria for sign variances are stated in Section 13.710, Sign Code. All other variance requests will be approved if the review body finds that the applicant has shown that all of the following criteria have been met:
- (1) The proposal will be consistent with the desired character of the area; and
 - (2) If more than one variance is being requested, the cumulative effect of the variances results in a project which is still consistent with the overall purpose of the zone; and
 - (3) The requested variance is the minimum necessary to allow the proposed use of the site; and
 - (4) Any impacts resulting from the variance are mitigated to the extent practical; or
 - (5) Application of the regulation in question would preclude all reasonable economic use of the site.

ZONING MAP AMENDMENTS

- 2.510 Purpose. This section states the procedures and review criteria necessary to process an amendment to the base zones, special purpose districts, and other map symbols of the Zoning Map. The section differentiates between amendments which are processed in a quasi-judicial manner and those processed in a legislative manner.
- 2.520 Initiation.
- (1) Quasi-judicial zoning map amendments may be initiated by a property owner, a representative of the owner, the Director, the Planning Commission, or the City Council.
 - (2) Legislative zoning map amendments may be initiated by the Director, Planning Commission or City Council. Citizens may request that the Planning Commission initiate a legislative amendment. This type of initiation is addressed in Section 1.580.
 - (3) Initiations by a review body are made without prejudice towards the outcome.
- 2.530 Procedure. Zoning map amendments will be reviewed through the Type IV procedures as outlined in Section 1.370 or by legislative action as provided for in Sections 1.580 - 1.660.
- 2.540 Special Notice Requirements. If a zone change request would change the zone of property which includes all or part of a manufactured home park, the City shall give written notice by first class mail to each existing mailing address for tenants of the manufactured home park at least 20 days but not more than 40 days before the date of the first hearing on the application. The failure of a tenant to receive a notice which was mailed shall not invalidate any zone change.
- 2.550 Review Criteria. Zoning map amendments will be approved if the Council finds that the applicant has shown that all of the following criteria are met:
- (1) The proposed base zone is consistent with the Comprehensive Plan map designation for the entire subject area unless a Plan map amendment has also been applied for.
 - (2) Existing or anticipated transportation facilities are adequate for uses that are permitted under the proposed zone designation.
 - (3) Existing or anticipated services (water, sanitary sewers, storm sewers, schools, police and fire protection) can accommodate potential development within the subject area without adverse impact on the affected service area.
 - (4) Any unique natural features or special areas involved such as floodplains, slopes, significant natural vegetation, historic district will not be jeopardized as a result of the proposed rezoning.
 - (5) The intent and purpose of the proposed zoning district best satisfies the goals and policies of the Comprehensive Plan.
 - (6) The land use and transportation pattern recommended in any applicable City-contracted or funded land use or transportation plan or study has been followed, unless the applicant demonstrates good cause for the departure from the plan or study. [Ord. 5635, 1/11/2006]
- 2.560 Corrections to the Official Zoning Map. The Director may initiate and approve a review following the Type I procedure for the types of corrections to the Official Zoning Map listed below:
- (1) A map line that was intended to follow a topographical feature does not do so. Topographical features include the tops and bottoms of hillsides, the banks of water bodies, and center lines of creeks or drainage ditches.

- (2) The line on the map does not match the legal description or map shown or referenced in the ordinance which applied the designation.
- (3) There is a discrepancy between maps and there is clear legislative intent for where the line should be.
- (4) It can be clearly shown that a map line is based on the location of a reference item that has since been moved. Reference items are rights-of-way, tentative rights-of-way, utility easements and similar type items. Map line changes in these cases must not be more than a trivial change to the map pattern and must not result in any significant impacts to abutting lots.

2.570 Zoning. For rezoning and annexation zoning requests, the zoning of the property shall be compatible with the Comprehensive Plan designation as provided in the Plan Designation Zoning Matrix. Zoning other than shown in the matrix requires approval of a Comprehensive Plan Map and/or Zoning Map amendment.

PLAN DESIGNATION ZONING MATRIX

Comprehensive Plan Designation	Compatible Zoning Districts
Light Industrial	Industrial Park (IP), Light Industrial (LI), Transit District (TD)
Heavy Industrial	Light Industrial (LI), Heavy Industrial (HI)
General Commercial	Neighborhood Commercial (NC), Community Commercial (CC), Regional Commercial (RC), Office Professional (OP)
Light Commercial	Neighborhood Commercial (NC), Office Professional (OP)
Village Center	Historic Downtown (HD), Central Business (CB), Lyon-Ellsworth (LE), Pacific Boulevard (PB), Elm Street (ES), Main Street (MS), Waterfront (WF), Mixed Use Commercial (MUC), Residential Medium Density (RM), Residential Medium Density Attached (RMA), Mixed Use Residential (MUR), Office Professional (OP), Community Commercial (CC)
Medium Density Residential	Residential Single Family (RS-5), Residential Medium Density (RM), Residential Medium Density Attached (RMA), Mixed Use Residential (MUR), Office Professional (OP), Neighborhood Commercial (NC)
Low Density Residential	Residential Single Family (RS-10, RS-6.5, RS-5), Hackleman-Monteith (HM), Residential Reserve (RR), Office Professional (OP), Neighborhood Commercial (NC)
Urban Residential Reserve	Residential Single Family (RS-10, RS-6.5, RS-5), Residential Reserve (RR), Residential Medium Density Attached (RMA), Residential Medium Density (RM), Mixed Use Residential (MUR), Neighborhood Commercial (NC), Office Professional (OP)
Public and Semi-Public	All zones
Open Space	Open Space (OS)

[Ord. 5555, 2/7/2003; Ord. 5556, 2/21/2003; Ord. 5673, 6/27/2007]

SITE PLAN REVIEW

- 2.600 Purpose. Site Plan Review is intended to promote functional, safe, and attractive developments, which maximize compatibility with surrounding developments and uses and with the natural environment. Site Plan Review mitigates potential land use conflicts resulting from proposed development through specific conditions attached by the review body. Site Plan Review is not intended to evaluate the proposed use or the structural design of the proposal. Rather, the review focuses on the layout of a proposed development, including building placement, setbacks, parking areas, external storage areas, open areas, and landscaping. [Ord. 5445, 4/12/2000]
- 2.610 Levels of Review. These sections establish three levels of Site Plan Review, with the degree of detail required for submittal and review criteria based on the projected land use impacts. Option A review is primarily for new development and is subject to the greatest scrutiny. Option B is primarily for review of those projects which are expansions of existing development and which will generally result in fewer impacts on the surrounding area than a new development. Option C review is used when the proposal is for a change in use or another modification to a developed site which will not result in a greater impact on the neighborhood or on public facilities. [Ord. 5445, 4/12/2000]
- 2.620 Relationship to Other Regulations. Approval of a land use application based on review criteria in this Code does not relieve the applicant of responsibility for compliance with other applicable codes, ordinances, statutes or regulations. [Ord. 5445, 4/12/2000]
- 2.630 When Site Plan Review is Required. In general, a Site Plan Review covers all proposed exterior alterations included in the development proposal, but does not cover portions of the existing development that are not being modified. An exception to this is parking areas, where any proposed change to the parking lot will result in the entire parking area being reviewed. Site Plan Review is required in all of the following instances:
- (1) New development.
 - (2) Building expansions of 500 square feet or more, or any expansion that results in a reduction of parking spaces.
 - (3) Parking area expansions of 1,000 square feet or more.
 - (4) Any development listed in Articles 3, 4, and 5 that specifically requires Site Plan Review. [Ord. 5445, 4/12/2000]
- 2.640 When Site Plan Review is not Required. Activities and developments listed below are excluded from the requirement for a Site Plan Review land use application but are nevertheless subject to the provisions of the Code where applicable:
- (1) Agricultural uses permitted outright in any zone.
 - (2) Detached single family dwellings and two unit dwellings.
 - (3) Accessory buildings and building additions of less than 500 square feet which conform to the provisions of this Code and the Uniform Building Code.
 - (4) Accessory buildings in residential districts that meet the following standards. (Information must be submitted that shows the standards are met. The information shall be submitted at the time the applicant applies for building permits. The Community Development Director or his/her designee will determine whether the standards are met.)

- (a) The proposed building does not exceed the height of the tallest building on adjacent property. Height here means the height of the building at its highest point.
- (b) The square footage of the area enclosed by the foundation of the proposed building does not exceed the square footage of the area enclosed by the foundation of the largest building on adjacent property.
- (c) The amount of land that will be covered by buildings if the proposed building is constructed does not exceed the applicable lot coverage restrictions of the Development Code.
- (d) The proposed building meets or exceeds the applicable setback requirements for the primary residential structure listed in the Development Code.
- (e) The materials that will be used on the proposed building (e.g. siding and roofing), and the color of those materials, are the same as those used on the primary residential structure on the subject property.
- (f) If the proposed building is located in any of the special purpose districts listed in Articles 6 and 7 of the Development Code, the building must also be reviewed for conformance with the requirements of the applicable district.

Accessory buildings in floodplain districts are subject to the floodplain regulations of Article 6.

- (5) Landscaping and routine property maintenance.
- (6) Improvement of parking areas containing less than 1,000 square feet and otherwise meeting the provisions of this Code.
- (7) A change internal to a building or other structure or usage of land that does not constitute a change of use as listed in Article 5.
- (8) Site Plan Review for a change in use within an existing structure when the following criteria are satisfied:
 - (a) No structural expansion in excess of 500 feet or additional exterior storage is proposed.
 - (b) The use will not create additional adverse affects for abutting properties or the neighborhood (e.g. visual, noise, or air pollution, increased parking requirements, or improvements to public facilities.)
 - (c) Any non-conformity with the provisions of this Code has been addressed, including compliance with sign, landscaping, and parking requirements except where restricted by building location or limiting site characteristics.
- (9) An emergency measure necessary for the safety or protection of property when authorized by the City Manager with written notice to the City Council.
- (10) Any temporary use of land of up to a 30-day duration (such as a promotional event, festival, carnival, or outdoor sale) which conforms with all other requirements of this Code and other applicable City regulations and public health and safety requirements, some of which may further limit such uses in terms of location, scope, and duration.
- (11) The establishment, construction, alteration, or maintenance of a public facility authorized by the Public Works Director including streets, highways, traffic control devices, drainage ways, sanitary and storm sewers, pump stations, water lines, electrical power or gas distribution lines, or telephone or television cable systems. This includes construction of staging areas of less than a six months duration but does not include major substations, treatment facilities, storage tanks, reservoirs, and towers.
- (12) Excavation and fill for foundations and all other excavation or filling of land involving 50 cubic yards or less which does not adversely affect drainage patterns and is not located within a floodplain or slope area. [Ord. 5381, 3/26/1997; Ord. 5445, 4/12/2000]

- 2.650 Review Criteria. A site plan approval will be granted if the review body finds that the applicant has met all of the following criteria that are applicable to the proposed development.
- (1) The transportation system can safely and adequately accommodate the proposed development.
 - (2) Parking areas and entrance-exit points are designed to facilitate traffic and pedestrian safety and avoid congestion.
 - (3) Public utilities can accommodate the proposed development.
 - (4) Any special features of the site (such as topography, hazards, vegetation, wildlife habitat, archaeological sites, historic sites, etc.) have been adequately considered and utilized.
 - (5) The design and operating characteristics of the proposed development are reasonably compatible with surrounding development and land uses, and any negative impacts have been sufficiently minimized.
- [Ord. 5445, 4/12/2000, Ord. 5635, 1/11/2006]

- 2.660 Conditions of Approval. The City may attach conditions to the approval of a Site Plan Review application in order to ensure that the proposal will conform to the applicable review criteria.
[Ord. 5445, 4/12/2000]

OPTION A REVIEW

- 2.670 Applicability. This level of review is intended for new development within the City. Any proposal that is not appropriately reviewed under Options B or C will be reviewed under Option A.
[Ord. 5445, 4/12/2000]
- 2.680 Procedure. A Type I-L limited land use procedure is followed for an Option A Site Plan Review with the Director acting as the review body. [Ord. 5445, 4/12/2000]
- 2.690 Application Contents. An application for Option A Site Plan Review consists of the following:
- (1) A completed application form.
 - (2) A mailing list of property owners within 100 feet of the entire contiguous site, except that a mailing list of property owners within 300 feet must be provided when a subdivision, manufactured home park, or multi-family development is proposed. The list will be compiled from the most recent property tax assessment roll. Notice shall also be provided to any neighborhood or community organization recognized by the governing body and whose boundaries include the site.
 - (3) One set of conceptual drawings, including floor plans and building elevations.
 - (4) A conceptual landscape plan (2 copies) showing the type and location of proposed landscaping and screening.
 - (5) A site plan (10 copies) showing the following:
 - (a) Assessor's map and tax lot number and lot and block description or other legal description.
 - (b) Lot dimensions and total lot area.
 - (c) North arrow.
 - (d) Location of all existing and proposed structures, including minimum distances from all structures to lot lines.
 - (e) Percentage of the lot covered by any and all structures.

- (f) Adjacent zoning designations and adjacent land uses including approximate location of buildings, accesses, streets, sidewalks, curbs, easements, and utilities.
- (g) Locations and dimensions of rights-of-way of all abutting streets (whether public or private) and existing and proposed driveways.
- (h) Size and location of all utilities.
- (i) Locations, dimensions, and nature of any easements.
- (j) Location of any non-access strips.
- (k) Natural drainage patterns (existing contour lines at two-foot intervals if required by Director.)
- (l) Location, size, and capacity of the existing and proposed drainage system including pipe size and slope. Show existing and proposed finished grade elevations at collection points and property lines. Include the location, size, and capacity of facilities identified in the Drainage Master Plan that would serve the proposed development.
- (m) Proposed cuts and fills of more than two feet and any changes in elevations proposed at property lines.
- (n) Location and species of trees greater than 25 inches in circumference when measured at 4-1/2 feet above mean ground level from the base of the trunk.
- (o) Location and dimensions of delivery and loading areas.
- (p) Location and dimensions of parking and circulation areas.
- (q) Location and dimensions of trash disposal areas.
- (r) Location of proposed signs. [Ord. 5338, 1/28/1998; Ord. 5445, 4/12/2000]

2.700 Appeals. An Option A Site Plan Review decision is a limited land use decision and may be appealed in accordance with Section 1.330. [Ord. 5445, 4/12/2000]

OPTION B REVIEW

2.710 Applicability. This level of review is intended for expansion of existing structures or development, which will have a minimal impact on the surrounding area. An Option B Site Plan Review must be filed when the following developmental activities are proposed:

- (1) An addition (exceeding 500 square feet) to an existing structure.
- (2) Parking lot additions of over 1000 square feet.
- (3) A change in occupancy to a more intensive use in an existing building.
- (4) Reduction in the number of parking spaces. Any development consistent in scope and impact with those listed here may also be reviewed under an Option B review, at the Director's discretion. [Ord. 5265, 12/18/1996; Ord. 5445, 4/12/2000]

2.720 Procedure. A Type I-L limited land use procedure is followed for the Option B Site Plan Review with the Director acting as the review body. [Ord. 5445, 4/12/2000]

2.730 Application Contents. The Director may require any of the information listed for Option A Site Plan Review in Section 2.690. In many cases, not all of this information will be required due to lack of applicability. [Ord. 5445, 4/12/2000]

2.740 Appeals. An Option B Site Plan Review decision is a limited land use decision and may be appealed in accordance with Section 1.330. [Ord. 5445, 4/12/2000]

OPTION C REVIEW

2.750 Applicability. An Option C Site Plan Review is intended for review of development in existing buildings. It is appropriate for the following types of development proposals:

- (1) A change in occupancy to a use which is not more intense in off-site impacts.
- (2) Resurfacing of nonconforming parking lots.
- (3) Other development with similar impacts. [Ord. 5445, 4/12/2000]

2.760 Procedure. A Type I procedure is followed for the Option C Site Plan Review. [Ord. 5445, 4/12/2000]

2.770 Application Contents. An Option C Site Plan Review requires submittal of only the completed application form. [Ord. 5445, 4/12/2000]

2.780 Review Criteria. The following criteria must be met in order for the Director to approve the proposed development.

- (1) Off-street parking is adequate to serve the proposed use.
- (2) The proposed use will not generate more traffic than the previous use.
- (3) The site is in, or can be brought into, compliance with the spirit of the Code regarding landscaping, screening and buffering.

Any applicable criteria from Section 2.650. [Ord. 5445, 4/12/2000]

ANNEXATIONS

- 2.800 Purpose. Annexation is the first step in converting urbanizable lands to urban land within the Albany Urban Growth Boundary. Annexation and subsequent development may provide economic and social benefits to the City of Albany through the creation of housing; business and commercial enterprise; creation of construction and permanent jobs; and expansion of the City's tax base. When annexations are properly timed, they allow for orderly expansion of city boundaries and contribute to logical extensions of public infrastructure. An ill-conceived annexation may impose burdens on the community that could outweigh the benefits. An annexation application must meet the quasi-judicial and legislative requirements of this Code and state law.
- 2.805 Procedure. Annexation applications are reviewed as a Type IV procedure. If it is the Albany City Council's legislative determination to set the matter for a citywide vote, annexation shall only be approved by a prior majority vote among the electorate.
- (1) Exception. These procedures do not apply to an annexation mandated by state law, which is a Type I procedure and not subject to voter approval.
- 2.810 Voting in Island Annexations. When considering the annexation of "island" territory as authorized by ORS 222.750, the City Council shall authorize the electors within the annexation territory to vote on the question of annexation. In such event, the votes of the electors in the annexation territory shall be counted with the votes of the electors within the city. This section shall not authorize the votes of the electors within the annexation territory to be considered separately from those of the citizens within the city, except that an annexation will not be approved unless the majority of votes cast by the city electors approve the annexation.
- 2.815 Annexation Agreement. The annexation applicant and the City of Albany may enter into an Annexation Agreement for the purpose of addressing the annexation-related quasi-judicial or legislative concerns of the City of Albany. The agreement may contain proffers made by the applicant to address quasi-judicial or legislative criteria or concerns. The annexation agreement may provide the basis for the City Council to determine that the proposed annexation is in the public interest. The terms of the annexation agreement may help the applicant meet applicable review criteria for annexation or enhance the public benefits that will result from the annexation. The terms of an annexation agreement may include, but are not limited to, timing of the submittal of an application for zoning, dedication of land for future public facilities, construction of public improvements, waiver of compensation claims, waiver of nexus or rough proportionality objections to future exactions, or other commitments deemed valuable to the City of Albany. The annexation agreement shall be recorded as a covenant running with the land, binding on the landowner's successors in interest.
- 2.820 Review Criteria. The review body shall make a quasi-judicial land use decision as to whether the proposed annexation complies with all of the following criteria:
- (1) Eligibility Criteria. The City shall determine that property is eligible for annexation based on the following criteria:
 - (a) The property is contiguous to the existing city limits; and
 - (b) The property is located within the Albany Urban Growth Boundary as established by the Albany Comprehensive Plan.
 - (2) Infrastructure Criteria. The City shall determine that it is timely to annex property based on the following criterion:
 - (a) An adequate level of urban services and infrastructure is available, or will be made available in a timely manner.
 - (b) As used in this section:
 - i. "Adequate level" means conforms to adopted plans and ordinances.
 - ii. "Urban services" means police, fire, and other City-provided services.

- iii. "Infrastructure" means sanitary sewer, water, storm drainage, and streets.
- iv. "Be made available in a timely manner" means that improvements needed for an adequate level of urban services and infrastructure will be provided at the time and place needed to serve the anticipated development. Improvements may be secured by a development agreement, annexation agreement, or other funding mechanism that will place the primary economic burden on the territory proposed for annexation and not on the City of Albany generally.

- (3) **Planning Criteria.** The City shall determine that adequate planning has occurred based on the following criterion:

Sufficient planning and engineering data have been provided, and necessary studies and reviews have been completed such that there are no significant unresolved issues regarding appropriate Comprehensive Plan and implementing ordinances. Examples of needed studies may include public infrastructure plans, buildable lands inventories, area refinement plans, or any task in an approved work program for Periodic Review.

- (4) **Reasonableness Criteria.** The City shall determine that it is reasonable to annex the property.

2.825 **Legislative Review.** The City has been entrusted by the people of Albany to make decisions affecting the livability of the community. The people rely on the City to consider whatever factors it deems appropriate in making quality of life determinations on their behalf, including whether to place annexation requests before the voters of the City of Albany.

- (1) The City is not obligated to reach a legislative decision to either place an annexation on the ballot or to refrain from doing so. The City is not obligated to approve the annexation even if it determines that the quasi-judicial review criteria have been met. Following the quasi-judicial land use determination, the City may decline to take legislative action, or make a legislative determination to approve or deny the proposed annexation if it deems such action to be in the public interest.

- (a) The legislative decision to place the matter on the ballot for election, or to decline to take such action, shall be at the discretion of the City and shall be made by resolution. If authorized, the matter shall be placed before the voters of the City in the manner prescribed by the City.
- (b) An annexation application denied by the City shall not be placed on the ballot for election.

2.830 **Proclamation of Annexation.** If the annexation is approved by the electorate, the City Council, by ordinance, shall set the final boundaries of the area to be annexed by a legal description of the annexation boundary and proclaim the annexation in accordance with state law.

ZONING OF ANNEXATION TERRITORY

2.835 **Interim Zoning.** Any area annexed to the City shall retain the zoning classification of the county until changed by the City. During the period between the proclamation of annexation and application of City zoning, the City shall enforce the current zoning regulations of the county along with any conditions, limitations or restrictions applied by the county as though they were part of the Code, except that the provisions of this Code shall supersede comparable provisions of the county zoning regulations.

2.840 **Procedure.** Applying initial City zoning to annexation territory is subject to the provisions of ADC 2.510 through 2.570.

2.845 Application of Initial City Zoning. The City may exercise full discretion in determining the initial City zoning of annexation territory.

- (1) The City may initiate a zoning map amendment as provided by ADC 2.520 to apply the initial City zoning to the annexation territory.
- (2) The City may approve the zoning requested by the applicant.
- (3) The City may select a zoning district other than that requested by the applicant in order to best satisfy the criteria for a zoning map amendment set forth in ADC 2.550. In this event, the applicant may withdraw the annexation application by written notice to the City within ten (10) days of the City's action, or forty-eight (48) hours prior to the filing date and time required by the County Clerk for inclusion in the election, whichever shall first occur.

2.850 Concurrent Applications. The City does not have authority to zone land or to regulate development under this Code until land is annexed. However, the applicant for annexation may request zone change and development-related applications filed for concurrent review with an annexation request. As used in this section, "development-related application" includes, but is not limited to, site plan review, conditional use, land division, or variance.

- (1) If the applicant for annexation desires concurrent, pre-annexation determinations for related land use applications, those applications shall be processed concurrently through a Type IV procedure.
- (2) In order to be eligible for filing zone change and development-related applications for concurrent review with an annexation request, the applicant shall waive the provisions of state law and this Code that require a final decision within 120 days.
- (3) The determination on all land use applications filed for concurrent review with an annexation application shall not be final for the purposes of administrative or judicial review until the date that the annexation is proclaimed.
- (4) All land use applications filed for concurrent review shall result in a single decision for purposes of appeal, such that all applications, excluding annexation, are subject to review on appeal if any one application is challenged.
- (5) If any land use decision concurrent with annexation is reversed on appeal, all concurrent applications, excluding annexation, are void.
- (6) Concurrent, development-related applications, once approved, may be modified pursuant to the procedures in ADC 1.226, or the development-related application may be withdrawn and a new application submitted for review.
- (7) In the event land is not developed in substantial conformance with a concurrent, development-related approval and the decision is no longer valid, the City may initiate a zone change pursuant to ADC 2.520 to revert all or a portion of the annexation territory to the previous county zoning classification. Such a reversionary stipulation may be included in the annexation agreement.

[Ord. 5635, 1/11/2006]