



NOTICE OF PUBLIC MEETING

**CITY OF ALBANY
CITY COUNCIL
Council Chambers
333 Broadalbin Street SW
Wednesday, March 9, 2011
7:15 p.m.**

OUR MISSION IS

*“Providing quality public services
for a better Albany community.”*

OUR VISION IS

*“A vital and diversified community
that promotes a high quality of life,
great neighborhoods, balanced
economic growth, and quality public
services.”*

AGENDA

Rules of Conduct for Public Hearing

1. No person shall be disorderly, abusive, or disruptive of the orderly conduct of the hearing.
2. Persons shall not testify without first receiving recognition from the presiding officer and stating their full name and residence address.
3. No person shall present irrelevant, immaterial, or repetitious testimony or evidence.
4. There shall be no audience demonstrations such as applause, cheering, display of signs, or other conduct disruptive of the hearing.

1. CALL TO ORDER
2. PLEDGE OF ALLEGIANCE TO THE FLAG
3. ROLL CALL
4. SCHEDULED BUSINESS

a. Legislative Public Hearing

1) Development Code Amendments. [Pages 1-28]

- a) DC-06-10, amending Ordinance No. 4441, which adopted the City of Albany Development Code and Zoning Map by amending the Development Code text related to allowing electric fences in the Light Industrial and Heavy Industrial zones, allowing barbed wire on livestock fencing, and clarifying the fencing standards, adopting findings, and declaring an emergency. [Pages 1-23]

Action: _____ ORD. NO. _____

- b) DC-01-11, amending Ordinance No. 4441, which adopted the City of Albany Development Code and Zoning Map by amending the Development Code text related to providing an alternative perimeter landscaping plan when landscaping can be placed in excess public right-of-way, adopting findings, and declaring an emergency. [Pages 1-2 & 23-28]

Action: _____ ORD. NO. _____

b. Public Hearing

- 1) Appeal of dangerous property designation for 117 Main Street NE. [Pages 29-38]

Action: _____

c. Business from the Public

d. Adoption of Resolutions

- 1) Authorizing the City Manager to sign an Intergovernmental Agreement with Greater Albany Public Schools, revising a prior agreement authorized by Resolution No. 5897. [Pages 39-47]

Action: _____ RES. NO. _____

- 2) Establishing system development charges for impacts to the Albany Transportation System, establishing an appeal fee, and repealing Resolution No. 5806. [Pages 48-56]

Action: _____ RES. NO. _____

e. Adoption of Consent Calendar

1) Approval of Minutes

- a) February 2, 2011, City Council Work Session. [Pages 57-60]

2) Accepting a Benton County Victim Impact Panel grant. [Pages 61-62] RES. NO. _____

3) Approving a liquor license for Forsman Inc., D/B/A Ma's Dairy Farm, 3411 Pacific Boulevard SW. [Page 63]

4) Accepting an easement from Albany Industrial Properties, LLC. [Pages 64-69] RES. NO. _____

Action: _____

- f. Award of Bid
 - 1) Parks & Recreation mowing contract. [Pages 70-71]Action: _____

5. BUSINESS FROM THE COUNCIL

6. NEXT MEETING DATE: Work Session March 21, 2011
Regular Session March 23, 2011

7. ADJOURNMENT

City of Albany Web site: www.cityofalbany.net

The location of the meeting/hearing is accessible to the disabled. If you have a disability that requires accommodation, please notify the Human Resources Department in advance by calling (541) 917-7500.



TO: Albany City Council

VIA: Wes Hare, City Manager
Greg Byrne, Community Development Director

FROM: Anne Catlin, Planner II *alc*

DATE: March 2, 2011, for the March 9, 2011, City Council Meeting

SUBJECT: Development Code Amendments (Planning Files DC-06-10 and DC-01-11)

RELATES TO STRATEGIC PLAN THEME: • Great Neighborhoods

RELATES TO: • Safe City

Action Requested:

The Planning Commission recommends that you approve the following two sets of legislative amendments to the Albany Development Code.

Discussion:

Planning File DC-06-10, Amendments to Fencing Regulations

These amendments propose to allow electric fences up to 10 feet tall in the Light Industrial and Heavy Industrial zones, allow barbed wire on top of livestock fencing, and will clarify and codify the current Code interpretation of where fences over 6 feet tall can be located.

A few "house keeping" amendments to the fencing standards are included, which includes consolidating the standards from several articles into Article 9, On-Site Development and Environmental Standards.

The Planning Commission removed the staff-recommended setback for electric fences placed along property lines shared with residential zones. They unanimously recommended the Council approve the amendments as modified.

The ordinance and the following ordinance exhibits are attached:

Exhibit A: Staff Report Findings and Conclusions

Exhibit B: Article 9, On-Site Development and Environmental Standards, relocated fence standards to this article

Exhibit C: Current fencing standards in Articles 3, 4 and 5 proposed to be removed and consolidated in Article 9

Planning File DC-01-11, Amendments to Commercial Perimeter Landscaping

These Code amendments would permit the Director to approve alternate perimeter landscaping plans on commercial property under limited circumstances – when landscaping can be placed in adjacent excess right-of-way.

The Planning Commission unanimously recommended the Council approve these amendments.

City Council Hearing, March 9, 2011

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March 2, 2011

The ordinance and the following ordinance exhibits are attached:

Exhibit A: Staff Report Findings and Conclusions

Exhibit B: Article 9, On-Site Development and Environmental Standards

Appeals

Legislative decisions made by the City Council can be appealed to the Oregon Land Use Board of Appeals by filing a Notice of Intent to Appeal within 21 days of the Council decision.

alc

ORDINANCE NO. _____

AN ORDINANCE AMENDING ORDINANCE NO. 4441, WHICH ADOPTED THE CITY OF ALBANY DEVELOPMENT CODE AND ZONING MAP BY AMENDING THE DEVELOPMENT CODE TEXT RELATED TO ALLOWING ELECTRIC FENCES IN THE LI AND HI ZONES, ALLOWING BARBED WIRE ON LIVESTOCK FENCING, AND CLARIFYING THE FENCING STANDARDS, ADOPTING FINDINGS, AND DECLARING AN EMERGENCY (FILE DC-06-10).

WHEREAS, from time to time it is appropriate to amend the Albany Development Code (Code) based on changing conditions, or to be in compliance with state and federal laws; and

WHEREAS, the City collects suggestions for revisions to the Code and has an ongoing process to evaluate and recommend changes to it; and

WHEREAS, the proposed amendments respond directly to requests from Albany property owners; and

WHEREAS, on June 21, 2010, a business owner asked the Planning Commission to initiate a review of the Code to allow electric security fences and the Commission voted to review the proposal; and

WHEREAS, several industries store equipment and merchandise outside in the Light Industrial (LI) and Heavy Industrial (HI) zones; and

WHEREAS, allowing electric security fencing in the LI and HI zones would deter theft and vandalism; and

WHEREAS, allowing barbed wire on top of fencing in the residential zoning districts used to contain livestock is necessary to keep animals off the fencing; and

WHEREAS, on February 7, 2011, the Planning Commission held a public hearing on the proposed amendments, recommended changes, and unanimously recommended the amendments to the City Council, based on their deliberation, testimony presented at the hearing, and the staff report; and

WHEREAS, on March 9, 2011, the Albany City Council held a public hearing on the proposed amendments, heard testimony presented at the public hearings, and then deliberated.

NOW, THEREFORE, THE PEOPLE OF THE CITY OF ALBANY DO ORDAIN AS FOLLOWS:

Section 1: The Findings and Conclusions found in the staff report, attached as Exhibit A, are hereby adopted in support of this decision.

Section 2: The Albany Development Code text is hereby amended as shown in the attached Exhibits B and C for the articles listed below:

Exhibit B: Article 9, On-Site Development Standards, Relocated fence standards and the proposed amendments to allow electric security fences up to 10 feet tall, and barbed wire on top of livestock fencing.

Exhibit C: Shows the current fencing standards in Articles 3, 4 and 5 that are proposed to be removed and consolidated in Article 9.

Section 3: Inasmuch as this Ordinance is necessary for the immediate preservation of the peace, health and safety of the citizens of the City of Albany, an emergency is hereby declared to exist. This ordinance will be in full force and effective immediately upon its passage by the Council and approval by the Mayor.

Passed by the Council: _____

Approved by the Mayor: _____

Effective Date: _____

Mayor

ATTEST:

Deputy City Clerk



FINDINGS AND CONCLUSIONS

Planning File DC-06-10
Recommended unanimously by the Planning Commission on February 7, 2011
Adopted by the Albany City Council on March 9, 2011

EXECUTIVE SUMMARY

The Albany Development Code (ADC) currently prohibits electric fences within the City. The Code also limits the height of all fences within the City to 8 feet. The Planning Commission agreed to review of a request from Forslund Construction to modify the Albany Development Code to allow electric security fences in some areas, and a Commissioner asked that barbed wire be allowed on livestock fencing.

Forslund Construction requested that the Planning Commission review a Development Code amendment to allow electric security fences within the City, and allow them to be 10 feet tall. (See the attached letter as Attachment A to the staff report.) The City denied the electrical permit, due to the current Code standards which prohibit both electrical fences and fences taller than 8 feet.

After the electric fence was installed at Forslund Construction, staff received a complaint from a resident that lives adjacent to the site with concerns about the safety of the electric fence for children due to its proximity to their property.

The two main issues staff evaluated regarding electric security fencing were safety and compatibility.

Safety. The proposed Development Code standards would require that electric fences be a product that is tested and approved by a State of Oregon approved testing laboratory. (Note: the laboratories test the product for safety. The testing laboratory report included with the application does not address where it is appropriate to install these fences.) The Code would also require that the fence be installed in accordance with the Oregon Electrical Specialty Code, the listing, and the manufacturer's installation instructions; electrical and building permits will be required; and the product must be installed by a licensed Oregon electrician.

Compatibility - where to allow electric security fences. There are numerous businesses that store large equipment, products, or materials outside in the Light Industrial (LI) and Heavy Industrial (HI) zones. Due to the high visibility of Albany's commercial zones and Industrial Park zone, staff recommended, and the Planning Commission agreed, to allow 10-foot-tall electric security fencing in the LI and HI zones only.

The way Albany has developed over time; there are numerous industrial properties that share property lines with residential properties. Currently new industrial uses must be setback from property lines shared with residential buildings between 30 and 50 feet, depending on the zoning district. Screening and a landscaped buffer yard are also required.

After evaluating the proposal against the Comprehensive Plan policies and researching where electric fences were permitted in other cities, staff presented the Planning Commission with two options for locating electric security fences on industrial sites that share property lines with residential zones: 1) require them to meet the setbacks for buildings; or 2) require the electric fence to be located 5 feet from residential property lines.

Planning Commission Recommendation. After hearing testimony, the Planning Commission determined that a pulsed electric security fence is a safe product and no setback from residential zoning districts is needed for safety. They recommended modifications to the standards to allow electric fences that were pulsed, and when installed along property lines shared with residential zones, require a solid perimeter fence.

Livestock/Large Animal Fencing. A few properties in Albany contain large animals as livestock or pets. The

Code currently does not allow barbed wire on top of fencing in the residential zoning districts where these animals are located. Staff proposes allowing up to 6 inches of barbed wire on the top of a fence at least 4 feet tall to keep large animals confined.

Minor "Clean Up". This package of amendments also includes administrative "clean up" related to fences that will clarify and codify where fences over 6 feet may be located and moves and consolidates the fencing standards from Articles 3, 4, and 5 to Article 9, On-Site Development Standards.

NOTICE INFORMATION

A notice of public hearing was mailed January 26, 2011, to persons believed to have a particular interest in this package of amendments. A notice of public hearing was published in the *Albany Democrat Herald* January 31, 2011. The Development Code amendments were posted on the City's Web site.

The Planning Commission held a public hearing February 7, 2011. Two people testified at the Planning Commission hearing, Michael Pate of Sentry Security Systems and the Electric Guard Dog fence, representing Forslund Construction; and Kami Forslund-Soehl, of Forslund Construction.

Mr. Pate explained the Electric Guard Dog fence system and its effectiveness against deterring theft and crime. He spoke against the need for requiring the fence to be setback from property lines shared with residential uses. He made the following points:

- The electric fence is installed behind a perimeter fence, within 2 feet to avoid a zone of entrapment.
- The system is monitored like an alarm system.
- The system is approved by the International Electrical Commission, the only organization with electric fence standards.
- The electric fence emits a pulsed shock when touched, which makes the system safe due to the time between pulses. The system will not injure a person, and will not affect pace makers.

Kami Forslund-Soehl said that Forslund Construction has tried several remedies to deter theft, including hiring a guard, but they have all been ineffective. Since installing the electric security fence, they have had very few problems. She spoke against requiring a 5-foot setback from property lines shared with residential uses. As a mother, she felt the electric fence would not harm children.

STAFF ANALYSIS

Development Code Amendment File DC-06-10

The Albany Development Code (ADC) contains the following review criteria that must be met for this Development Code amendment to be approved. Code criteria are written in *bold italics* and are followed by the Findings and Conclusions.

- (1) *The proposed amendments better achieve the goals and policies of the Comprehensive Plan than the existing regulatory language.*

Relevant Comprehensive Plan goals and policies are written in *italic* type and considered as separate review criteria following the description of the major revisions.

FINDINGS OF FACT

Electric Fence Request

- 1.1 An Albany business owner requested that the Planning Commission initiate a review of the ADC to allow electric security fences, and secondly to allow them to be 10 feet tall, when the current height limit for fences is 8 feet. The installation instructions require a non-electric fence or wall at least 6 feet tall to be

installed around the perimeter of the fence. The spacing of the perimeter fence must be either very close (within 18 inches) of the electrically charged fence so there is no “zone of entrapment,” or at least one meter away.

- 1.2 The Code currently prohibits fences and walls “constructed of or containing any material that will do bodily harm, such as electric, barbed wire, broken glass, spikes, or any other hazardous and dangerous materials,” with limited exceptions (ADC 3.400, 4.315, 5.380, and 5.400).

Barbed wire is permitted on top of a 6-foot-tall fence in commercial and industrial zones and most of the mixed use zones. The total height of the fence with barbed wire may not exceed 8 feet [ADC 4.315(1) and 5.400(1)]. Concertina wire is permitted on top of fences in high security areas provided warning signs are posted at intervals not less than 15 feet.

- 1.3 Staff researched fencing regulations in other Oregon cities and found that electric fences are prohibited in all cities that were evaluated, except Tangent and Portland. Portland allows electrical fencing in industrial use categories if it is a product listed by a State of Oregon approved testing laboratory and the fence is installed and used in accordance with the testing laboratory listing. Tangent allows protective fencing that complies with state law. One City allowed the electric fence through the variance process and other cities are either not aware of the fences, or they have chosen not to enforce their Code. A few states have adopted legislation to allow certain types of electric fences.
- 1.4 Staff has evaluated the application, the Comprehensive Plan goals and policies, and has looked at fencing in the industrial and commercial areas. In order to maintain a healthy and livable community, the primary issues to evaluate and balance are the increased security needs of some industries and businesses, safety of Albany’s residents and employers, and community aesthetics and design.
- 1.5 The Comprehensive Plan does not directly address business security and resident security and safety, but the Plan acknowledges the special needs of the business community.

Goal 9: Economy, Land Use, Industrial/Employment, Policy 1: Recognize the special needs of the area’s existing industry, and ensure the provision of adequate industrial land for expansion and future development of the forest-products, rare-metals, and agriculture-related industries.

- 1.6 Business security is important to a healthy business environment – in retaining existing businesses, helping them prosper, and in attracting new businesses. There are numerous options for security – from barbed wire fencing to security alarms and guards, to enclosing merchandise within a building. The request to amend the Code to allow electric security fences would provide another option for security. (Note: The general welfare of Albany’s residents and businesses is addressed generally in the Development Code principles under criterion 2.)
- 1.7 The Albany Comprehensive Plan addresses urban design and community aesthetics in Chapter 7 and also under state planning Goal 9, Economic Development. It states that “commercial areas have a vital stake in their own aesthetic quality,” and, “a positive community image can help in recruiting new businesses.” “With good design, the overall business climate may be enhanced by reducing residential and industrial conflicts.” The most important areas in which to emphasize good aesthetics are along visible corridors, Albany’s major streets and highways, and within Albany’s major commercial centers.

Chapter 7, Aesthetics and Urban Design, Goal: Improve Albany’s image, livability, appearance, and design quality through aesthetic enhancement.

Policy 1: Expansion and new development projects shall be designed and landscaped to complement and enhance the appearance of the development site and surrounding area.

EXHIBIT A

Policy 3, Develop enforcement procedures to abate dangerous and nuisance-creating situations to promote compatibility and reduce conflict within neighborhoods and between different land uses.

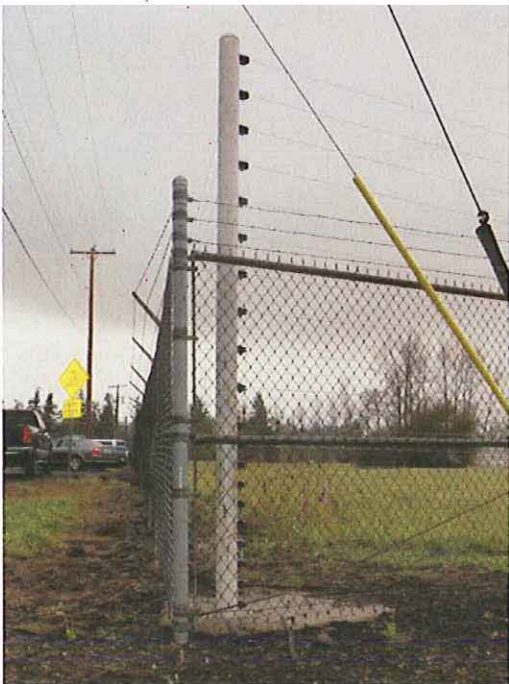
- *Implementation Method 3. Maintain development standards that assure compatibility of commercial and industrial areas with surrounding land uses, including residential neighborhoods. Pay particular attention to areas adjacent to residential streets, Pacific Boulevard, Santiam Highway, and those adjacent to or visible from Interstate 5.*
- *Implementation Method 4. Periodically review and, if necessary, update Development Code requirements and other policies and ordinances that address issues of public nuisance and community appearance.*

Goal 9, Economy, Land Use, Community Image, Policy 1: Evaluate and revise existing commercial and industrial landscaping standards as needed to achieve a positive community image and a pleasant pedestrian environment.

- *Implementation Method 1: Require industrial and commercial developments along major transportation corridors to meet special development standards relating to setbacks, landscaping, architecture, signs, and outside storage to present a pleasing visual image.*

1.8 The Plan goals and policies promote commercial and industrial development that is compatible in appearance with surrounding uses and residential neighborhoods through development standards. The City's policies to improve both Albany's livability and image in highly visible areas, also suggests that electric fences, if permitted, should be located away from residential uses and out of commercial corridors.

1.9 The 10 foot height coupled with the perimeter fencing is purposefully imposing to deter intruders. Staff finds that the proposal to allow 10-foot-tall electric fences does not meet the goals and policies related to a positive community image in Albany's highly visible areas and residential neighborhoods and should be restricted to the LI and HI zones. Here are some photos of the electric security fences installed.



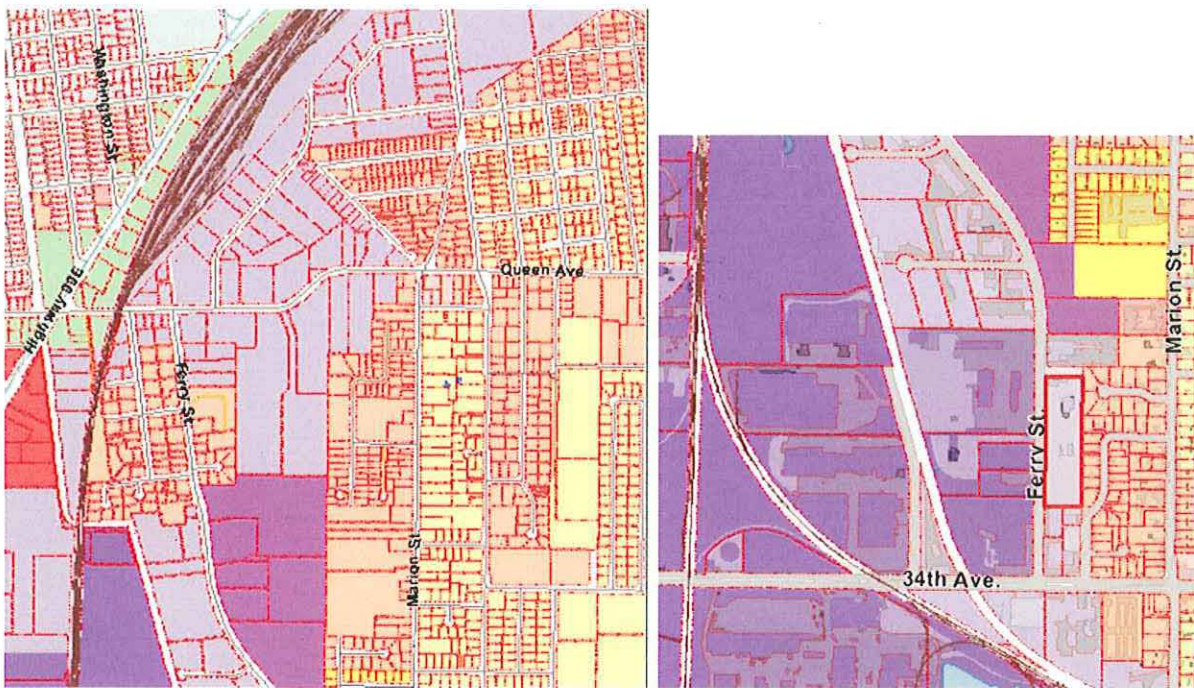
Electric fence installed around the Wah Chang site in Millersburg/Albany (left photo), and 3001 Ferry Street (below).



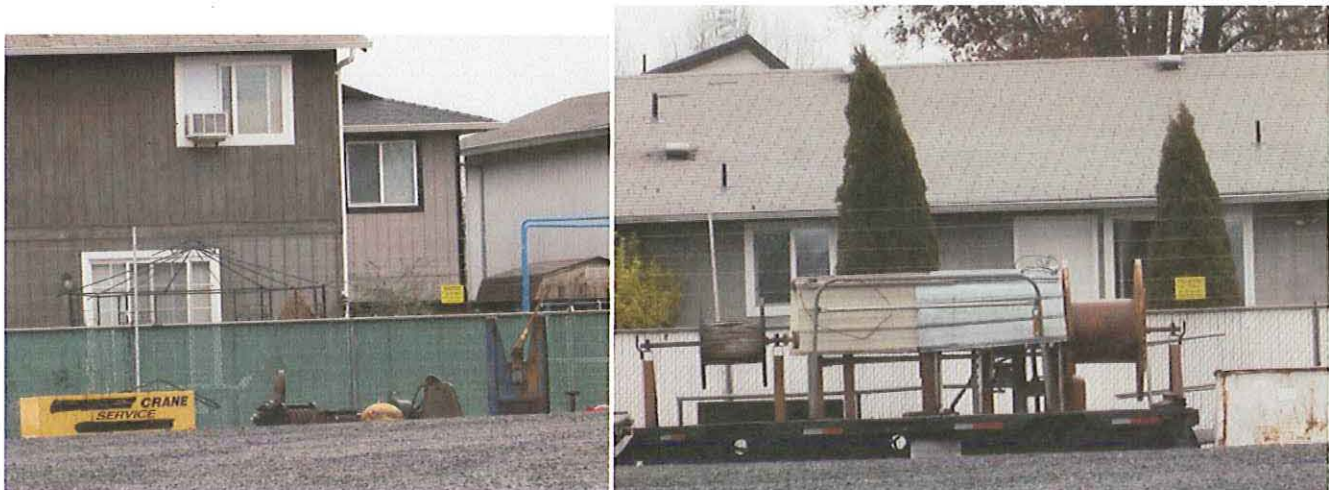
1.10 Staff recommended that electrically charged fences be required to meet the front setback, which is the current requirement for fences over 6 feet tall. See the language in Exhibit B, 9.370 (4).

1.11 Due to old development patterns, industrial zones abut residentially zoned land in several areas of the City. (The purple shaded properties are industrial, and the yellow and peach properties are residential.) In

order to provide a buffer between industrial and residential uses, the Code requires new industrial uses to be setback from property lines shared with residential buildings between 30 and 50 feet, depending on the zoning district. Screening and a landscaped buffer yard are also required. Fences up to 8 feet tall are allowed within the required side and rear setbacks.



- 1.12 *Compatibility.* Regarding compatibility with adjacent uses, one Plan policy says, “to abate dangerous and nuisance-creating situations to promote compatibility and reduce conflict within neighborhoods and between different land uses.” The electric security fences require a perimeter fence to reduce chances of being shocked accidentally. The common perimeter fence as seen in the photos provided earlier and the following is a chain link fence, and in the case below one with slats. The slats do not provide a screen, as required between industrial and commercial uses, and they can be easily penetrated.



- 1.13 *How far away from a residential property line is compatible?* The Code currently requires new industrial buildings to be located between 30 and 50 feet from residential properties in order to reduce conflicts between the two uses. A 30-foot landscaped buffer yard and screen are also required. Fences over 6 feet tall currently require a building permit, but the Code permits fences up to 8 feet tall within required setbacks.

- 1.14 Staff concluded that the intent of the Comprehensive Plan and the current Development Code standards is to provide separation between residential and industrial uses. Therefore, staff presented two setback options for electric fences installed along property lines adjacent to residential zones: 1) require them to meet the same setback for buildings [40 feet in the LI zone and 50 feet in the HI zone]; or 2) require the electric fence to be located at least 5 feet from the shared property line(s) with residential uses. Staff also recommended that the fence on the shared property line be solid to limit penetration and visibility through the fence. The Code currently requires screening between residential and industrial uses.
- 1.15 Planning Commission recommendations: After hearing testimony, the Planning Commission determined that a pulsed electric security fence was a safe product and no setback from residential zoning districts is needed for safety. They recommended modifications to the standards to allow electric fences that were pulsed, and when installed along property lines shared with residential zones, require a solid perimeter fence.

Barbed Wire on Top of Fences for Animal Containment

- 1.16 The Code does not allow barbed wire on top of fences in residential zoning districts. (Note, fences containing electric or barbed wire for animal containment that existed when the property was annexed to the City are grandfathered and considered legal non-conforming.) Large animals will lean on, and eventually push over fences that do not have something on top to keep them off the fence.
- 1.17 There are not many Albany sites containing livestock or other large animals, but where permitted, undeveloped sites are often used for agricultural purposes until they are developed more fully. The proposed amendments would permit barbed wire on top of fences used for containing large animals in residential areas. See the proposed language in Exhibit B, Section 9.370(3).

Clarifying Standards for Fences Between 6 and 8 Feet tall

- 1.18 In the commercial, industrial and mixed use zones, the ADC does not address the location of fences between 6 and 8 feet tall directly. Articles 4.320 (1) and 5.410(1)(a) say, "Fences may be up to 8 feet tall provided that the fence is located behind the required front setbacks or planting areas and outside of any vision clearance area as defined in 12.180."

Staff has interpreted the current Code language to mean that fences up to 6 feet tall are allowed in the front setbacks and on front property lines. Fences taller than 6 feet must be located outside of the required front setback. In zones with a zero minimum setback, staff proposes fences taller than 6 feet be located a minimum of 3 feet from the property line. This would allow for a small separation between the sidewalk and the fence.

- 1.19 The Code allows barbed wire on top of a 6-foot-tall fence in 4.315(1) and 5.400 (1), making these fences taller than 6 feet. The Code is unclear as to whether the barbed wire is included when measuring the height of the fence, and consequently, where barbed wire fences can be located. There are numerous old 6 foot fences with barbed wire on top located on property lines. However, when reviewed with a development application, staff has required fences taller than 6 feet to be located outside the front setback. The proposed amendments would clarify that fences are measured to the top of the wire. The following pictures show new and older developments in Albany's industrial areas and central Albany.



1.20 The proposed clarifying amendments support the comprehensive plan policies referenced earlier in the staff report related to aesthetics and a positive community image. In addition, the standards support the following policy that balances functional design with the community in mind.

Goal 14, Urbanization, Development Review, Policy 4: Encourage flexibility in design review and interpretation of policies and regulations by ensuring that functional design and community benefit remain as the principal review criteria.

1.21 Albany’s fencing standards are currently located in three different Articles of the ADC, at the end of the zoning district chapters that explain what uses are allowed. Fences are on-site development and in most communities, the fence standards are centralized in the “on-site development standards” chapter. The proposed amendments would remove the fence standards from Articles 3, 4 and 5, and consolidate them at the end of Article 9, On-Site Development Standards. This will make the Code easier to use and will remove some inconsistencies within the fencing standards.

Goal 14, Urbanization, Development Review, Policy 5: Ensure the City’s land use planning process and policy framework is workable and understandable for local officials, staff, and the public.

CONCLUSIONS

- 1.1 There is demand for security fencing in zones that allow for large equipment and material storage. Permitting electric security fences in the LI and HI zones would support existing industries.
- 1.2 Requiring the electric fence to be located behind a solid perimeter fence would reduce conflicts between the residential uses and the fence, making them compatible with the Comprehensive Plan goals and policies. Likewise, the requirement to locate these fences out of the front setback will provide a buffer between the public right-of-way and sidewalks and the fence, to reduce conflicts with pedestrians.

- 1.3 The amendment to allow barbed wire on top of a fence used to contain large animals will help to contain the animals and reduce damage and loss to the owners. The location of the barbed wire would be out of reach for small children.
- 1.4 The proposal to codify the current interpretation of where to allow fences over 6 feet tall will make the Code easier to understand.
- (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.*

The applicable Development Code policies and purposes are identified in *italic* type and considered as a separate review criterion.

FINDINGS OF FACT

- 2.1 Staff reviewed the zone purpose statements to determine where it would be appropriate to allow for electric security fences up to 10 feet tall. Due to the wide range of uses allowed in Albany’s commercial and mixed use zones, their visible location, and the desire to maintain a positive community image, the electric fences are not appropriate in these zones.
 - 2.2 The Industrial Park (IP) zone is intended to allow light manufacturing, high-tech, research and development, institutions and other low-impact business in a quality development. The IP zone is also located along highly visible corridors. The electric security fence does not meet the intent of the IP zone.
 - 2.3 The electric security fence is consistent with the purposes of the LI and HI zones. They are intended for a wide range of manufacturing, warehousing, shipping, outside storage or stockpiling of materials.
- (1) Serve as the principal vehicle for implementation of the City’s Comprehensive Plan in a manner that protects the health, safety, and welfare of the citizens of Albany.*
- (10) Protect constitutional property rights, provide due process of law, and give consideration in all matters to affected property owner interests and in making land use decisions.*
- 2.4 Businesses need ways to secure their property and protect their inventory and investments. Residents also need safety and security.
 - 2.5 To ensure the electric fence is a safe product and is installed correctly, the proposed ADC amendments would require that electric fences be a product that is tested and approved by a State of Oregon approved testing laboratory. The standards also require that the fence be installed in accordance with the Oregon Electrical Specialty Code and the manufacturer’s installation instructions; electrical and building permits will be required; and the product must be installed by a licensed Oregon electrician.
 - 2.6 The Police Chief did not have an issue locating electric security fencing on industrial or highly vulnerable sites. He thought the fences would be helpful in preventing crime. He expressed concern with them being located directly adjacent to residential neighborhoods without ample safeguards to ensure inadvertent contact with the fence system.
 - 2.7 The Fire Department’s main concern with allowing electric fences is easy access in the event of an emergency. They want to ensure that the gates be controlled by a device that allows them to be opened easily. The amendments include revisions recommended by the Fire Department for access.
 - 2.8 The proposed amendments attempt to balance the safety and security needs of the businesses and

EXHIBIT A

industries of the residences by requiring electrically charged security fences to be located away from property lines shared with residential zones. Two options are proposed that would require the electric fence be setback, one would be at least 5 feet from property lines shared with residentially zoned property or uses, the other would be at least 40 feet.

(3) Facilitate prompt review of development proposals and the application of clear and specific standards.

- 2.9 The amendments to the fence standards, excluding the new proposal to allow electric security fences, will codify interpretation of standards that are currently not explicit.

CONCLUSIONS

- 2.1 The proposed Development Code amendments related to electric fences can ensure the safety and welfare of Albany's residents with specific safety and location standards.
- 2.2 The other amendments to the fence standards will clarify the existing standards.
- 2.3 This criterion is satisfied.

RELATED EXHIBITS (Attached):

Exhibit B: Article 9, On-Site Development Standards, Relocated fence standards and the proposed amendments to allow electric security fences up to 10 feet tall, and barbed wire on top of livestock fencing.

Exhibit C: Shows the current fencing standards in Articles 3, 4 and 5 proposed to be removed and consolidated in Article 9.

STAFF REPORT ATTACHMENT A

Forslund Construction, Inc.

EXCAVATION CONTRACTORS & CRANE SERVICE

March 19, 2010

Re: Electric Guard Dog Security Fencing

To Whom It May Concern:

Forslund Construction, Inc. has been located at 3001 Ferry Street SW, in Albany, OR since 1975. At this location we have a couple of buildings, a lot of equipment, fuel and vehicles. For security purposes we installed a 6' cyclone fence with 6 strands of barbwire on top of the fence, but this proved to be ineffective. Thieves began cutting through the cyclone part of the fence to gain access. We were vandalized many times which was costly to the company. In the 1980's we tried installing a surveillance system that was linked to a service that would notify us and the police if there was any activity. After multiple false alarms and the police complaining of responding to false alarms the system was removed. We continued to see a high frequency of criminal incidents. Thieves were not only getting into our yard, but breaking into office buildings stealing computers and other valuable tools and supplies. They also began cutting fuel lines in our vehicles and stealing the fuel. We decided to look into other forms of security. We had seen security fencing at Fisher Implement in Tangent, OR and that's how we found out about the Electric Guard Dog Security fencing. Fishers reported to us that they had had zero incidents since installing the system. We then contacted Electric Guard dog and found that we thought it was the best way to protect our property from criminals. We felt we had the right to protect ourselves and our property.

Although the fence has been physically installed on our property, the City of Albany has prohibited us from turning it on.

Sincerely,



Wayne Forslund

3001 SW Ferry Street • Albany, Oregon 97322 • Phone (541) 926-4157 • Fax (541) 926-9322 • CCB# 63450

FENCES

- 9.360 **Purpose.** Fences can create a sense of privacy, protect children and pets, provide separation from busy streets, and enhance the appearance of property. The negative effects of fences can include the creation of street walls that inhibit police and community surveillance, decrease the sense of community, hinder emergency access, lessen solar access, hinder the safe movement of pedestrians and vehicles, and create an unattractive appearance. These standards are intended to promote the positive aspects of fences and to limit the negative ones.
- 9.370 **Materials.** Fences and walls shall not be constructed of or contain any material that will do bodily harm, such as electric or barbed wire, broken glass, spikes, or any other hazardous or dangerous materials, except as follows:
- (1) Barbed wire is permitted atop on top of a 6-foot-tall fence in commercial, industrial, and mixed-use zones except MUC and MUR. The total height of the fence and barbed wire is limited to 8 feet. Barbed-wire-only fences are prohibited except as allowed in subsection (2).
 - (2) **Correctional Institutions and High Security Areas.** Concertina wire or barbed-wire only fences may be used around correctional institutions and high security areas provided that the fences are posted at least at 15-foot intervals with clearly visible warnings of the hazard.
 - (3) **Large Animal Containment.** Where cattle, sheep, horses or other livestock are permitted or existed when the property was annexed to the City, barbed wire is permitted within 6 inches from the top of a fence at least 4 feet tall that is used to contain or restrict large animals. Fences for this purpose must meet the standards in AMC 6.10.
 - (4) **Electrically charged fences** are permitted in the LI and HI zones when the following standards can be met:
 - (a) The fence is located outside the front setback and required landscaping, buffering or screening; and
 - (b) The electrically charged fence shall not exceed 10 feet in height; and
 - (c) The electrically charged fence shall be a pulsed charge system, and not a continuous charge system.
 - (d) No electric fence shall be installed or used unless it is completely surrounded by a perimeter non-electrical fence or wall that is not less than 6 feet tall; and
 - (e) Warning signs stating, "Warning, Electric Fence" shall be posted at intervals not less than 50 feet; and
 - (f) When property lines are shared with a residential zoning district, the following additional standard shall be met:
 - i. A solid fence or wall between 6 and 8 feet tall shall be placed at the shared property line(s); and
 - ii. Warning signs shall be posted at intervals of not less than 25 feet.
 - (g) The fence shall be tested and approved by a State of Oregon approved testing laboratory; and
 - (h) The fence shall be installed and used accordance with the Oregon Electrical Specialty Code, the listing, and the manufacturer's installation instructions; and
 - (i) Electrical permits and inspections shall be required for the installation. Work must be performed by a licensed Oregon electrician.
 - (j) In addition to the Fire Department access requirements in the Oregon Fire Code, the following additional standards are required for properties protected by an electric fence:

- i. **Each vehicle gate shall open automatically using a sensing device approved by the fire department. This automatic operation shall be supplemented by the installation of a Knox electric switch (with dust cover) to be installed in an approved location.**
- ii. **The gate opening equipment shall be equipped with a battery back-up in the advent of power failure (both ingress & egress sides).**
- iii. **Power to the electrified fence, excluding gate opening controls, shall be deactivated upon activation of automatic or manual fire department access for ingress or egress through the gate.**
- iv. **The vehicle gate shall provide a means for the fire department to egress from the site.**
- v. **A pedestrian type gate shall be installed immediately adjacent to all vehicle access gates.**

9.380 Standards. Fences and walls shall meet the following standards. If a fence or wall is used to meet required screening, the fence shall meet the provisions in Section 9.385.

Standards in Residential, MUR and MUC zones:

- (1) Fences in front setbacks. Fences shall be no taller than 4 feet in required front setbacks unless allowed below.
 - (a) Properties listed on the National Register of Historic Places may have front yard fences taller than 4 feet if the fence is appropriate to the building style and scale, and is approved by the Landmarks Advisory Commission. [Ord. 5689, 3/12/08]
- (2) Corner properties, which by definition have two front yards, may have a fence no taller than 6 feet in the front yard adjacent to the street that does not contain the main door entrance when the fence does not extend in front of the building and one of the following conditions is met:
 - (a) If the adjoining street is improved with sidewalks and a planter strip, the fence may be on or behind the property line.
 - (b) If the adjoining street is improved with sidewalks but no planter strip, the fence is located a minimum of 3 feet from the sidewalk.
 - (c) If the adjoining street is improved with curbs and gutters but no sidewalks, the fence is located 10 feet from the face of the curb.
 - (d) If the adjoining street is unimproved, the fence is no closer than 3 feet from the property line.
- (3) Interior Setbacks.
 - (a) Fences in a residential zone in Article 3 or in the MUR or MUC zone may have fences up to 6 feet tall in the interior setbacks except that a single-family use or zone that shares an interior property line with a multiple-family, commercial or industrial use or zone may have a fence up to 8 feet tall along the property line.

Standards Commercial, Industrial, HD, CB, ES, LE, MS, PB, WF, and TD zones:

- (4) Fences in front setbacks. Fences shall be no taller than 6 feet in required front setbacks. 6-foot fences containing barbed wire on top or fences taller than 6 feet are not permitted in the front setback.

Standards for All fences:

- (5) In no instance or zone shall a fence exceed 8 feet except when permitted in 9.370.
- (6) Fences over 6 feet tall require a building permit prior to construction. Fences over 6 feet tall shall meet building setbacks, except when permitted along property lines in Sections 9.370(4)(d) or permitted in required setbacks in 9.380(3)(a).
- (7) In no instance shall a fence extend beyond the property line.
- (8) All fences shall meet the Clear Vision Area standards in Section 12.180.
- (9) **Measuring Fence Height.** Fence height shall be measured from the average height of the grade adjacent to where the fence is to be located. If a fence is to be constructed on top of a berm, the height shall be measured from the bottom of the berm. Fence height includes the height of the fence, wall, or picket and does not include the posts, or arbors and trellises at entrance gates.
- (10) **Maintenance.** Every fence, whether required or not, will be maintained. No fence is allowed to become or remain in a condition of disrepair including, but not limited to noticeable leaning, missing slats, broken supports, and overgrowth of weeds or vines.

9.385 **Screening.** Whenever a sight-obscuring fence, wall or hedge is required under the provisions of this Code, it must meet the following provisions and the vision clearance standards in Section 12.180:

- (1) **Opacity.** In order to be "sight-obscuring," fences and walls must be at least 75 percent opaque when viewed from any angle at a point 25 feet away from the fence or wall. Hedges must be an evergreen species that will meet the standards year-round within 2 years of planting.
- (2) **Height.** Fences and walls will be a minimum of 6 feet tall. Hedges will be of a species capable of attaining a height of at least 6 feet within 2 years of planting, given their age, height and health when planted.
- (3) **Maintenance.** Fences and walls will be maintained in safe condition and opacity is maintained as required in subsection (a) of this section. Wooden materials will be protected from rot, decay, and insect infestation. Plants forming hedges will be replaced within six months after dying or becoming diseased to the point that the opacity required in subsection (a) of this section is not met.

Staff Comments: This is the remnants of Sections 3.400, 4.315(2), and 5.400(2), which allowed barbed wire or concertina wire fences in existence upon annexation to be considered legal nonconforming.

9.390 **Non-conforming Fences.** Existing fences that were constructed legally and/or that were in place at the time the property was annexed to the City that do not meet the current fencing standards shall be considered a legal non-conforming use, provided that the barbed wire or upturned barbed selvage does not extend over a street or alley and where it does slant toward the public right-of-way, it is located not less than one foot from said right-of-way.

[Ord. 5446, 5/10/00; Ord. 5555, 2/7/03; Ord. 5556, 2/21/03; Ord. 5673, 6/27/07; Ord. 5689, 3/12/08; Ord. 5742, 7/14/10]

ARTICLE 3 RESIDENTIAL ZONING DISTRICTS

FENCES

~~3.400~~ ~~Materials.~~ Fences and walls shall not be constructed of or contain any material which will do bodily harm, such as barbed wire, broken glass, spikes, or any other hazardous or dangerous materials. Electric and barbed wire fences are not permitted except those intended to contain or restrict cattle, sheep, horses or other livestock, and existing prior to annexation to the City may remain. [Ord. 5446, 5/10/00]

~~3.410~~ ~~Standards.~~ Every fence shall be maintained in a condition of reasonable repair and shall not be allowed to become and remain in a condition of disrepair including noticeable leaning toward an adjoining property or sidewalk, missing sections or slats, broken supports, non-uniform height, and overgrowth of weeds or vines.

~~(1)~~ Fences shall be no taller than 6 feet in interior setbacks, 4 feet in front setbacks if they meet the clear vision area standards in Section 12.180. [Ord. 5742, 7/14/10]

~~Exceptions to Height:~~

~~(a)~~ A single family use or zone that shares an interior property line with a multiple family use or zone may have a fence up to 8 feet tall along the property line.

~~(b)~~ Properties listed on the National Register of Historic Places may have front yard fences taller than 4 feet if the fence is appropriate to the building style and scale, and is approved by the Landmarks Advisory Commission. [Ord. 5689, 3/12/08]

~~(2)~~ Corner properties, which by definition have two front yards, may have a fence no taller than 6 feet in the front yard adjacent to the street that does not contain the dwelling's main door entrance when the fence does not extend in front of the dwelling and one of the following conditions is met:

~~(a)~~ If the adjoining street is improved with sidewalks and a planter strip, the fence may be on or behind the property line.

~~(b)~~ If the adjoining street is improved with sidewalks but no planter strip, the fence is located a minimum of 3 feet from the sidewalk.

~~(c)~~ If the adjoining street is improved with curbs and gutters but no sidewalks, the fence is located 10 feet from the face of the curb.

~~(d)~~ If the adjoining street is unimproved, the fence is no closer than 3 feet from the property line.

~~—[Ord. 5673, 6/27/07; Ord. 5689, 3/12/08]~~

~~(3)~~ Fences more than 6 feet tall require a building permit prior to construction. Except when a taller fence is permitted at the lot line [see subsection (1) (a)], fences more than 6 feet tall shall meet building setback requirements. In no instance shall a fence be taller than 8 feet.

~~—[Ord. 5742, 7/14/10]~~

~~(4)~~ In no instance shall a fence extend beyond the property line.

~~(5) All fencing shall comply with the requirements of the clear vision area (Section 12.180) for streets and driveways.~~

~~(6) Fence height shall be measured from the average height of the grade adjacent to where the fence is to be located. If a fence is to be constructed on top of a berm, the height shall be measured from the bottom of the berm.~~

~~Fence height includes the height of the fence wall or picket and does not include the posts, decorative finials or similar elements, and arbors and trellises at entrance gates.~~

~~—[Ord. 5446, 5/10/00; Ord. 5689, 3/12/08]~~

ARTICLE 4 COMMERCIAL AND INDUSTRIAL ZONING DISTRICTS

~~FENCES IN COMMERCIAL AND INDUSTRIAL ZONING DISTRICTS~~

~~4.310 In commercial and industrial zones, a fence shall meet the following standards. If a fence is used to meet required screening, the fence shall meet the provisions of 4.320 (4) below and Section 9.250. All fences shall meet the Clear Vision Area standards in Section 12.180. ———
[Ord. 5555, 2/7/03; Ord. 5742, 7/14/10]~~

~~4.315 Materials. Fences and walls shall not be constructed of or contain any material that will do bodily harm, such as electric or barbed wire, broken glass, spikes, or any other hazardous or dangerous materials, except as follows:~~

~~(1) Barbed wire is permitted atop a 6-foot tall fence. The total height of the fence and barbed wire is limited to 8 feet. Barbed wire only fences and concertina wire are prohibited except as allowed in subsection (2).~~

~~Concertina wire may be used around correctional institutions and high security areas provided that the fences are posted at least at 15-foot intervals with clearly visible warnings of the hazard.~~

~~(a) Except as specified in the provisions of subsections (1) and (2) above, concertina wire, barbed wire, or upturned barbed selvage existing at the time of the passage of this ordinance that is between six and seven feet above grade in the commercial districts shall be considered a legal non-conforming use, provided that the barbed wire or upturned barbed selvage does not extend over a street or alley and where it does slant toward the public right of way, it is located not less than one foot from said right of way.~~

~~4.320 Standards.~~

~~(1) Fences may be up to 8 feet tall if the fence is located behind the required front setback and outside of any vision clearance area as defined in Section 12.180. In no instance shall a fence be taller than 8 feet. ———
—[Ord. 5742, 7/14/10]~~

~~(2) Fences more than 6 feet tall require building permits.~~

~~(3) Whenever a sight-obscuring fence, wall or hedge is required under the provisions of this~~

~~Code, it must meet the following provisions and the vision clearance standards in Section 12.180:~~

~~(a) Opacity. In order to be "sight-obscuring," fences and walls must be at least 75 percent opaque when viewed from any angle at a point 25 feet away from the fence or wall. Hedges must be an evergreen species that will meet the standards year-round within 2 years of planting.~~

~~_____ [Ord. 5742, 7/14/10]~~

~~Height. Fences and walls will be a minimum of 6 feet tall. Hedges will be of a species capable of attaining a height of at least 6 feet within 2 years of planting, given their age, height and health when planted.~~

~~_____ [Ord. 5742, 7/14/10]~~

~~Maintenance. Fences and walls will be maintained in safe condition and opacity is maintained as required in subsection (a) of this section. Wooden materials will be protected from rot, decay, and insect infestation. Plants forming hedges will be replaced within six months after dying or becoming diseased to the point that the opacity required in subsection (a) of this section is not met.~~

~~(4) Every fence, whether required or not, will be maintained. No fence is allowed to become or remain in a condition of disrepair including, but not limited to noticeable leaning, missing slats, broken supports, and overgrowth of weeds or vines.~~

~~_____ [Ord. 5742, 7/14/10]~~

ARTICLE 5 MIXED USE VILLAGE CENTER ZONING DISTRICTS

FENCES

MUC AND MUR DISTRICTS [Ord. 5556, 2/21/03]

~~5.380 Materials. Fences and walls must not be constructed of or contain any material that will do bodily harm, such as barbed wire, broken glass, spikes, or any other hazardous or dangerous materials. Electric and barbed wire fences are not permitted except those intended to contain or restrict cattle, sheep, horses or other livestock, and existing prior to annexation to the City may remain. [Ord. 5446, 5/10/2000]~~

~~5.390 Standards. Every fence must be maintained in a condition of reasonable repair and shall not be allowed to become and remain in a condition of disrepair including noticeable leaning toward an adjoining property or sidewalk, missing sections or slats, broken supports, non-uniform height, and overgrowth of weeds or vines.~~

~~(1) Fences may be no taller than 6 feet in interior setbacks, 4 feet in front setbacks and shall meet the clear vision area standards in Section 12.180.~~

~~_____ [Ord. 5742, 7/14/10]~~

Exceptions to Height:

~~(a) A single-family use that shared an interior property line with a multiple-family use or zone may have a fence up to 8 feet tall along that property line without having to meet building setbacks.~~

~~(b) Properties listed on the National Register of Historic Places may have front yard fences taller than 4 feet if the fence is appropriate to the building style and scale, and~~

is approved by the Landmarks Advisory Commission.

~~[Ord. 5689, 3/12/08; Ord. 5742, 7/14/10]~~

- ~~(2) Corner properties, which by definition have two front yards, may have a fence of up to 6 feet tall in the front yard adjacent to the street that does not contain the dwelling's main door entrance when one of the following conditions is met:

 - ~~(a) If the adjoining street is improved with sidewalks and a planter strip, the fence may be on or behind the property line.~~
 - ~~(b) If the adjoining street is improved with sidewalks but no planter strip, the fence is located a minimum of 3 feet from the sidewalk.~~
 - ~~(c) If the adjoining street is improved with curbs and gutters but no sidewalks, the fence is located 10 feet from the face of the curb.~~
 - ~~(d) If the adjoining street is unimproved, the fence is no closer than 3 feet from the property line.~~~~

~~[Ord. 5689, 3/12/08]~~

- ~~(3) Fences more than 6 feet tall require a building permit prior to construction. Except where a taller fence is permitted at the lot line [see subsection (1) above], fences more than 6 feet tall must meet building setback requirements. In no instance shall a fence be taller than 8 feet.~~

~~[Ord. 5742, 7/14/10]~~

- ~~(4) In no instance shall a fence extend beyond the property line.~~

- ~~(5) All fencing must comply with the requirements of the clear vision area standards in Section 12.180 for streets and driveways.~~

- ~~(6) Fence height shall be measured from the average height of the grade adjacent to where the fence is to be located. If a fence is to be constructed on top of a berm, the height shall be measured from the bottom of the berm.~~

~~— Fence height includes the height of the fence wall or pickets and does not include the posts, decorative finials or similar elements, and arbors and trellises at entrance gates.~~

~~[Ord. 5446, 5/10/00; Ord. 5689, 3/12/08]~~

~~HD, CB, MS, LE, TD, PB, ES, WF DISTRICTS — [Ord. 5555, 2/7/03; Ord. 5689, 3/12/08]~~

~~Fences for residential uses or National Register properties in these zones see Sections 5.380 and 5.390.~~

~~5.400 — Materials. Fences and walls must not be constructed of or contain any material that will do bodily harm, such as electric or barbed wire, broken glass, spikes, or any other hazardous or dangerous materials, except as follows:~~

- ~~(1) Barbed wire is permitted atop a 6-foot fence. The total height of the fence and barbed wire is limited to 8 feet. Barbed wire only fences and concertina wire are prohibited except as allowed in subsection (2).~~
- ~~(2) Concertina wire may be used atop a 6-foot chain-link fence around correctional institutions and high-security areas provided that the fences are posted at least at 15-foot intervals with clearly visible warnings of the hazard.~~

- (a) ~~Except as specified in the provisions of subsections (1) and (2) above, concertina wire, barbed wire, or upturned barbed salvage existing at the time of the passage of this ordinance that is between 6 and 7 feet above grade is considered a legal non-conforming use, provided that the barbed wire or upturned barbed salvage does not extend over a street or alley and where it does slant toward the public right-of-way, it is located not less than one foot from said right-of-way.~~

~~5.410 Standards:~~

- (1) ~~Fences are limited to the height and locational standards listed below:~~

- ~~(a) Fences may be up to 8 feet tall provided that the fence is located behind the required front setbacks or planting areas and outside of any vision clearance area as defined in Section 12.180. In no instance may a fence exceed 8 feet in height.~~
- ~~(b) Fences more than 6 feet tall require building permits.~~

~~[Ord. 5742, 7/14/10]~~

- (2) ~~Whenever a sight-obscuring fence, wall or hedge is required under the provisions of this Code, it must meet the following provisions:~~

- ~~(a) Opacity. In order to be "sight-obscuring," fences and walls must be at least 75 percent solid when viewed from any angle at a point 25 feet away from the fence or wall. Hedges must be an evergreen species that will meet this standard year-round within 2 years of planting.~~

~~[Ord. 5742, 7/14/10]~~

- ~~(b) Height. Fences and walls will be at least 6 feet tall. Hedges will be of a species capable of attaining a height of at least 6 feet within 2 years of planting, given their age, height and health when planted.~~

~~[Ord. 5742, 7/14/10]~~

- ~~(c) Maintenance. Fences and walls will be maintained in safe condition and opacity is maintained as required in subsection (a) of this section. Wooden materials will be protected from rot, decay, and insect infestation. Plants forming hedges will be replaced within 6 months after dying or becoming diseased to the point that the opacity required in subsection (a) of this section is not met.~~

- (3) ~~Every fence, whether required or not, will be maintained. No fence is allowed to become or remain in a condition of disrepair including, but not limited to noticeable leaning, missing slats, broken supports, and overgrowth of weeds or vines.~~

~~[Ord. 5673, 6/27/07; Ord. 5689, 3/12/08; Ord. 5742, 7/14/10]~~

ORDINANCE NO. _____

AN ORDINANCE AMENDING ORDINANCE NO. 4441, WHICH ADOPTED THE CITY OF ALBANY DEVELOPMENT CODE AND ZONING MAP BY AMENDING THE DEVELOPMENT CODE TEXT RELATED TO PROVIDING AN ALTERNATIVE PERIMETER LANDSCAPING PLAN WHEN LANDSCAPING CAN BE PLACED IN EXCESS PUBLIC-RIGHT-OF-WAY, ADOPTING FINDINGS, AND DECLARING AN EMERGENCY (FILES DC-01-11).

WHEREAS, from time to time it is appropriate to amend the Albany Development Code (Code) based on changing conditions, and to be in compliance with state and federal laws; and

WHEREAS, the City collects suggestions for revisions to the Code and has an ongoing process to evaluate and recommend changes to it; and

WHEREAS, the proposed amendments respond directly to requests from Albany property owners who are challenged by bringing previously developed property up to the current perimeter landscaping standards; and

WHEREAS, the amendments would allow commercial perimeter landscaping to be placed in excess public-right of way in limited circumstances; and

WHEREAS, on February 7, 2011, the Planning Commission held a public hearing on the proposed amendments and unanimously recommended these changes to the City Council, based on their deliberation, and the staff report; and

WHEREAS, on March 9, 2011, the Albany City Council held a public hearing on the proposed amendments, heard testimony presented at the public hearings and then deliberated.

NOW, THEREFORE, THE PEOPLE OF THE CITY OF ALBANY DO ORDAIN AS FOLLOWS:

Section 1: The Findings and Conclusions found in the staff report, attached as Exhibit A, are hereby adopted in support of this decision.

Section 2: The Albany Development Code text is hereby amended as shown in the attached Exhibit B: Article 9, On-Site Development and Environmental Standards.

Section 3: Inasmuch as this Ordinance is necessary for the immediate preservation of the peace, health and safety of the citizens of the City of Albany, an emergency is hereby declared to exist. This ordinance will be in full force and effective immediately upon its passage by the Council and approval by the Mayor.

Passed by the Council: _____

Approved by the Mayor: _____

Effective Date: _____

Mayor

ATTEST:

Deputy City Clerk



FINDINGS AND CONCLUSIONS

Planning File DC-01-11

Recommended unanimously by the Planning Commission on February 7, 2011

Adopted by the Albany City Council on March 9, 2011

EXECUTIVE SUMMARY

Staff is proposing an amendment to the Code to permit the Director to approve alternate perimeter landscaping plans on commercial property under limited circumstances.

The amendment would permit the Director to approve an alternate landscape plan, making use of the public right-of-way, when certain conditions are met. Briefly, the applicant would have to:

- secure written permission of the agency owning the right-of-way;
- augment the landscaping and irrigation if necessary to bring them to standard; and
- promise to provide the required landscaping on-site if permission to use the right-of-way is rescinded.

We have recently had two properties in various stages of development review with similar difficulties in meeting the City's commercial perimeter landscaping requirements.

Both sites were developed under previous standards, and have been vacant for more than a year. Under these circumstances, the Code requires the property to be brought up to current Code when there is redevelopment or change of use. This is a standard requirement in Codes around the nation. It assures that development in the community reflects the changing conditions and standards over time.

With the two current properties, we see situations where the intent of the Code -- quality development with landscaping -- may be met without strict adherence to the requirements. The screen grabs below illustrate the conditions.

The building (1260) sits on a small lot, with a wide area of landscaping between the property line and Santiam Hwy to the south. Current Code requires that additional ten-foot-wide perimeter landscape strips be added on-site along both street frontages. Under our proposal, the applicant would not have to add a ten-foot strip of landscaping along the south property line, but would still be required to extend the landscaping along the Price Road frontage.



EXHIBIT A

In the second example, there is partial landscaping along the Hwy 99 frontage that will be extended along the remainder of the south property line, providing a wider landscape strip than would be required on-site. Again, the perimeter landscape along the side street would be required.



In the staff's judgment, this change would provide flexibility in reviewing redevelopment and change of use proposals, while still meeting the purpose and intent of the On-Site Development Standards.

NOTICE INFORMATION & PLANNING COMMISSION HEARING

A notice of public hearing was published in the *Albany Democrat-Herald* on January 31, 2011.

The Planning Commission held a public hearing February 7, 2011 on the proposed amendments. No one testified at the hearing. No written testimony had been received.

STAFF ANALYSIS

Development Code Amendment File DC-01-11

The Albany Development Code (ADC) contains the following review criteria which must be met for this Development Code amendment to be approved. Code criteria are written in *bold italics* and are followed by Findings and Conclusions.

- (1) *The proposed amendments better achieve the goals and policies of the Comprehensive Plan than the existing regulatory language.*

FINDING OF FACT

1.1 *Albany Comprehensive Plan, Chapter 7, Social Amenities, Aesthetics and Urban Design*

Goal: Improve Albany's image, livability, appearance, and design through aesthetic enhancement.

The proposal would provide an alternative method for achieving the Comprehensive Plan goal, while preserving flexibility in site design and value for previously-developed properties.

CONCLUSION

- 1.1 The proposed amendments are consistent with the Comprehensive Plan goal.

- (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.*

FINDING OF FACT

- 2.1 *ADC 9.010, On-Site Development and Environment Standards, Overview.*

The ADC Overview sections calls for standards that “foster high quality development throughout the City and to minimize adverse effects on surrounding property owners or the general public”. Landscaping that provides this quality may be balanced against the constraints encountered when sites have been previously developed under different codes. In such cases, unused rights-of-way, adjacent to these sites, can supply the necessary area for fulfilling the landscape requirement.

CONCLUSION

- 2.1 The proposed amendments are consistent with the Albany Development Code.

LANDSCAPING

9.140 General Requirements. Landscaping requirements by type of use are listed below:

- (1) Landscaping Required – Residential. All front setbacks yards (exclusive of accessways and other permitted intrusions) are required to be landscaped before an occupancy permit will be issued or final building permit approved. In all residential districts except Rural Residential (RR), the minimum landscaping acceptable for every 50 lineal feet of street frontage (or portion thereof, deducting the width of the driveway) is:
 - (a) One tree at least 6 feet tall.
 - (b) Four 1-gallon shrubs or accent plants.
 - (c) The remaining area treated with attractive ground cover (e.g., lawn, bark, rock, ivy, and evergreen shrubs).

- (2) Landscaping Required – Non-Residential. All required front and interior setbacks yards, exclusive of accessways and other permitted intrusions, must be landscaped before an occupancy permit will be issued. Minimum landscaping acceptable for every 1,000 square feet of required setbacks yards in all commercial industrial districts is as follows:
 - (a) One tree at least 6 feet tall for every 30 feet of street frontage.
 - (b) Five 5-gallon or eight 1-gallon shrubs, trees or accent plants.
 - (c) The remaining area treated with suitable living ground cover, lawn, or decorative treatment of bark, rock, or other attractive ground cover.
 - (d) When the yard adjacent to a street of an industrially zoned property is across a right-of-way from other industrially or commercially zoned property, only 30 percent of such yard setback area must be landscaped.

- (3) Alternate Plan – Non-Residential - The Director may approve placement of the required setback landscaping in public right-of-way when the following conditions are met:
 - (a) The site contains existing development that includes substantial building(s), and is subject to ADC improvement requirements due to a change of use or vacancy; and
 - (b) The appropriate government agency grants written permission for use of the right-of-way; and
 - (c) The applicant provides written assurance that on-site setback landscaping will be installed within 90 days in the event permission to use the right-of-way is revoked; and
 - (d) The Director finds that the required setback landscaping can feasibly be installed on the property without creating other violations of this Code; and
 - (e) The Director finds that providing the landscaping in the public right-of-way in the interim fulfills the intent this Code for high quality development (9.010) and the minimum landscaping requirements in Section 9.140(2)(a) through (c).



TO: Albany City Council

VIA: Wes Hare, City Manager
Greg Byrne, Community Development Director *MB*

FROM: Melanie Adams, Building Official *MA*

DATE: March 2, 2011, for the March 9, 2011, City Council Meeting

SUBJECT: Appeal of dangerous property designation for 117 Main Street NE

RELATES TO STRATEGIC PLAN THEME: • A Safe City

Action Requested:

The Building Division issued a dangerous property Notice and Order to the owner of 117 Main Street NE on November 4, 2010. The property owner appealed this Order to the Building Board of Appeals. This matter is now scheduled for a *de novo* hearing before the City Council to determine whether the decision to classify this property as dangerous was correct under the provisions of the Municipal Code as of the date the Order was issued.

Summary:

Over the course of 16 months, the Building Division received and investigated a number of complaints alleging that the property in question was dangerous and in need of repair. These complaints included concerns about a lack of basic sanitation, rat infestations, electrical hazards, mold, and general concerns that the structure was not safe for regular human habitation. These concerns were investigated and as a result the Building Department concluded that the property was dangerous and subject to such classification under the Albany Municipal Code.

Criteria:

The criteria with which Council should review the decision of the Building Official in this case is as follows:

A dangerous property shall be considered to exist whenever any building, premises, structure, or portion thereof meets any of the criteria listed in AMC 18.28.010 "to the extent that the life, health, property, or safety of the public or the building, structure, or premises' occupants are unreasonably endangered."

AMC 18.28.010(2)(k)(ii) references the property maintenance standards in AMC 18.30, which comprise the majority of the violations cited in this Order of the Building Official. The specific criteria used by the Building Official in making the decision to declare this property dangerous are listed in Appendix A of the Notice and Order (attached).

Discussion:

I. Chronology

July 20, 2009 - Initial complaint is received from tenant about poor conditions at the house. Tenant says that her landlord refused to repair wiring problems and that there is raw sewage

under the house. She complains of rats and roaches in the living space and says one bedroom is uninhabitable. She says she and her roommates are moving out because they can't take it anymore. Tenant requests inspection.

July 22, 2009 - Inspection performed by Code Compliance Inspector Mary Gaeta and Building Inspector Joel Heenan. House is found to be in severely dilapidated condition and inspectors were able to confirm many of the tenant's complaints. Inspectors do not find anything that appears to be an imminent danger since the tenant is no longer living in the house, however there are enough deficiencies and maintenance problems that a Notice and Order is likely warranted. Due to an accumulation of household items, inspectors were not able to access the electrical panel in the garage to perform a full inspection.

July 23, 2009 - Tenants have moved out and house is vacant. Building Official approves moving forward with Notice and Order. Property is added to Compliance watch list until staffing resources allow further enforcement action to be taken. Staff anticipates that property will remain vacant for a while given that it's currently in foreclosure.

December 15, 2009 - New tenant of this property stops by Building counter to discuss the deficiencies at her rental house and to schedule an inspection with Mary. Tenant says the house was filthy when they moved in, the gas heater was never fixed, and the wall heaters do not seem to be safe. She says electrical outlets are not securely mounted and circuits are easily overloaded by use of "typical" appliances. She says the shower and toilet no longer drain to the ground below the house as the previous tenant had said, although a records search by staff shows that no plumbing permits had been applied for to perform plumbing work. Tenant says there are problems with drains clogging. She says that there are rat holes in the walls and evidence of rats on the property. She says the garage door doesn't fully close; they are not using the garage. Tenant is worried about the conditions in the house aggravating her mother's health issues. To accommodate tenant's schedule, Mary arranges to inspect the property on Monday, January 4th. Mary advises tenant to call her if she sees anything that seems to be an immediate life safety threat and Building staff will come sooner than the 4th. Property owner Michelle Schoning appears to have taken property out of foreclosure.

January 4, 2010 - Current tenant delays inspection due to health issues. Former tenant (original complainant) calls to tell Mary Gaeta further details about her experience living at this property. Tells Mary about rat droppings and that new cadet heaters were installed without permits, among other complaints.

February 16, 2010 - Inspectors Mary Gaeta and Joel Heenan are able to access the house and perform a second site inspection. They observe evidence to support most of the complaints reported by the previous two tenants. Inspectors were able to access the electrical panels during this visit.

February 18, 2010 - Building sends letter to property owner Michelle Schoning giving 15 days to have contractors apply for permits to correct deficiencies and verify integrity of work done without permits.

Appeal of dangerous property designation for 117 Main Street NE

Page 3

March 2, 2011, for the March 9, 2011, City Council Meeting

February 24, 2010 - Michelle Schoning calls Mary Gaeta to discuss letter. Requests list of specific deficiencies.

February 25, 2010 - Letter itemizing deficiencies sent to owner Michelle Schoning per her request.

March 24, 2010 - Michelle Schoning calls Mary Gaeta to request more information about City's requirements.

March 25, 2010 - Letter explaining requirements in greater detail sent to owner Michelle Schoning per her request. Owner is given an additional 15 days to apply for permits and begin repair work.

March through October - Property is kept on watch list in anticipation of ultimately issuing a Notice and Order. Lack of staff means that if properties don't pose an immediate threat to life safety, they enter a queue for enforcement action.

October 20, 2010 - Tenant calls Mary Gaeta to say that the house still doesn't have working heat. She says the outlets are overheating when space heaters are plugged in, that the black mold is getting worse, there's a leaking ceiling, and a small section of the ceiling is caving in. Requests inspection. With cold weather approaching, inspection is fast-tracked.

October 22, 2010 - Site visit confirms that electrical and other deficiencies and unpermitted work have not been addressed. Further examination of the electrical panels combined with the fact that no repair work seems to be imminent will raise the priority level of this case.

October 26, 2010 - Final warning letter issued to owner Michelle Schoning. Notice and Order will be issued if no response from property owner by November 3rd.

November 4, 2010 - No response from property owner after final warning letter. Repairs still not made. Notice and Order issued via certified mail.

II. Scheduling

I received a request from the property owner, Michelle Schoning, to postpone this appeal hearing until after March 23rd as she will be out of the country. This is the second time that Mrs. Schoning has requested such an extension of an appeal hearing due to being out of town; her first request was granted and the Board of Appeals hearing was postponed. Shortly before the rescheduled hearing date, Mrs. Schoning advised us that she would not be attending the hearing after all and that her husband would be acting as her agent.

I have met with the City Attorney regarding Mrs. Schoning's request to reschedule the appeal before the Council, and at his suggestion, this request was denied. The more we learn about the electrical system at this property, the more concerned we become about the safety of the tenants living in the house. As long as the Notice and Order is under appeal, all enforcement actions are stayed and the Building Division has no mechanism with which to require the property owner to remedy the hazards. To further delay the appeals process places the

tenants of this property at greater risk of injury or death, and given the fact that Mr. Schoning presented his wife's case to the Board of Appeals and has subsequently been our primary point of contact for inspections and site visits at this property, we do not believe it to be a hardship on the property owner to hold the hearing as scheduled on March 9th.

III. Council Role

Pursuant to the terms of AMC 18.14.30(2) the Council has the authority and responsibility to review the Building Official's decision to classify this property as dangerous. The Council's review should be based upon the evidence presented at the hearing and should be specific to the date of the Notice and Order, November 4, 2010. While the Council must determine whether or not the Order was correctly issued based upon substantial evidence, the Council's review does not extend to determining the corrective action which would follow a decision to sustain the Building Official's Notice and Order. As noted in AMC 18.14.30(2), the appeal body, "may review the Building Official's discretionary determination that a structure is dangerous, **but not the ensuing remedy.**" While the appropriateness of the Building Official's decision is clearly the subject of Council review, the remedial measures which must be taken to correct the deficiencies if the Order is sustained are specialized technical decisions which must be left to the appropriate licensed building inspectors.

Budget Impact:

None.

MMA

Attachments: Exhibit A



NOTICE AND ORDER

DATE: November 4, 2010

TO: MICHELLE A. SCHONING
4363 HONEYSUCKLE DRIVE NW
CORVALLIS, OR 97330

BULA REALTY, LLC
806 NW 4TH STREET
CORVALLIS, OR 97330-6259

NOTICE IS HEREBY GIVEN that the Building Official of the City of Albany, as authorized by Albany Municipal Code Chapter 18.28, "Dangerous Buildings, Structures, and Premises," has inspected the structure and premises hereinafter described, and has found said structure and premises to be dangerous under the provisions set forth in Albany Municipal Code Section 18.28.010.

The conditions and defects of said structure that render it dangerous under the provisions of Albany Municipal Code Section 18.28.010, "Dangerous Buildings, Structures, and Premises," are listed in Appendix A, attached, which is a part of this Notice and Order.

The structure referred to in the preceding paragraph is located at 117 Main Street NE, on real property situated in the City of Albany, County of Linn, State of Oregon described as follows: Map No.11S-03W-06DA, Tax lot 3600.

You are hereby ordered to repair or demolish the structure and premises to correct the conditions set forth in Appendix A pursuant to the timelines listed in Appendix A.

Failure to comply with the requirements of this Notice and Order will result in the Building Official taking appropriate action as authorized by Albany Municipal Code Chapter 18.28. **The Building Official may issue a criminal citation to the owner(s) if the terms of this Notice and Order are not complied with.** The Building Official may proceed to cause the work to be done and charge the costs thereof against the property or its owner.

Pursuant to Albany Municipal Code 18.12.030, recovery of costs for action taken by the City in investigation and enforcement of this Notice and Order shall be paid by the owner(s) of the property or the person(s) responsible for the property. **Failure to pay these costs may result in a lien on the property which is the subject of this Notice and Order.** Pursuant to Albany Municipal Code 18.10.180, the Building Official may also record a Notice of Substandard or Non-Conforming Conditions upon the title of the property which is the subject of this Notice and Order.

Any person having a record title or legal interest in the building subject to this Notice and Order may appeal this Notice and Order, or any action of the Building Official, to the Building Board of Appeals of the City of Albany. The notice of appeal must be filed in writing, as required in Chapter 18.14 of the Albany Municipal Code, **within fourteen (14) days from the date of service of this Notice and Order**. Appeals should be delivered to the Building Official at City Hall, 333 Broadalbin SW, Albany, OR, 97321. Failure to appeal within the specified time period will constitute a waiver of all rights to an administrative hearing regarding this Notice and Order.

If further information concerning this Notice and Order is needed, please contact Melanie Adams, Building Official, City of Albany Building Division, City Hall, 333 Broadalbin Street SW, Phone (541) 917-7553.

CITY OF ALBANY



Melanie Adams
Building Official

- c: James V. B. Delapoer, City Attorney
- Mike Trabue, Fire Marshal
- John Bradner, Fire Chief
- Greg Byrne, Community Development Director
- Marilyn Smith, Public Information Officer

APPENDIX A
117 Main St. NE, Albany
Map No. 11S03W06DA, Tax lot 3600

The following condition(s) constitute a dangerous building, structure, or premises under Section 18.28.010 of the Albany Municipal Code:

- (1) The premises are a fire hazard due to dilapidated condition, deterioration, and damage; lack of sufficient fire-resistive construction; faulty electric wiring; and insufficient doors or windows to provide safe and adequate means of exit in case of fire or panic (AMC 18.28.010(2)(j)).
- (2) The property is manifestly unsafe for the purpose for which it is being used (AMC 18.28.010(2)(k)(i)).
- (3) The premises are maintained in violation of specific requirements of the State Fire Code, the State Building Code, and the Albany Municipal Code (AMC 18.28.010(2)(n)):
 - a. There is evidence that considerable work has been done to the premises without permits. (AMC 18.06.010)
- (4) The premises have the following conditions or defects described in Chapter 18.30 of the Albany Municipal Code ["Property Maintenance"] to the extent that life, health, property, or safety of the public or its occupants are endangered (AMC 18.28.010(2)(k)(ii)):
 - a. Trash and debris. Accumulations scrap materials, junk, and trash were present in yard and garage. In garage, the accumulation of materials blocks easy access to the electrical panel. (AMC 18.030.115)
 - b. Exterior structure – Generally. The exterior of the structure is not being maintained in good repair, structurally sound, and sanitary so as to not pose a threat to public health, safety or welfare. (AMC 18.30.140)
 - c. Exterior walls and exposed surfaces. Exterior walls and weather-exposed exterior surfaces and attachments are not free of holes, breaks, loose or rotting boards or timbers. The condition of these exterior surfaces is likely to admit rain or dampness to the interior portions of the walls or the occupied spaces of the building. There are several gaps and holes in the wood siding near the foundation large enough to admit rats. There is evidence of damage from water entering the structure observable in several ceiling and interior wall areas in the dwelling. (AMC 18.30.145)
 - d. Exterior structural members. Some structural members are not maintained structurally sound, and may not be capable of supporting the imposed loads. There are deteriorated and inadequate headers above doors leading into back of house and garage. (AMC 18.30.230)
 - e. Roofs and drainage. Roof drains, gutters, and downspouts are not present on the house and garage and are required. A section of roofing at the back (northeast) section of house appears to have been simply laid upon the existing roof. (AMC 18.30.160)
 - f. Rodent harborage. Large openings in siding near foundation were noted in several places around the structure and in a bedroom. Evidence of previous rodent infestation inside dwelling area documented. (AMC 18.30.110)
 - g. Doors. Not all exterior doors, door assemblies, and hardware are maintained in good condition. Locks at all entrances do not tightly secure the doors. There are significant gaps around entry doors at front and back of house. The garage door is hanging at an angle; unable to be opened or closed. (AMC 18.30.210)
 - h. Window and door frames. Several windows, doors, and frames have not been kept in sound condition and good repair, and are not weathertight. There are gaps or leaks present around some dwelling doors and windows that admit dampness and drafts. (AMC 18.30.190)

- i. Openable windows. Not all windows required to be properly designed for emergency egress or ventilation are easily openable and capable of being held in position by window hardware. (AMC 18.30.200)
- j. Insect screens. Doors and windows required for ventilation of habitable rooms and food preparation areas are not supplied with approved tightly-fitting screens of not less than 16 mesh per inch. (AMC 18.30.205)
- k. Interior structure – Generally. The interior of the structure and equipment therein are not maintained in good repair, structurally sound, and in a sanitary condition. (AMC 18.60.225)
- l. Interior surfaces. Interior walls, floors, ceilings, cabinets, countertops, and sinks are not maintained in a clean, sanitary, safe, and structurally sound condition, and are not free of large holes and serious cracks, loose plaster or wallpaper, or flaking or scaling paint. One bedroom contains holes near the floor that appear to have been created by rats entering the house. The living room ceiling exhibits peeling paint and water damage, and in one corner, the ceiling is crumbling and falling. There is a large un-caulked gap in shower stall which may admit water to interior of wall. (AMC 18.30.235)
- m. Interior doors. Not every interior door fits reasonably well within its frame and is capable of being opened and closed by being properly and securely attached to jambs, headers, or tracks as intended by the manufacturer of the attachment hardware. (AMC 18.060.250)
- n. Access from bedrooms. Bedrooms should not constitute the only means of access to other bedrooms or habitable spaces and should not serve as the only means of egress from other habitable spaces. The only means of access and egress for the back (east-most) bedroom is through another bedroom. (AMC 18.30.360)
- o. Water closet accessibility. Not every bedroom has access to at least one water closet and lavatory without passing through another bedroom. The occupant of the back bedroom must cross through the front bedroom to access the bathroom. (AMC 18.30.375)
- p. Prohibited occupancy. Nonhabitable spaces are possibly being used for sleeping purposes. The garage was reported to have been previously advertised a dwelling without heat, adequate egress, adequate electrical service, running water, or adequate access to a water closet and lavatory. (AMC 18.30.380)
- q. Plumbing systems and fixtures - Generally. Many plumbing fixtures are not properly installed and maintained in working order, as required in OAR 918-750-0120(4), and are not kept free from obstructions, leaks, and defects, and are not capable of performing the function for which such plumbing fixtures are designed. Not all plumbing fixtures are maintained in a safe, sanitary, and functional condition. The toilet does not empty or fill properly. Sink drain in bathroom leaks. (AMC 18.30.460)
- r. Sanitary drainage system – Generally. Not all plumbing fixtures are properly connected to either a public sewer system or to an approved private sewage disposal system. The shower is not legally connected to an approved sewer outlet. History of complaints of raw sewage odors coming from underneath the house. (AMC 18.30.495)
- s. Sanitary drainage system; maintenance. Plumbing stacks and vents are not free from obstructions and defects. Lines and drains clog easily. (AMC 18.30.500)
- t. Heating; facilities required. Heating facilities are not provided in the structure as required by the Municipal Code. There is no approved heat source installed in the dwelling areas. (AMC 18.30.510)
- u. Heating; residential occupancies. The house is not provided with heating facilities capable of maintaining a room temperature of 68 F in all habitable rooms, bathrooms, and toilet rooms. Cooking appliances should not be used to provide space heating to meet the requirements of this section. Tenants must use space heaters because there is no other safely operable source of heat. (AMC 18.30.515)

- v. Heat supply. The owner of the building does not supply heat to every occupant and does not maintain heating facilities capable of maintaining a room temperature of 68 degrees Fahrenheit (20 degrees Celsius) in all habitable rooms, bathrooms, and toilet rooms. (AMC 18.30.520)
- w. Mechanical appliances. Not all mechanical appliances, cooking appliances, and water heating appliances are properly installed and maintained in a safe working condition, and are not capable of performing the intended functions. Several heater units and ventilation fan in bathroom appear to have been installed without permits or inspections. There are no permits on record for water heater installations. (AMC 18.30.530)
- x. Electrical facilities required. A minimum of 5 branch circuits are not provided in each dwelling subpanel consisting of:
- 1-20 amp, 120-volt circuit to bathroom sink receptacle outlet.
 - 2-20 amp, 120 volt circuits to kitchen counter area.
 - 1-15- or 20-amp, 120 volt circuit for general lighting
 - 1-20-amp, 120 volt circuit for laundry area.
- Note: any additional electrical appliances will require added circuits to safely serve appliances. (AMC 18.30.560)
- y. Electrical service. Dwelling units are not provided with electrical service in accordance with the State Electrical Code. There are inadequate or non-working receptacles in some rooms resulting in the overuse of expansion outlets and extension cords. (AMC 18.30.565)
- z. Installation of electrical equipment. Not all electrical equipment, wiring, and appliances are properly installed and maintained in a safe and approved manner. Service and electrical equipment are not installed as per the State Electrical Code and maintained in a safe and approved manner. Present are a number of cracked, damaged or missing receptacle covers and switch plates. Electrical circuits have been added at the breaker panel without permits or inspection. (AMC 18.30.575, 18.06.010)
- aa. Lighting fixtures. Not every interior stairway, exterior exit door, toilet room, kitchen, and bathroom contains at least one working electrical lighting fixture. (AMC 18.30.585)
- bb. Electrical system hazards. The electrical system constitutes a hazard to the occupants of the dwelling units by reason of inadequate service, insufficient receptacle and lighting outlets, overloaded circuits, improper wiring and installation, exposed wiring, wiring installed without required inspection, lack of access by tenants to electrical panel servicing their dwelling, and deterioration and damage. (AMC 18.30.570)
- cc. Receptacles. The required electrical receptacle outlets and switched lighting outlets are not provided in each dwelling unit. The kitchen counters are not all provided at least 2-receptacle duplex outlets. An adequate amount of receptacle outlets has not been provided in order to eliminate the use of extension cords and adapters for more that 2-cord sets plugging into a duplex outlet. (AMC 18.30.580)

The following conditions shall be met in order to comply with the attached Notice and Order:

BUILDING OR DEMOLITION PERMITS NEEDED TO CORRECT THE DEFICIENCIES DESCRIBED HEREIN SHALL BE APPLIED FOR BY LICENSED CONTRACTORS WITHIN 5 DAYS OF THE DATE OF THIS NOTICE AND ORDER.

REPAIR OR DEMOLITION WORK TO CORRECT DEFICIENCIES DESCRIBED HEREIN SHALL COMMENCE WITHIN 7 DAYS OF THE DATE OF THIS NOTICE AND ORDER.

REPAIR OR DEMOLITION WORK TO CORRECT DEFICIENCIES DESCRIBED HEREIN SHALL BE COMPLETED, AND THE WORK SHALL BE INSPECTED AND RECEIVE FINAL APPROVAL FROM THE BUILDING OFFICIAL WITHIN 30 DAYS OF THE DATE OF THIS NOTICE AND ORDER.

Failure to comply with the requirements of this Notice and Order, including each of the deadlines listed above, will result in the Building Official taking appropriate action as authorized by Albany Municipal Code Chapter 18.28. The Building Official may proceed to cause the work to be done and charge the costs thereof against the property or its owner.



TO: Albany City Council
VIA: Wes Hare, City Manager
FROM: Ed Hodney, Director of Parks and Recreation *EH*
DATE: March 2, 2011, for the March 9, 2011 City Council Meeting
SUBJECT: Resolution revising Resolution No. 5897, authorizing Intergovernmental Agreement with Greater Albany Public Schools

RELATES TO STRATEGIC PLAN THEME: ● An Effective Government
● Great Neighborhoods

Action Requested:

A Resolution authorizing the City Manager to sign an Intergovernmental Agreement with Greater Albany Public Schools, revising a prior agreement authorized by Resolution No. 5897 and passed March 10, 2010.

Discussion:

By Resolution No. 5897, the City Council authorized an Intergovernmental Agreement (IGA) between the City and Greater Albany Public Schools. Specifically, the IGA authorized Parks SDC funding in the amount of \$300,000 to build a cinder track and irrigated soccer field at Timber Ridge School. The track was to be completed by Spetember2010. In return the City would gain the use of these facilities during non-school hours for Parks and Recreation programs. Additionally, GAPS was to convey ownership of Burkhart Park to the City upon payment of the \$300,000. Finally, the IGA established a mechanism whereby the City could purchase Deerfield Park from GAPS for a set amount over a three-year period.

At the Work Session on December 6, 2010, staff advised the City Council of the school district's request to increase the amount of project money for the track and soccer field to \$470,000. Construction costs had exceeded estimates and the district was interested in an all-weather track to replace the cinder surface. The City Council gave staff direction to budget the additional costs from the Parks SDC Program in FY 2011-2012.

The attached draft of a revised IGA makes the following revision to accomplish the Council's objectives. Changes to the original IGA have been italicized and underlined for your convenience:

1. *Section 1 (page 1) increases the amount of the City's contribution up to \$470,000*
2. *Sec. 1.b. (page 1) extends the completion date for the track to September 2011*
3. *Sec.1.c. (page 1) establishes a mechanism that applies only in the event that the total project costs fall short of \$470,000, adjusting the City's purchase price for Deerfield Park (see Section 3.g.3.)*
4. *Sec.1.e. (page 2) establishes a City new payment date of July 15, 2011 for the track and soccer field project*
5. *Sec. 3.g.3. (page 5) establishes a decreased purchase amount for Deerfield Park, decreasing it from \$362,620 to \$192,620 in recognition of the City's increased contribution for the track and soccer field.*

Albany City Council

Page 2

March 2, 2011

The GAPS board has reviewed and approved the revised IGA, subject to the City Council's approval.

Budget Impact:

\$470,000 from Parks SDC program will be allocated for this project in the FY 2011-2012 Parks and Recreation Department budget and the City's updated Capital Improvements Program.

Attachment: Resolution
Draft IGA

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN AN INTERGOVERNMENTAL AGREEMENT WITH GREATER ALBANY PUBLIC SCHOOLS, REVISING A PRIOR AGREEMENT AUTHORIZED BY RESOLUTION NO. 5897 AND PASSED ON MARCH 10, 2010.

WHEREAS, ORS 190.010 provides that a unit of local government may enter into a written agreement with any other unit of local government for the performance of any or all functions and activities that a party to the agreement, its officers or agencies, have authority to perform. Among those specifically identified statutorily recognized functions includes the transfer of possession of or title to real property, or the apportionment among the parties to the agreement of the responsibility for providing funds to pay for expenses incurred in the performance of the functions or activities of the parties; and

WHEREAS, the parties to this agreement desire to enter into an agreement which will result in the sale or lease of certain real properties from one local government entity to another, the construction of public facilities and the maintenance of facilities, and

WHEREAS, Greater Albany Public Schools (GAPS) desires to construct public facilities by building a new soccer field and track at its Timber Ridge School.

WHEREAS, GAPS also owns certain real property known as Burkhart Park and Deerfield Park which the City of Albany desires to acquire by lease and/or sale;

WHEREAS, GAPS and the City of Albany previously entered into an Intergovernmental Agreement to achieve these ends; and

WHEREAS, both parties now intend to make substantive revisions to the original agreement;

NOW, THEREFORE, BE IT RESOLVED that the City of Albany City Council authorizes the City Manager to sign this revised agreement and execute the City's obligations contained therein.

DATED AND EFFECTIVE THIS 9th DAY OF MARCH 2011.

ATTEST:

Mayor

City Clerk

**INTERGOVERNMENTAL AGREEMENT
PURSUANT TO ORS CHAPTER 190**

This agreement is made this ____ day of _____, 2011 between the City of Albany, a municipal corporation and political subdivision of the state of Oregon, (hereinafter referred to as "City") and the Greater Albany Public School District, a unit of local government (hereinafter referred to as "GAPS").

RECITALS

A. ORS 190.010 provides that a unit of local government may enter into a written agreement with any other unit of local government for the performance of any or all functions and activities that a party to the agreement, its officers or agencies, have authority to perform. Among those specifically identified statutorily recognized functions includes the transfer of possession of or title to real property, or the apportionment among the parties to the agreement of the responsibility for providing funds to pay for expenses incurred in the performance of the functions or activities of the parties.

B. The parties to this agreement desire to enter into an agreement which will result in the sale or lease of certain real properties from one local government entity to another, the construction of public facilities and the maintenance of facilities.

C. GAPS desires to construct public facilities by building a new soccer field and track at its Timber Ridge School. GAPS also owns certain real property known as Burkhart Park and Deerfield Park which the City desires to acquire by lease and/or sale.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

Section 1. Construction of Soccer Field and Track. City agrees to pay to GAPS up to \$470,000 for the specific purpose of allowing GAPS to construct a soccer field and track (known herein as "the public facilities") at Timber Ridge School which is located at 373 Timber Ridge St. NE, Albany, Oregon 97322.

a. The sum to be paid by City to GAPS shall be paid in a "lump sum".

b. GAPS shall design and construct the facilities at Timber Ridge School during the spring and summer construction season of 2011, with a substantial completion date of September 1, 2011.

c. GAPS shall be responsible for any costs in completing the public facilities which exceeds \$470,000. Should these costs be less than \$470,000, the City's contribution to the project shall be reduced accordingly; the difference between the

actual contribution and \$470,000 shall be added to the remaining payment required by the City to purchase Deerfield Park, as detailed in Section 3.

d. The parties shall consult one another in the design of the public facilities and shall comply with all Oregon public contracting laws in the construction of the public facilities. GAPS is not obligated to accept the opinions of the City regarding the design of said public facilities.

e. Any agreements for the construction of the public facilities shall be entered into by GAPS. City shall make payment in full to GAPS on or before July 15, 2011.

f. The parties agree that the facilities constructed by GAPS at Timber Ridge School shall be for the benefit of GAPS and its students, teachers and other faculty during school hours and during the regular school year. At all other times, the public facilities shall be made available to the City as the Priority User.

g. GAPS shall be responsible for the costs of maintenance, the maintenance of the public facilities and the operation of the soccer field and track.

Section 2. Sale of Burkhart Park. Upon the payment of the sales price as provided in section 1 of this agreement from City to GAPS, GAPS will convey by its warranty deed to City the following described real property, located in Albany, Linn County, Oregon:

[Property description inserted here for Burkhart Park]

a. Conditions of this sale are as follows:

1. Within 30 days of the execution of this Agreement, GAPS agrees, at its expense and cost, to cause the issuance of a preliminary title report on the Property, along with copies of all documents that give rise to any exceptions listed in the report. The title company designated by the parties to act in this capacity is Amerititle, 1393 Clay St. SE, Albany, Oregon. Within 15 days of receiving the preliminary title report, City shall give GAPS written notice setting forth the exceptions that are not acceptable to the City. All other exceptions shall be deemed acceptable to the City. GAPS shall have 10 days after receiving the City's notice within which to give the City its written notice agreeing to eliminate the unacceptable exceptions or electing to terminate this agreement.

2. At the closing, a standard owner's title policy in the amount of the \$117,720 shall be issued to the City, insuring title vested in the City, subject only to exceptions which have been approved by the City at the expense of GAPS.

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3. All other closing costs, such as escrow fees and recording fees shall be split between the parties. Each party shall pay its own legal and professional fees which are incurred by that party.

4. To the best knowledge of GAPS' officials, after reasonable inquiry, the Property is materially in compliance with applicable state and federal environmental standards and requirements affecting it. GAPS has not received any notices of violation or advisory action by regulatory agencies regarding environmental control matters or permit compliance with respect to the Property. GAPS has not transferred hazardous waste from the Property to another location that is not in compliance with applicable environmental laws, regulations or permit requirements. No other person has transferred hazardous waste from the Property to another location that is not in compliance with applicable environmental laws, regulations or permit requirements. There are no proceedings, governmental administrative actions, or judicial proceedings pending or, to the best of GAPS' knowledge, contemplated under any federal, state, or local laws regulating the discharge of hazardous or toxic materials or substances into the environment. GAPS has not stored, produced or disposed of any hazardous substance, including asbestos, on the Property.

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 and 195.305 to 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930 AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007.

Section 3. Lease/Sale of Deerfield Park. GAPS agrees to lease to the City the real property known as Deerfield Park, which is located in the City of Albany, Linn County, Oregon and more particularly described as follows:

[Insert property description for Deerfield Park]

a. The term for this lease shall commence upon the signing of this agreement and continue for a term of 25 years, unless sooner terminated as hereinafter provided.

b. The City shall have the right of possession and obligations under the lease shall commence as of the date of signing of this agreement.

d. City shall pay to GAPS as rent the sum of \$1000 per year, payable annually, the first payment to be made upon the signing of this lease and successive payments to be made upon the same date each year thereafter.

e. Any taxes, insurance costs, utility charges or other expenses of operation of the Park that City is required to pay to GAPS or to any third party shall be additional rent.

f. For so long as this lease is effective, the property shall be used as a public park and no other purpose. City shall not cause or permit any Hazardous Substance to be spilled, leaked, disposed of or otherwise released on or under the property. City may store such Hazardous Substances on the property only to quantities necessary to satisfy City's reasonably anticipated needs. City shall comply with all Environmental Laws and exercise the highest degree of care in the use, handling and storage of Hazardous Substances and shall take all practicable measures to minimize the quantity and toxicity of Hazardous Substances used, handled or stored on the Property. The term "Environmental Law" shall mean any federal, state or local statute, regulation or ordinance or any judicial or other governmental order pertaining to the protection of health, safety or the environment. The term "Hazardous Substance" shall mean any hazardous, toxic, infectious or radioactive substance, waste and material as defined or listed by any Environmental Law and shall include, without limitation, petroleum oil and its fractions.

g. Early Termination of Lease. This lease may be terminated in one of the following manners:

1. Either party may terminate this lease for no cause by giving written notice to the other party of at least 180 days prior to the date for the termination of the lease.

2. In the event of default, or for cause, either party may terminate this lease by giving no less than 45 days notice to the other party. In the event of an early termination of the lease as set forth in this paragraph or under paragraph 3(g)(1), any permanently affixed improvements to the property shall remain on the property and shall be owned by GAPS. For the purposes of this paragraph, default or cause shall be one or more of the following:

i. Failure to pay rent when due within 15 days after written notice that the rent is due.

ii. Failure of City to comply with any term or condition or fulfill any obligation of the lease, other than the payment of rent, within 30 days after written notice by GAPS specifying the nature of the default with reasonable particularity. If the default is of such a nature that it cannot be completely remedied within the 30 day period, this provision shall be complied with if City begins correction of the default within the 30 day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable.

3. For three years from the date of this agreement, City shall have the sole and exclusive option to purchase Deerfield Park from GAPS. The purchase price shall be the sum of \$192,620 which shall all be payable at closing.

i. To exercise its option, City shall give written notice of its intent to exercise the option. Within 10 days of such notice, the parties shall agree to set up an escrow account at a mutually agreeable title company. The parties shall agree upon a closing date and GAPS will provide City with a preliminary title report at least 15 days prior to closing. Within 15 days of receiving the preliminary title report, City shall give GAPS written notice setting forth the exceptions that are not acceptable to the City. All other exceptions shall be deemed acceptable to the City. GAPS shall have 10 days after receiving the City's notice within which to give the City its written notice agreeing to eliminate the unacceptable exceptions or electing to terminate this agreement

ii. At the closing, a standard owner's title policy in the amount of the purchase price shall be issued to the City, insuring title vested in the City, subject only to exceptions which have been approved by the City at the expense of GAPS.

iii. All other closing costs, such as escrow fees and recording fees shall be split between the parties. Each party shall pay its own legal and professional fees which are incurred by that party.

4. In the event that City does not exercise its option, the City shall continue to lease the property from GAPS pursuant to the terms in Section 3, a. through f.

Section 4 General Provisions

A. Except as provided in this agreement, no party hereto will be responsible for or have any liability for the actions, negligence or performance of the employees, officers, agents or representatives of any other party. Nothing in this agreement is intended to create any joint liabilities between these parties and each party to this agreement, subject to the provisions of Oregon's Tort Claim Act, shall indemnify and hold harmless any other party to the agreement for any claims made for the actions of said parties' employees, officers, agents or representatives. Each party to this agreement shall name the other as an additional insured on that portion of the property and facilities which are covered by this Intergovernmental Agreement.

B. In the event of litigation to enforce any provision of this agreement, the parties agree that the venue shall be Linn County, Oregon. The parties also agree that in the event of litigation over this agreement, the prevailing party or parties to the litigation shall be entitled to the payment that party or parties reasonable attorney fees, both at trial and on appeal.

C. Notice shall be deemed delivered to any party upon the deposit of the same in the United States Mail, with adequate postage affixed thereto, and sent to the following addresses, or such other address which may be communicated between the parties from time to time:

For the City: Director, Albany Parks & Recreation
P. O. Box 490
Albany, OR 97321-0144

For GAPS: Director of Business
Greater Albany Public Schools
718 7th Avenue SW
Albany, OR 97321

D. Waiver by either party of strict performance of any provision of this agreement shall not be a waiver of or prejudice the party's right to require strict performance of the same provision in the future or of any other provision.

E. Time is of the essence of the performance of each of the responsibilities and obligations of this agreement.

F. Any remedies specifically mentioned in this agreement shall be in addition to and shall not exclude any other remedy available to the parties under applicable law.

G. This agreement sets forth the entire understanding of the parties with respect to the responsibilities and rights for the agreement which are contained herein. This agreement supersedes any and all prior understandings, negotiations, discussions and agreements between the parties. This agreement may not be modified or amended except by a written agreement executed by the parties.

This agreement is executed in duplicate, on the date and year above mentioned, by the parties as evidenced by the signatures of representatives of each party below.

For the City:

For Greater Albany Public Schools:



TO: Albany City Council

VIA: Wes Hare, City Manager
Diane Taniguchi-Dennis, P.E., Public Works Director *diane taniguchi-dennis*

FROM: Jeni Richardson, P.E., Civil Engineer III *Jeni Richardson*
Ronald G. Irish, Transportation Systems Analyst *Ron Irish*

DATE: February 3, 2011, for the March 9, 2011, City Council Meeting

SUBJECT: Proposed Transportation System Development Charge

RELATES TO STRATEGIC PLAN THEME: • Great Neighborhoods

Action Requested:

In accordance with the City Council's direction, staff requests that Council adopt the attached resolution implementing a new Transportation System Development Charge for impacts to the Albany transportation system.

Discussion:

The Albany City Council adopted a new Transportation System Plan (TSP) in February 2010 to guide development and upgrades for Albany's road, bike, and pedestrian networks today through the year 2030. The TSP identifies \$242 million dollars worth of transportation projects inside the Albany city limits. About half of those projects will be needed to serve projected future development over the next 20 years.

In July 2010 Council reviewed the methodology that establishes the maximum transportation System Development Charges (TSDC) at \$10,423 per p.m. peak hour trip. Council also reviewed two TSDC fee levels that would move from the current fee of \$1,734 per single family home to \$3,000 either at once or over a five-year period. The two fee options were designed to fund all the near-term projects in the first 10 years. The ramped fee option responds to current slow development activity but would lose an estimated \$1 million in revenues in the first five years, which means certain projects on the list would not get done.

In January 2011 Council held a public hearing on the TSDC methodology and two TSDC fee options. After consideration of the public testimony, Council adopted the TSDC methodology but expressed concern about the two fee options due to the current economy and whether recovery will keep up with the proposed 5-year ramp assumptions. Staff was directed to develop a TSDC fee resolution that implements a flat TSDC fee structure and retains the current TSDC charged a single family home. Following discussion of this fee option on February 2, 2011, Council directed staff to bring the ramped fee option from the January public hearing for consideration.

The attached resolution establishes the TSDC base fee and includes the list of funded projects based on the fee structure that ramps from the current fee to \$3,000 over a five-year period. The resolution includes a statement that future fee increases envisioned in the ramp will only be implemented with Council action based on an analysis of economic indicators to be used as a basis for future annual step decisions. Staff will return to Council in April or May 2011 with a report on potential economic indicators that might be used to decide future fee adjustments. Beginning in 2012, Council will be asked to consider economic indicators during the spring and evaluate if and when the TSDCs will be adjusted.

Albany City Council

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February 24, 2011 for March 9, 2011, City Council Meeting

Budget Impact:

If adopted, the Transportation SDC will become effective on March 9, 2011. The revenue received will vary based upon specific development activity.

JMR:kw

Attachment: Resolution

c: Janet Steele, Albany Chamber of Commerce
John Pascone, Albany Millersburg Economic Development
Jerry Running, Willamette Valley Homebuilders Association

RESOLUTION NO. _____

A RESOLUTION ESTABLISHING SYSTEM DEVELOPMENT CHARGES FOR IMPACTS TO THE ALBANY TRANSPORTATION SYSTEM, ESTABLISHING AN APPEAL FEE AND REPEALING RESOLUTION NO. 5806 (A RESOLUTION REVISING TRANSPORTATION SYSTEM DEVELOPMENT CHARGES, REAFFIRMING AN SDC CREDIT POLICY, REAFFIRMING AN APPEAL FEE AND REPEALING RESOLUTION NO. 5429).

WHEREAS, through the historic adoption of ordinances establishing and amending Albany Municipal Code 15.16 regarding system development charges, the Council of the City of Albany has duly declared its intent to comply with the provisions of ORS 223.207 through 223.208 and 223.297 through 223.314; and

WHEREAS, a methodology for the calculation of an improvement and reimbursement fee system development charge for the transportation system in Albany has been developed as specifically described in Resolution No. 5972; and

WHEREAS, the adopted methodology resulted in a maximum allowable fee of \$10,423; however in the interest of promoting economic development, the City Council deemed it desirable to charge less than the legally allowable charges; and

WHEREAS, the *Engineering News Record* (ENR) Construction Cost Index (Seattle) in February 2010, when the project list and costs within the Transportation System Plan were adopted was 8647; and

WHEREAS, the future fee increases envisioned in the ramp will only be implemented with Council action based on an analysis of economic indicators to be used as a basis for future annual step decisions.

NOW, THEREFORE, BE IT RESOLVED by the Albany City Council that Resolution No. 5806 is hereby repealed; and

BE IT FURTHER RESOLVED that an improvement fee and a reimbursement fee transportation system development charge for Albany hereby be established as described herein; and

BE IT FURTHER RESOLVED that an appeal fee is hereby established as described herein.

BASE FEE ESTABLISHED

The base unit for the transportation system development charge (SDC) improvement and reimbursement fee will be p.m. peak hour trip end as defined in the latest version of the Trip Generation manual by the Institute of Transportation Engineers (ITE). The base fee for a single trip end ramps up from \$1,716.83 to \$2,970.30 over a 5-year period to account for anticipated slow recovery of development activity. The base fee for a single trip is a combination of an improvement and a reimbursement base fee as shown below.

Year	Base SDCi Fee	Base SDCr Fee	Total Base Fee for a Single Trip End
2011	\$1,281.19	\$435.64	\$1,716.83
2012	\$1,595.05	\$435.64	\$2,030.69
2013	\$1,907.92	\$435.64	\$2,343.56
2014	\$2,220.79	\$435.64	\$2,656.43
2015	\$2,534.65	\$435.64	\$2,970.29

CALCULATING THE SYSTEM DEVELOPMENT CHARGE

Residential, institutional, business and commercial, office, and industrial development SDC fees are computed by multiplying the base SDC fee by the associated basis for trip determination and by the associated p.m. peak hour trip end rate for the given land use. This calculated fee is further reduced to allow for a pass-by trip credit that varies by land use. Pass-by trip factors are 8% for industrial and office (ITE Category 000-199 and 700-799), 20 percent for institutional (ITE Category 300-699), and 50% for business and commercial (ITE Category 800-999).

A sample SDC calculation for a single family house (ITE Category 210) for the first year is shown below.

SDC Calculation for a Single Family House (ITE Category 210)				
	P.M. Peak Trip Rate ¹	Pass-By Factor ²	Base Fee for a Single Trip Fee	SDC Fee
SDCi	1.01	1.00	\$1,281.19	\$1,294
SDCr	1.01	1.00	\$ 435.64	\$ 440
Total			\$1,716.83	\$1,734

¹ P.M. Peak Trip Rate for given land uses are defined in the latest edition of the ITE manual

² Data for pass-by trip reduction factors are taken from an analysis of traffic impact fees developed by Anthony Rufolo, Center for Urban Studies, Portland State University

A sample SDC calculation for other land uses for the first year (2011) is shown below.

ITE Code	Description	Units	PM Peak Trips	Pass by Factor	Base Fee for a Single Trip Fee	SDC Fee
220	1 Apartment	1 unit	0.62	1.00	\$1,716.83	\$1,064
110	Light Industrial	1000 sf	0.91	0.92	\$1,716.83	\$1,437
140	Manufacturing	1000 sf	0.73	0.92	\$1,716.83	\$1,153
520	Elementary School	1000 sf	1.21	0.80	\$1,716.83	\$1,662
710	General Office	1000 sf	1.49	0.92	\$1,716.83	\$2,353
720	Medical Office	1000 sf	3.46	0.92	\$1,716.83	\$5,465
814	Specialty Retail	1000 sf	2.71	0.50	\$1,716.83	\$2,326
820	Shopping Center	1000 sf	3.73	0.50	\$1,716.83	\$3,202
862	Home Improvement Superstore	1000 sf	2.37	0.50	\$1,716.83	\$2,034
911	Walk-In Bank	1000 sf	12.13	0.50	\$1,716.83	\$10,413
931	Quality Restaurant	1000 sf	7.49	0.50	\$1,716.83	\$6,430
932	High Turnover Restaurant	1000 sf	11.15	0.50	\$1,716.83	\$9,571
934	Fast Food W/Drive Thru	1000 sf	33.84	0.50	\$1,716.83	\$29,049

SDC CREDITS

Pursuant to Albany Municipal Code Section 15.16.090, a credit against the transportation SDC fee shall be given in the following situations:

A. Credit for prior use:

Pursuant to AMC 15.16.090 (1), a credit against the reimbursement and improvement fee portions of the SDC shall be given in an amount of the SDCi and SDCr calculated for the existing use if it is less than the SDCi and SDCr calculated for the proposed use. If the change in use results in the SDCi or SDCr for the proposed use being less than the SDCi or SDCr for the existing use, no SDCi or SDCr shall be required for that fee portion; however, no refund or credit shall be given.

B. Credit for the cost of a qualified public improvement associated with the development:

Pursuant to AMC 15.16.090 (2), a credit against the improvement fee portion of the SDC shall be given for the cost of a qualified public improvement required as a condition of development approval. A qualified public improvement must also be identified in the funded section of the project list in *Figure A: SDC Eligible Projects Funded by the Adopted Fee Schedule* (see below). A funded project can be either wholly or partially funded with SDCi fees. Projects can move between the funded and unfunded sections according to AMC 15.16.060 (3).

The credit shall not exceed the dollar amount (adjusted annually using ENR Seattle Construction Cost Index) in the SDC column in *Figure A* associated with a qualified improvement in the funded projects group. If the credit exceeds the amount of TSDCi to be paid by the development, then the excess credit may be applied against transportation improvement fees that accrue in subsequent phases of the original development project. In summary, credits are possible only for projects identified in *Figure A* as having SDC funding and only to the extent that it is SDC funded.

On-site: A project that meets these qualification criteria and is located in whole or in part, on or contiguous to the property, and that is required to be built with greater capacity than is necessary for the particular development needs and exceeds the minimum standard facility size, will have reserve capacity. The applicant shall have the burden of demonstrating that a particular qualified transportation improvement will have a reserve capacity. The Highway Capacity manual (HCM), or other City-approved traffic engineering methodology, shall be the approved method for calculating reserve capacity. The reserve capacity shall be expressed as a percent of the construction cost for said improvement. That portion of the construction cost that represents the reserve capacity, when multiplied by the percent of said project funded with the SDCi fee as identified in *Figure A* will be the estimated credit. The actual credit will be the lower of the estimated credit and the dollar amount (adjusted using ENR Seattle Construction Cost Index) in the funded SDC column in *Figure A* associated with said project.

Off-site: A project that meets these qualification criteria that is not located on or contiguous to property (an off-site improvement) is qualified for a SDCi credit. The credit shall be the lower of the actual construction cost or the dollar amount (adjusted using ENR Seattle Construction Cost Index) in the funded SDC column in *Figure A* associated with said project.

C. Credit for reducing the number of trip ends the development will generate using automobiles:

Transit or Pedestrian: A credit against the improvement fee portion of the SDC shall be possible if the development is in an established transit or pedestrian district or if a program to be instituted in connection with the development is determined by the City Engineer to materially reduce the number of trip ends the development will generate using automobiles and the extent of improvements necessary to serve the development, and that the reduction will continue for at least 10 years after the development is occupied.

The reduced SDC will be calculated based upon the number of trip ends the development will generate with the trip end reduction program in effect. Before granting the credit, the City shall receive assurances that will bind the owner and the owner's successors to perform the program for the time required.

D. Credit for reducing the number of peak hour trips the development will generate using automobiles:

Off-peak Work Hours: A credit against the improvement fee portion of the SDC shall be possible if a program to be instituted in connection with the development is determined by the City Engineer to materially reduce the number of peak hour trips the development will generate using automobiles and the extent of improvements necessary to serve the development, and that the reduction will continue for at least 10 years after the development is occupied. The reduced SDC will be calculated based upon the number of trip ends the development will generate with the peak hour trip reduction program in effect. Before granting the credit, the City shall receive assurances that will bind the owner and the owner's successors to perform the program for the time required.

APPEAL PROCEDURE AND FEE

Pursuant to Albany Municipal Code Section 15.16.100(5), an appeal fee of \$100 per appeal is hereby established.

Appeal submittal by parties appealing their calculated fee (AMC Section 15.16.100(3)) shall:

- a) Conform to AMC Section 15.16.100 procedures;
- b) Use standard study methodology and data collection forms and procedures for conducting a local trip generation study described in Albany’s adopted “Traffic Impact Study Guidelines” and the ITE Trip Generation Manual; and
- c) Be prepared by or under the direct supervision of a Professional Civil or Transportation Engineer currently licensed to practice within the State of Oregon, and with special training and experience in transportation engineering and planning. The engineer shall certify the document by providing a signature and seal of approval.

Figure A: SDC Eligible Projects Funded by the Adopted Fee Schedule

Year 1-10 funded projects are in column 7. All short- and mid-term projects are funded.
Year 11-20 funded projects are in column 8.

1	2	3	4	5	6	7	8
Project #	Project	TSP Priority	Growth Percentage	Total Project Cost (2010 \$)	TSDC Eligible	TSDC Eligible & Funded Years 1-10	TSDC Eligible & Funded Years 11-20
B1	14th Avenue	short	100%	\$2,000	\$2,000	\$2,000	
B2	Waverly Drive	short	100%	\$5,000	\$5,000	\$5,000	
B3	Hill Street	long/dev	100%	\$743,000	\$743,000		\$743,000
B4	24th Avenue	short	100%	\$5,000	\$5,000	\$5,000	
B5	Jackson Street	short	100%	\$674,000	\$110,000	\$110,000	
B6	Center Street	short	100%	\$6,000	\$6,000	\$6,000	
B7	US 20, North Albany	long/dev	100%	\$31,000	\$31,000	\$31,000	
B8	1st Avenue	long/dev	100%	\$43,000	\$43,000		
B9	2nd Avenue	long/dev	100%	\$43,000	\$43,000		
B10	Madison Street/7th Avenue	long/dev	100%	\$40,000	\$40,000		
B11	7th Avenue	long/dev	100%	\$95,000	\$95,000		
B12	Takena	long/dev	100%	\$53,000	\$53,000		\$53,000
B13	Liberty/Lakewood	long/dev	100%	\$76,000	\$76,000		
B14	12th Avenue (West)	mid	100%	\$32,000	\$32,000	\$32,000	
B15	Bain Street	long/dev	100%	\$49,000	\$49,000		
B16	South Shore Drive	long/dev	100%	\$33,000	\$33,000		
B17	Shortridge Street	long/dev	100%	\$27,000	\$27,000		
B18	24th Avenue	long/dev	100%	\$44,000	\$44,000		\$44,000
B19	38th Avenue and 39th Avenue	mid	100%	\$106,000	\$106,000	\$106,000	
B20	Lyon Street	short	100%	\$2,000	\$2,000	\$2,000	
B21	Ellsworth Street	short	100%	\$4,000	\$4,000	\$4,000	
I1	Main Street/Salem Avenue/3rd Avenue	short	100%	\$1,088,000	\$1,088,000	\$1,088,000	
I2	Main Street/Santiam Avenue/4th Avenue	short	69%	\$255,000	\$175,950	\$175,950	
I3	14th Avenue/Heritage Mall Access	short	100%	\$41,000	\$41,000	\$41,000	
I4	14th Avenue/Clay Street	short	100%	\$10,000	\$10,000	\$10,000	
I5	Waverly Avenue/14th Avenue	short	100%	\$41,000	\$41,000	\$41,000	
I6	Waverly Avenue/Queen Avenue	long/dev	100%	\$72,000	\$72,000		
I7	Waverly Avenue/Grand Prairie	long/dev	100%	\$175,000	\$175,000		
I8	US 20/North Albany Road	short	13%	\$40,000	\$5,200	\$5,200	
I9	US 20/Springhill Drive	short	23%	\$14,000	\$3,220	\$3,220	

1	2	3	4	5	6	7	8
Project #	Project	TSP Priority	Growth Percentage	Total Project Cost (2010 \$)	TSDC Eligible	TSDC Eligible & Funded Years 1-10	TSDC Eligible & Funded Years 11-20
I10	Knox Butte/Century Drive	short	0%	\$345,000	\$0	\$0	
I11	34th Avenue/Marion Street	mid	100%	\$345,000	\$345,000	\$345,000	
I12	US 20 (Lyon Street)/2nd Avenue	mid	16%	\$23,000	\$3,680	\$3,680	
I13	US 20/Clay Street	mid	20%	\$185,000	\$37,000	\$37,000	
I14	OR 99E/34th Avenue	long/dev	32%	\$192,000	\$61,440		\$61,440
I15	34th Avenue/Hill Street	long/dev	100%	\$350,000	\$350,000		\$350,000
I16	Ellingson Road/Columbus Street	long/dev	100%	\$345,000	\$345,000		\$172,500
I17	Waverly Avenue/14th Avenue	long/dev	100%	\$77,000	\$77,000		\$77,000
I18	Queen Avenue/Geary Street	long/dev	100%	\$1,901,000	\$1,901,000		\$950,500
I19	Waverly Avenue/34th Avenue	long/dev	100%	\$42,000	\$42,000		
I20	US 20 (Ellsworth Street)/1st Avenue	mid	22%	\$18,000	\$3,960	\$3,960	
I21	US 20 (Lyon Street)/1st Avenue	mid	23%	\$11,000	\$2,530	\$2,530	
I22	US 20 (Lyon Street)/1st Avenue	mid	23%	\$10,000	\$2,300	\$2,300	
I23	US 20 (Ellsworth Street)/2nd Avenue	mid	23%	\$17,000	\$3,910	\$3,910	
I24	OR 99E/Waverly Avenue	long/dev	27%	\$959,000	\$258,930		\$258,930
I25	US 20/Waverly Drive	long/dev	29%	\$853,000	\$247,370		\$247,370
I26	US 20/Waverly Drive	long/dev	29%	\$240,000	\$69,600		\$69,600
I27	OR 99E/Queen Avenue	long/dev	26%	\$894,000	\$232,440		\$232,440
I28	OR 99E/34th Avenue	long/dev	32%	\$456,000	\$145,920		
I29	OR 99E/Killdeer Avenue	long/dev	28%	\$3,207,000	\$897,960		
I30	US 20/Timber Street	long/dev	44%	\$571,000	\$251,240		\$251,240
I31	US 20/Timber Street	long/dev	44%	\$619,000	\$272,360		
I33	Knox Butte/New North/South Collector	long/dev	100%	\$525,000	\$0	\$0	
I34	Springhill Dr./Hickory St.	long/dev	100%	\$345,000	\$345,000		\$345,000
I35	Gibson Hill Rd/Crocker Ln	mid	100%	\$345,000	\$345,000	\$345,000	
I36	Timber St Extension/18th Ave/Spicer Dr ROW	short	100%	\$650,000	\$650,000		\$650,000
I36	Timber Str. Extension/18th Ave/Spicer Dr	long/dev	100%	\$863,000	\$863,000		\$441,000
I37	OR 99E / 29th Ave	long/dev	28%	\$106,000	\$29,680		
I38	Salem Avenue/Geary Street	long/dev	28%	\$845,000	\$236,600		\$236,600
I39	OR 99E/Lyon Street	long/dev	16%	\$205,000	\$32,800		
I40	OR 99E/53rd Avenue	long/dev	38%	\$550,000	\$209,000		\$209,000
L1	53rd Avenue Extension	long/dev	54%	\$17,986,000	\$9,712,440		
L2	Waverly Drive	long/dev	36%	\$1,394,000	\$501,840		\$317,772
L3	Washington/Calapooia/1st/2nd	short	42%	\$100,000	\$42,000	\$42,000	
L4	Timber Street Extension ROW	short	100%	\$966,000	\$966,000		\$483,000
L4	Timber Street Extension	long/dev	100%	\$2,708,000	\$2,708,000		\$1,354,000
L5	Main Street - 7th Avenue - Hill Street	mid	64%	\$1,292,000	\$826,880	\$826,880	
L6	North Albany Road	mid	29%	\$5,847,000	\$1,695,630	\$1,695,630	
L6	North Albany Road ROW	short	100%	\$19,000	\$19,000		\$19,000
L8	Lochner-Columbus Connector	long/dev	100%	\$2,742,000	\$2,742,000		\$548,400
L9	Queen Avenue	long/dev	12%	\$0	\$0		
L10	New North Albany Connector	long/dev	100%	\$5,818,000	\$5,818,000		\$2,794,000
L11	Spicer Drive Extension (West of Timber St.)	long/dev	100%	\$982,000	\$982,000		\$491,000
L12	Spicer Drive Extension (East of Timber St.)	long/dev	100%	\$1,666,000	\$1,666,000		
L13	Goldfish Farm Road Extension	long/dev	100%	\$1,013,000	\$1,013,000		\$303,900
L14	Dogwood Avenue Extension	long/dev	100%	\$3,294,000	\$3,294,000		\$658,800
L15	New North/South Collector - LID	short	100%	\$2,548,000	\$0	\$0	
L15	New North/South Collector	long/dev	100%	\$4,949,000	\$4,949,000		\$989,800
L16	New East/West Collector	long/dev	100%	\$3,723,000	\$3,723,000		\$744,600

1	2	3	4	5	6	7	8
Project #	Project	TSP Priority	Growth Percentage	Total Project Cost (2010 \$)	TSDC Eligible	TSDC Eligible & Funded Years 1-10	TSDC Eligible & Funded Years 11-20
L17	Expo Parkway Extension (south of Dunlap)	long/dev	100%	\$996,000	\$996,000		\$199,200
L18	Timber St Extension to Somerset Avenue	long/dev	100%	\$1,720,000	\$1,720,000		\$344,000
L19	Somerset Avenue Extension - LID	short	100%	\$383,000	\$0	\$0	
L19	Somerset Avenue Extension	long/dev	100%	\$1,270,000	\$1,270,000		\$254,000
L20	Santa Maria Avenue Extension	long/dev	100%	\$1,872,000	\$1,872,000		\$374,400
L21	Knox Butte Road Widening ROW	short	100%	\$1,478,000	\$1,478,000		\$1,478,000
L21	Knox Butte Road Widening	long/dev	60%	\$3,169,000	\$1,901,000		\$1,901,000
L22	Knox Butte Road Widening ROW	short	100%	\$31,000	\$31,000		
L22	Knox Butte Road Widening	long/dev	56%	\$825,000	\$462,000		
L23	Knox Butte Road Widening	long/dev	52%	\$1,256,000	\$653,120		
L24	Knox Butte Road Widening	long/dev	47%	\$7,688,000	\$3,613,360		
L25	Dunlap Avenue Extension	long/dev	100%	\$1,045,000	\$1,045,000		\$209,000
L26	Springhill Road Widening	long/dev	61%	\$3,406,000	\$2,077,660		
L27	US 20 Widening	long/dev	18%	\$8,351,000	\$1,503,180		
L28	Ellingson Road Extension	long/dev	61%	\$4,430,000	\$2,702,300		
L30	Oak Street	short	100%	\$2,130,000	\$2,130,000	\$2,130,000	
L31	Fescue Street to Three Lakes Road Connector	long/dev	100%	\$886,000	\$886,000		\$177,200
L32	Fescue Street Extension	long/dev	100%	\$3,054,000	\$3,054,000		
L33	Three Lakes Road Realignment ROW	short	59%	\$750,000	\$442,500		
L33	Three Lakes Road Realignment	long/dev	59%	\$1,868,000	\$1,102,120		
L34	Looney Lane Extension	long/dev	100%	\$914,000	\$914,000		\$182,800
L35	Albany Avenue Widening	long/dev	26%	\$1,177,000	\$306,020	\$306,020	
L36	W Thornton Lk Dr, N Albany Rd & N Alb Middle School	long/dev	11%	\$565,000	\$565,000	\$565,000	
L37	Springhill Drive	long/dev	18%	\$4,158,000	\$748,440		
L38	Scenic Drive	long/dev	10%	\$6,842,000	\$684,200		
L39	Century Drive	long/dev	52%	\$3,199,000	\$1,663,480		
L40	Gibson Hill Road	long/dev	6%	\$3,816,000	\$228,960		\$228,960
L41	Skyline Drive	long/dev	0%	\$1,523,000	\$0		
L42	Crocker Lane	long/dev	30%	\$4,529,000	\$1,358,700		
L43	Valley View Drive	long/dev	40%	\$3,695,000	\$1,478,000		
L44	West Thornton Lake Drive	long/dev	11%	\$6,097,000	\$670,670		
L45	Allen Lane	long/dev	56%	\$2,689,000	\$1,505,840		
L46	Columbus Street	long/dev	49%	\$2,727,000	\$1,336,230		
L47	Grand Prairie Road	long/dev	53%	\$2,260,000	\$1,197,800		
L48	Spicer Drive	long/dev	32%	\$868,000	\$277,760		
L49	Scravel Hill Road	long/dev	21%	\$9,699,000	\$2,036,790		
L50	Quarry Road	long/dev	21%	\$3,493,000	\$733,530		
L51	Spicer Road	long/dev	54%	\$676,000	\$365,040		
L52	Goldfish Farm Road	long/dev	82%	\$4,444,000	\$3,644,080		
L53	Ellingson Road	long/dev	49%	\$5,847,000	\$2,865,030		
L54	Lochner Road	long/dev	44%	\$5,756,000	\$2,532,640		
L55	Three Lakes Road ROW	short	42%	\$287,000	\$120,540		\$120,540
L55	Three Lakes Road	long/dev	42%	\$4,569,000	\$1,918,980		
L56	US 20 - East of I-5	long/dev	44%	\$2,068,000	\$909,920		
L57	Santa Maria Avenue	long/dev	91%	\$694,000	\$631,540		
L58	Oak Street	short	65%	\$2,186,645	\$1,588,000	\$1,588,000	
L59	Water Avenue	short	50%	\$4,070,000	\$2,035,000	\$2,035,000	
L60	US 20 Superelevation and Widening	long/dev	22%	\$3,122,000	\$686,840		

1	2	3	4	5	6	7	8
Project #	Project	TSP Priority	Growth Percentage	Total Project Cost (2010 \$)	TSDC Eligible	TSDC Eligible & Funded Years 1-10	TSDC Eligible & Funded Years 11-20
L61	Three Lakes Road	long/dev	0%	\$1,879,000	\$0		
M1	Queen/Geary Periwinkle Path	short	70%	\$46,000	\$32,200	\$32,200	
M2	Oak Creek Trail	long/dev	70%	\$2,645,000	\$1,851,500		\$200,000
M3	West Timber-Linn Trail	mid	70%	\$161,000	\$112,700	\$112,700	
M4	South Waterfront Trail	mid	70%	\$76,000	\$53,200	\$53,200	
M5	Albany-Corvallis Multiuse Path	mid	70%	\$435,000	\$304,500	\$304,500	
M6	Albany-Corvallis Multiuse Path	long/dev	70%	\$761,000	\$532,700		
M7	East Timber-Linn Trail	long/dev	70%	\$277,000	\$193,900		\$193,900
M8	Bain Street/Waverly Lake Trail	long/dev	70%	\$153,000	\$107,100		\$107,100
M9	Lebanon Trail	long/dev	70%	\$581,000	\$406,700		
M10	Periwinkle Trail Extension	long/dev	70%	\$1,528,000	\$1,069,600		
M11	East Albany Willamette River Bridge	long/dev	70%	\$7,657,000	\$5,359,900		
M12	99E/Oak Creek	long/dev	70%	\$129,000	\$90,300		
M13	US 20/99E Undercrossing	long/dev	70%	\$1,500,000	\$1,050,000		
P1	Springhill Drive	mid	70%	\$542,000	\$379,400	\$379,400	
P2	99E/24th Avenue	long/dev	70%	\$129,000	\$90,300		
P3	Oregon 99E: Burkhart to Waverly	long/dev	70%	\$129,000	\$90,300		
P4	Ferry Street	long/dev	70%	\$725,000	\$507,500		
P5	Columbus Street	long/dev	70%	\$277,000	\$193,900		
P6	Geary Street	long/dev	70%	\$791,000	\$553,700	\$553,700	
P7	Airport Road	long/dev	70%	\$485,000	\$339,500		
P8	Killdeer Street	long/dev	70%	\$174,000	\$121,800		
P9	Waverly Drive	long/dev	70%	\$88,000	\$61,600		
P10	Albany-Santiam Canal Pedestrian Esplanade	long/dev	70%	\$1,232,000	\$862,400		
P11	Thurston Street Canal Pedestrian Esplanade	long/dev	70%	\$1,863,000	\$1,304,100		
P12	Gibson Hill Road	short	70%	\$1,034,000	\$723,800	\$723,800	
S1	ADA Accessibility Audit	short	0%	\$25,000	\$0	\$0	
S2	Hwy 20 Corridor & Downtown Refinement Plan	short	100%	\$250,000	\$250,000	\$250,000	
S3	Safety Audit	short	0%	\$30,000	\$0	\$0	
S4	OR 99E Speed Study	short	0%	\$0	\$0	\$0	
S5	Downtown STA	short	0%	\$0	\$0	\$0	
S6	Albany TSP MPO Update	mid	32%	\$350,000	\$112,000	\$112,000	
S7	Major Corridors	long/dev	0%	\$0	\$0		
S8	Wayfinding	long/dev	0%	\$25,000	\$0		
S9	Interstate 5 / OR 99E / Knox Butte	long/dev	100%	\$100,000	\$100,000	\$100,000	
S10	Interstate 5 / US 20 (Santiam)	long/dev	100%	\$100,000	\$100,000	\$100,000	
T1	ADA Accessibility Projects	mid	70%	\$430,000	\$301,000	\$301,000	
TOTALS				\$242 M	\$131 M	\$15 M	\$20 M

DATED AND EFFECTIVE THIS 9TH DAY OF MARCH 2011.

Mayor

ATTEST:

City Clerk

CITY OF ALBANY
 CITY COUNCIL WORK SESSION
 City Hall, Council Chambers
 333 Broadalbin Street SW

Wednesday, February 2, 2011
 6:00 p.m.

MINUTES

CALL TO ORDER

Mayor Sharon Konopa called the meeting to order at 6:02 p.m.

ROLL CALL

Councilors present: Councilors Dick Olsen, Jeff Christman, Bill Coburn, Floyd Collins, Bessie Johnson (arrived at 6:17 p.m.), and Ralph Reid, Jr.

PROPOSED TRANSPORTATION SYSTEM DEVELOPMENT CHARGE (TSDC)

Transportation Systems Analyst Ron Irish explained at the Public Hearing held January 12, 2011, Council heard testimony, adopted the Methodology setting the maximum SDC fee at \$10,000 per single family home, closed the public hearing, and asked staff to set up a work session to discuss options for setting TSDCs. Council also asked staff to provide additional data along with the TSDC flat fee Resolution, which retains current TSDCs for a single-family home (\$1,734), project that level until the end of the TSP, and establish a project list with the expectation that Council would have some flexibility each year to adjust those fees to add needed projects to the list.

Irish presented the TSP Project Summary spreadsheet (Attachment 1) listing all the projects in the adopted Transportation System Plan and comparing the Ramped Option and Flat Fee Option. On page 4 of the spreadsheet, Irish explained with the Ramped Option, 88 projects could be completed in comparison to the Flat Fee Option of 54 total projects. Irish then presented a graph of the Transportation SDC Fee Options for a single-family home comparing the Flat Fee and Ramped options, and a table and graph showing the building permit costs from 1997 through 2010 and comparing the total permit costs, land costs, and median home sales during that same time period. Irish also said a letter is attached to the Council agenda packet that staff received from Metropolitan Land Group stating their concern in regards to several projects that may be moved off the revised list and supporting a delayed ramp approach as proposed in the resolution presented to Council during the public hearing on January 12, 2011.

Councilor Bill Coburn said there was a discussion at the last meeting in regards to reviewing the fees on an annual basis and Council could adjust the rate upwards when there are indicators showing the economy is recovering, and asked if this would be brought back to Council on an annual basis. Public Works Director Diane Taniguchi-Dennis said this would be brought back annually to Council because of the change in the ENR index and the decision could also be made in regards to changes to the projects listed. Dennis said a statement could be added to the resolution to this effect. Coburn felt this was needed.

Councilor Floyd Collins said he agreed with adding this statement to the Resolution, and felt each year advocates would be approaching Council to add projects to the list, not just opponents to adjusting the fee. Collins pointed out the revenue collected over the first 14 months is the same for both options. Collins added that the flat fee option says we acknowledge the economic conditions, keeping the rates "status quo" relative to a single family house, but we make the commitment to review on an annualized basis. If we go to the ramped fee, even though the revenue is the same, the message is we're adjusting fees up 20 percent.

Councilor Dick Olsen said over the next 10 years in the flat fee and ramped options, the plan is to spend \$15 million on projects, and asked if the current SDC funds available are included in the balance shown on the spreadsheet for the projects listed in the next four-year period. Irish explained the existing SDC account balance is approximately \$6-\$7 million, adding that a large portion of that fund has been obligated to the Lowe's development and the extension of Oak Street, with the balance available for some of the priority projects.

Olsen asked about funding for projects not on the list, such as the one discussed in the letter from the Metropolitan Land Group. Irish explained the basic difference between the ramped and the flat fee options in the short-term is with the ramped fee, the City could offer a credit to a developer for projects on the list because more funds will be available in the long-term, and with the flat fee option, developers will be requesting their projects be added to the funded project list in order to qualify for credit, or they would need to decide whether to build the infrastructure with no SDC participation. Olsen expressed concern about using existing SDC funds and not saving for future developments, and said he has reservations about not using the ramped method.

Collins explained if a project is not on the funded list and a developer pays for building the infrastructure without SDC credit, the developer would put the cost of that improvement in the cost of the land sold to a builder. The builder would then pay the \$1,734 as opposed to the fee that was ramped at the time. The builder would be paying higher land values, but wouldn't pay the increased permit costs across the counter.

Konopa explained that in the beginning of the TSP process there was discussion regarding the need for higher SDC fees if the needed projects identified by staff and prioritized by Council were to be built, and feels that we're going against what Council originally set out to accomplish in order to have a solid Transportation System Plan.

Collins added that the project list was based on the assumption of the growth pattern identified four years ago. If growth doesn't occur, then some of the projects will need to slide on the list until the growth does occur.

Konopa asked staff if this was the second time the project list has been scaled back in order to keep the fee down.

Richardson explained the maximum allowable SDC fee is \$10,000. Staff scaled that down to \$3,000 in order to fund the high-priority projects in the first 10 years. Konopa confirmed that other projects are again being moved off the list using the flat fee option.

Christman asked under the ramped scenario, if the first increase would be in July 2012. Irish confirmed that in July 2012 it would increase by 20 percent. Christman confirmed that in July 2012, the effect of the ramped option would be the same as the flat fee option if Council would review it again yearly. Irish explained that the fund balance would be the same, but the option chosen might make a difference for a developer, depending if that project is on the funded list.

Christman said his concern is that the City will get into the same situation we did with the Building Department not increasing fees, and felt those who object would do so whenever fees were to increase because no one wants the cost of doing business to go up. Christman added that he is leaning more towards the ramped option because he feels that a plan needs to be in place in order to finance the priority projects.

Coburn said he agrees with Floyd in keeping the fee flat and re-visiting it a year from now, and feels that SDC fees should probably have been raised years ago when there was a lot of building going on, but now is not the time. Coburn added that he feels it is important for the City to be seen as construction-friendly.

Johnson asked if we went from the flat fee of \$1,734 to \$3,000, what difference would it make on building one regular house. Irish said beyond the initial difference in the fee, it depends to some degree on whether the development that created the lot was an eligible project and received credit. For a lot that already exists, it would be cheaper, but for a lot that was developed and not eligible for credit, the cost for the land would probably be higher. Irish added that the \$3,000 fee would only be implemented if Council passed a resolution to do so.

Olsen asked about the existing balance of the SDC fund. Irish said the balance of the SDC fund has been growing steadily over last few years as the City assigned low levels of SDC funds to a lot of different projects, but did not have the matching funds available to build any one project. Olsen asked about matching the needs with revenues, and Irish agreed that if growth didn't occur as expected, the demand wouldn't occur and the revenue stream wouldn't be coming in as fast as anticipated, resulting in a delay of projects, which would be the same for either of the SDC options. Irish added the methodology adopted that set the \$10,000 maximum fee was established to maximize the growth potential of all the different classifications of projects.

MOTION #1: Coburn made a motion to adopt the resolution identified as attachment 2 and asked staff to add a statement that it will be reviewed in one year. The motion seconded by Collins.

Olsen said it was difficult voting for this as he was unsure of the criteria to be used for reviewing it.

Collins said the minimum criteria would be: 1) what is the economic conditions occurring in our community at the time, and 2) what has been the turnaround in the number of permits being requested. Annual review would give Council a chance to review what the economy is doing and adjust.

Olsen asked what the ramped method would be, and Collins said if the Council didn't take action it would be an automatic 20 percent per year.

Coburn said perhaps a task force could be established to come up with a way of analyzing the economic indicators to give the Council justification for making a decision.

City Manager Wes Hare said it is a policy decision what the Council wants for their community. SDCs are not intended to cover all the infrastructure cost, but are supposed to help offset the costs associated with increased growth. Hare said knowing what other communities are charging may make a difference because choosing where to build can sometimes be based on cost. Richardson responded with the information that Corvallis was charging a TSDC of \$2,100 in 2007-2008.

Collins said he did research 6-7 years ago when a relative was relocating to the valley. Collins explained that a builder was building model homes in Corvallis, Albany, Monmouth and Salem. It was the same house and the same approximate-sized lot, and went from Corvallis to Salem to Albany to Monmouth with \$25,000 increments. It wasn't the price of the SDCs, it was the community and the market that set the price. The SDC is the component of the market price, it is not the driver.

Konopa felt staff has conducted four years of research with the assistance of a consultant doing the initial piece of the TSP; therefore, Council needed to make the decision based on that.

Christman said he understood, but felt that next year they would need some criteria for making a decision on whether to raise the fees.

Taniguchi-Dennis said whether Council adopts the ramp or the flat fee option with reviewing it in a year, the initial fee for a single family home is in the same place. This allows staff to test the methodology. Dennis added that a developer may come advocating for their project to be added to the list, and if it's not a project that can be swapped out, a fee increase may need to be looked at. Dennis said staff will work with the development community to come up with indicators and evaluate those to provide Council with some economic data.

Christman said he agrees with having the information on the economic indicators – quantitative numbers to help them make the decision – and having a plan in place, and feels that those need to be tracked now and not wait until June 15 to figure out what those indicators are.

Johnson feels the \$3,000 ramped option would be the best option so developers know Albany's plan.

Olsen said Council has 15 months to rethink steps in ramp, and should adopt the ramp option.

VOTE - MOTION #1: Konopa asked for a vote on the motion to adopt the \$1,734 flat fee option with review annually. Council defeated the motion with a vote of 4 to 2, with Olsen, Reid, Johnson, and Christman voting no.

MOTION #2: Johnson moved to approve the \$3,000 ramped fee resolution as presented at the January 12, 2011, Council meeting. Christman seconded the motion.

Irish recommended that Council direct staff to bring back the resolution for adoption at the next regular Council meeting.

AMENDED MOTION #2: Johnson amended her motion to direct staff to bring back the ramped fee resolution with the \$3,000 ramped option. Christman agreed to this amendment to the motion.

2nd AMENDMENT TO MOTION #2: Collins made a motion to amend Councilor Johnson's motion to add a "whereas" statement to the resolution that Council will review the rates annually. Coburn seconded the amended motion, saying this communicates to our community that we will be reviewing on an annual basis.

VOTE - 2nd AMENDMENT TO MOTION #2: Konopa asked for a vote on the amendment for Council to review the rates on an annual basis. Motion unanimously passed.

VOTE - AMENDED MOTION #2: Konopa asked for a vote on the main motion to direct staff to bring back the \$3,000 ramped fee resolution to the next Council meeting for adoption. Motion passed 4-2, with Collins and Reid voting no.

Johnson asked if the projects mentioned in the Metropolitan Land Group's letter are in the funded list of projects.

Irish said they referenced three projects in their letter – project I16, traffic signal at the Ellingson Road/Columbus Street intersection, and projects L46 and L53 Oak and Columbus Streets to accommodate future growth associated with the Oak Creek Refinement Plan. Irish explained the traffic signal is on the funded list for the ramped option; however, the Oak and Columbus Street road segments are not. None of the projects are on the funded list for the flat fee option. The decision about L46 and L53 was made because the developer had already received a land-use approval committing them to build and have already paid the SDC fees. Irish added that the developer may ask Council in the future to consider adding these to the funded list with the need to shift funds.

BUSINESS FROM THE PUBLIC

There was no business from the public.

COUNCILOR COMMENTS

Collins reported he heard the post office block has been sold to the federal government, which was previously owned by two individuals. Because a sale to the federal government means the property would be taken off the tax rolls, Collins said he is concerned about the implications to the CARA Plan. Collins said he left a message for Kate Porsche, the City's Urban Renewal Manager.

Collins said he will be absent from the February 9th Council meeting and the February 21st Work Session, and the CARA meeting on February 16th.

Konopa reported Congressional Aides were here and took a tour of the downtown – JC Penney building, The Vault, the Broadalbin Promenade, and the Carousel. Konopa said she also shared a packet of information with them

regarding the East Thornton Lake Natural Area and discussed the funding needs for that project. Konopa added that they expressed a desire to see the Talking Water Gardens this spring along with Senators and Congressman DeFazio.

CITY MANAGER REPORT

There was no report.

ADJOURNMENT

There being no further business, the Work Session adjourned at 7:32 p.m.

Respectfully submitted,

Reviewed by,

Karen Williams
Public Works Project Coordinator

Wes Hare
City Manager



TO: Albany City Council
VIA: Wes Hare, City Manager
FROM: *E. Boyd*
Edward Boyd, Chief of Police

DATE: February 22, 2011, for March 9, 2011, Council Meeting

SUBJECT: Acceptance of Grant from the Benton County Victim Impact Panel, Inc.

RELATES TO STRATEGIC PLAN THEME:

- An Effective Government
- A Safe City

Action Requested:

City Council authorization for the Albany Police Department to accept the Benton County DUII Victim Impact Panel, Inc. grant of \$2,665.

Discussion:

The Benton County DUII Victim Impact Panel, Inc. distributes non-federal funds to Linn/Benton County law enforcement agencies based on their DUII arrests for the prior year. The amount of the grant for the Albany Police Department for Fiscal Year 10-11 is \$2,655. The funds must be used for DUII-related services. We plan to apply these funds for advanced crash investigation training for a Multi-Agency Accident Investigation Team (MAAIT) member and/or crash investigation software.

Budget Impact:

Increase education and training line item that already exists in the adopted Fiscal Year 10-11 budget.

Attachment: Resolution

RESOLUTION NO. _____

A RESOLUTION IN SUPPORT OF ACCEPTING THE BENTON COUNTY VICTIM IMPACT PANEL GRANT.

WHEREAS, the Benton County Victim Impact Panel makes non-federal funds grants to law enforcement agencies; and

WHEREAS, the City of Albany Police Department has been invited and approved to receive \$2,700; and

WHEREAS, grant acceptance will add DUII enforcement-related crash investigation training for a Multi-Agency Accident Investigation Team (MAAIT) member and/or crash investigation software; and

WHEREAS, grant acceptance will require the funds be spent on DUII enforcement-related expenses.

NOW, THEREFORE, BE IT RESOLVED that the Albany City Council does hereby state that DUII enforcement is a priority.

BE IT FURTHER RESOLVED that the Albany City Council authorizes the Albany Police Department to accept this non-federal grant for \$2,700 and the following appropriations be made for Fiscal Year 2010-2011:

<u>Grant Fund</u>	<u>Line Item</u>	<u>DR</u>	<u>CR</u>
Benton County Victim Impact Panel Grant	100-10-1002-42818	\$2,700	
Education and Training for Crash Investigation	100-30-1301-61011		\$2,700

DATED AND EFFECTIVE THIS 9TH DAY OF MARCH, 2011.

Mayor

ATTEST:

Deputy City Clerk



TO: Albany City Council

VIA: Wes Hare, City Manager

FROM: Edward Boyd, Chief of Police

A handwritten signature in black ink that reads 'Edward Boyd' followed by a circled '10'.

DATE: March 1, 2011, for March 9, 2010, City Council Meeting

SUBJECT: Full On-Premises Sales, Greater Privilege, Liquor License Application for Forsman Inc., D/B/A Ma's Dairy Farm, 3411 Pacific Boulevard SW.

Action Requested:

I recommend the Full On-Premises Sales, Greater Privilege, Liquor License Application for Forsman Inc., D/B/A Ma's Dairy Farm, be approved.

Discussion:

Thelma and Joseph Forsman on behalf of Forsman Inc., D/B/A Ma's Dairy Farm, have applied for a Full On-Premises Sales, Greater Privilege liquor license. Based on a background and criminal history investigation through Albany Police Department records, the applicant has no criminal record.

Budget Impact:

None.

MR

RESOLUTION NO. _____

A RESOLUTION ACCEPTING THE FOLLOWING EASEMENT:

Grantor

Albany Industrial Properties, LLC

Purpose

A 40-foot wide easement over a new deep trunk sewer main east of I-5 as part of the Lawndale sewer pump station elimination project, SS-11-01.

NOW, THEREFORE, BE IT RESOLVED by the Albany City Council that it does hereby accept this easement.

DATED AND EFFECTIVE THIS 9TH DAY OF MARCH 2011.

Mayor

ATTEST:

City Clerk

EASEMENT FOR PUBLIC UTILITIES

THIS AGREEMENT, made and entered into this 15TH day of FEBRUARY, 2011, by and between Albany Industrial Properties, LLC, hereinafter called Grantor, and the CITY OF ALBANY, a Municipal Corporation, herein called "City."

WITNESSETH:

That for and in consideration of the total compensation to be paid by the City, the grantor has this day bargained and sold and by these presents does bargain, sell, convey, and transfer unto the City of Albany, an easement and right-of-way, including the right to enter upon the real property hereinafter described, and to maintain and repair public utilities for the purpose of conveying public utilities services over, across, through, and under the lands hereinafter described, together with the right to excavate and refill ditches and/or trenches for the location of the said public utilities and the further right to remove trees, bushes, under-growth, and other obstructions interfering with the location and maintenance of the said public utilities.

This agreement is subject to the following terms and conditions:

1. The right-of-way hereby granted consists of:

A 40-foot wide easement over a new deep trunk sewer main east of I-5 as part of the Lawndale sewer pump station elimination project, SS-11-01. See legal description on attached Exhibit A and map on attached Exhibit B.
2. The permanent easement described herein grants to the City, and to its successors, assigns, authorized agents, or contractors, the perpetual right to enter upon said easement at any time that it may see fit, for construction, maintenance, evaluation and/or repair purposes.
3. The easement granted is in consideration of \$1.00, receipt of which is acknowledged by the Grantor, and in further consideration of the public improvements to be placed upon said property and the benefits grantors may obtain therefrom, and in further consideration of the quitclaim/release by the City of two portions of an existing Easement for Public Utilities in the southerly extension of Rye Street.
4. The Grantor does hereby covenant with the City that they are lawfully seized and possessed of the real property above-described and that they have a good and lawful right to convey it or any part thereof and that they will forever warrant and defend the title thereto against the lawful claims of all persons whomsoever.
5. Upon performing any maintenance, the City shall return the site to original or better condition.
6. No permanent structure shall be constructed on this easement.

IN WITNESS WHEREOF, the Grantor has hereunto fixed their hand and seal the day and year written below.

GRANTOR:

Radney G. Kempf
For ~~Albany~~ Albany Industrial Properties LLC

STATE OF OREGON)
County of Lane) ss.
City of Eugene)

The foregoing instrument was acknowledged before me this 15th day of February, 2011, by Radney G. Kempf on behalf of Albany Industrial Properties, LLC as his voluntary act and deed.



Donald Manning
Notary Public for Oregon
My Commission Expires: 12-7-2011

CITY OF ALBANY:

STATE OF OREGON)
County of Linn) ss.
City of Albany)

I, Wes Hare, as City Manager of the City of Albany, Oregon, pursuant to Resolution Number _____, do hereby accept on behalf of the City of Albany, the above instrument pursuant to the terms thereof this _____ day of _____ 2011.

City Manager

ATTEST:

City Clerk

EXHIBIT A

PERMANENT UTILITY EASEMENT

Legal Description of easement area

A 40-foot wide Easement for Public Utilities, as shown on the attached maps labeled Exhibit B and Exhibit C, and as described below.

Beginning at the southeast corner of Lot 7 of Farwest Industrial Plat as recorded in Book 9, Page 27 of Linn County, Oregon Plat Records; thence South $00^{\circ} 05' 15''$ West 218.0 feet along the southerly extension of the westerly right of way line of Fescue Street to the **true point of beginning**; thence continuing South $00^{\circ} 05' 15''$ West 40.0 feet; thence North $89^{\circ} 53' 44''$ West 285.5 feet; thence South $00^{\circ} 05' 15''$ West 32.0 feet; thence North $89^{\circ} 53' 44''$ West 40.0 feet; thence North $00^{\circ} 05' 15''$ East 72.0 feet; thence South $89^{\circ} 53' 44''$ East 325.5 feet to the true point of beginning.



EXHIBIT B
SS-11-01, LAWNDALE SEWER EXTENSION
PUBLIC UTILITY EASEMENT
T11S R3W SEC 16 TL 704

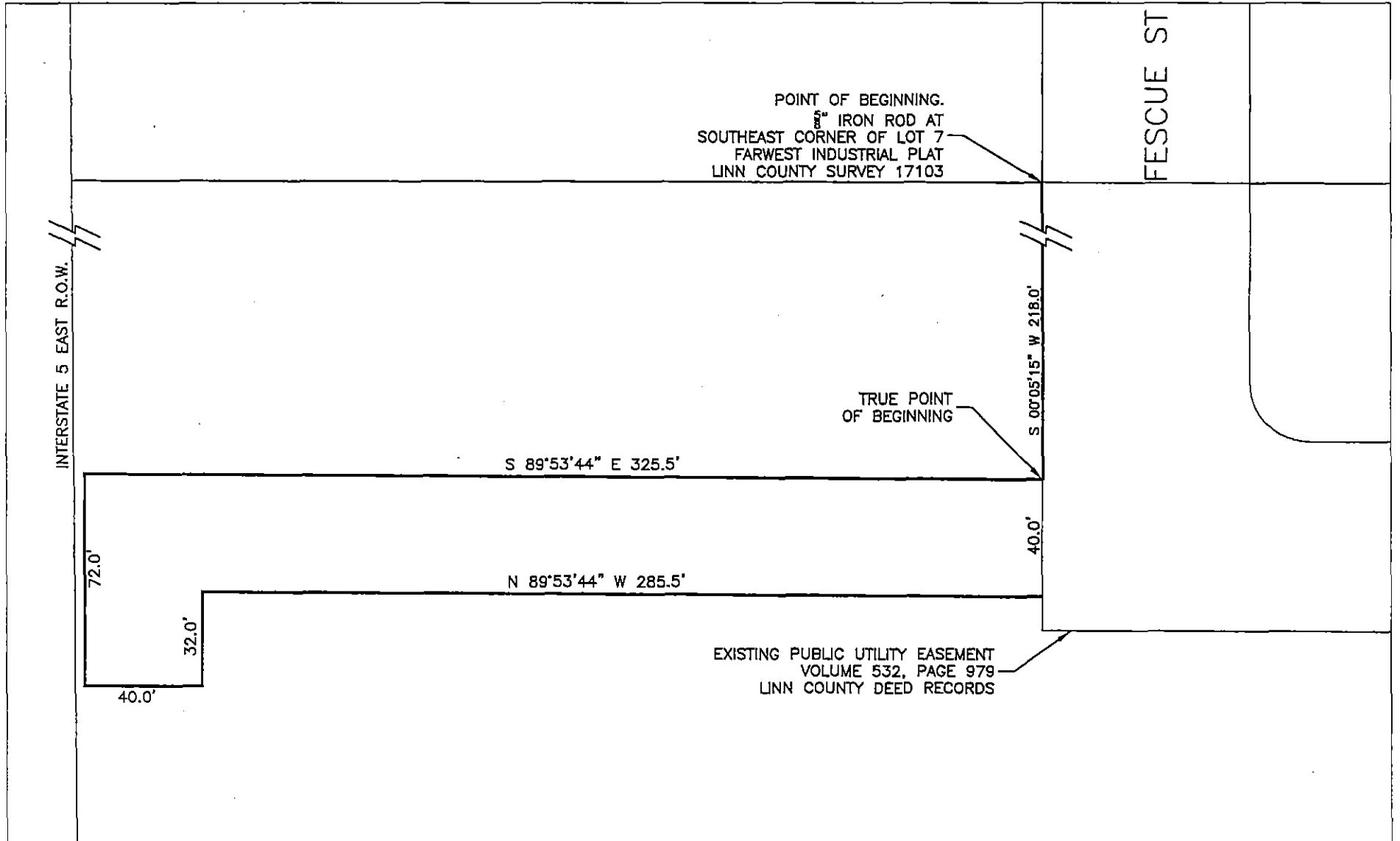
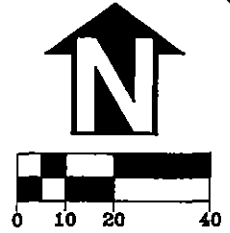


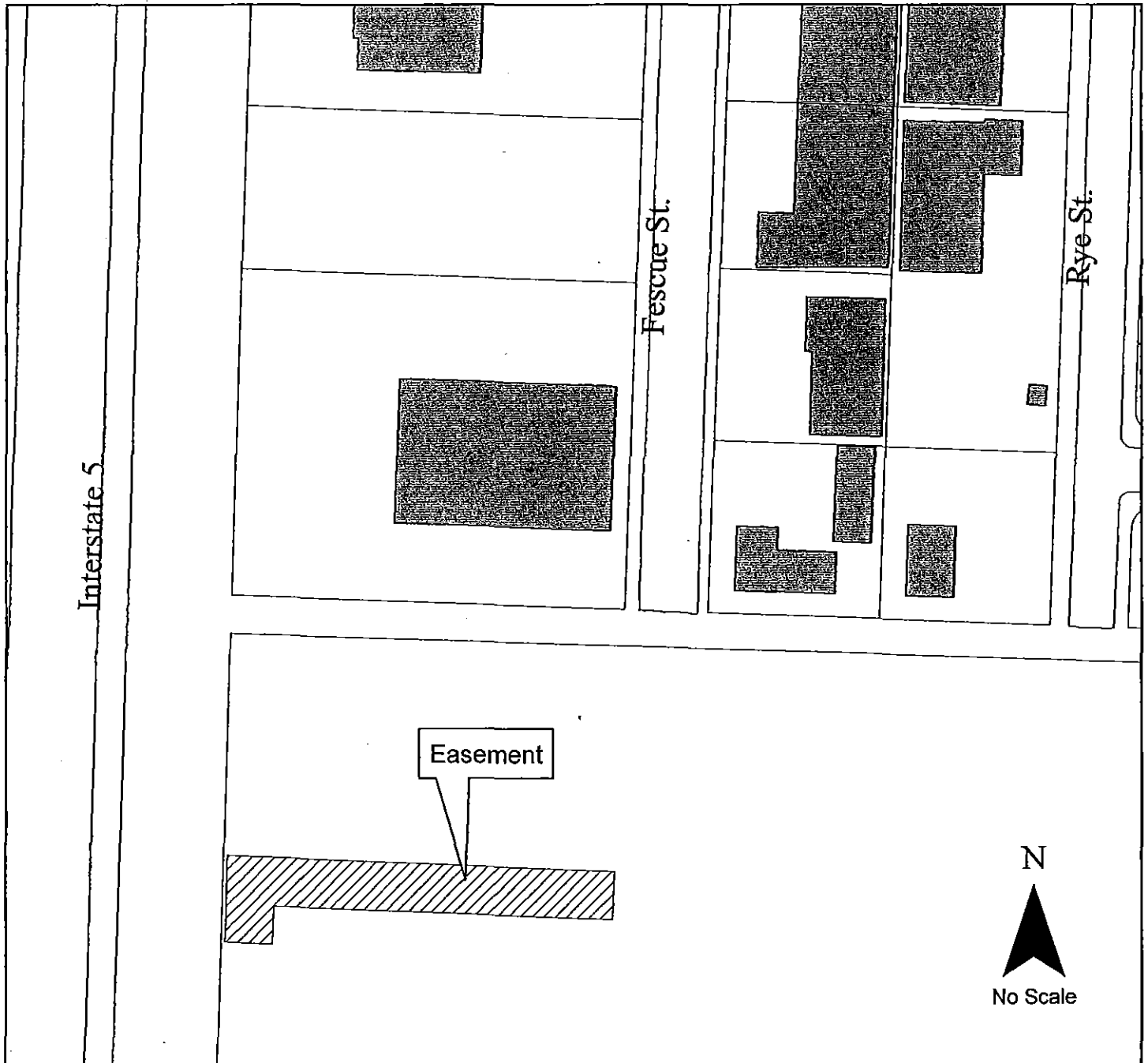
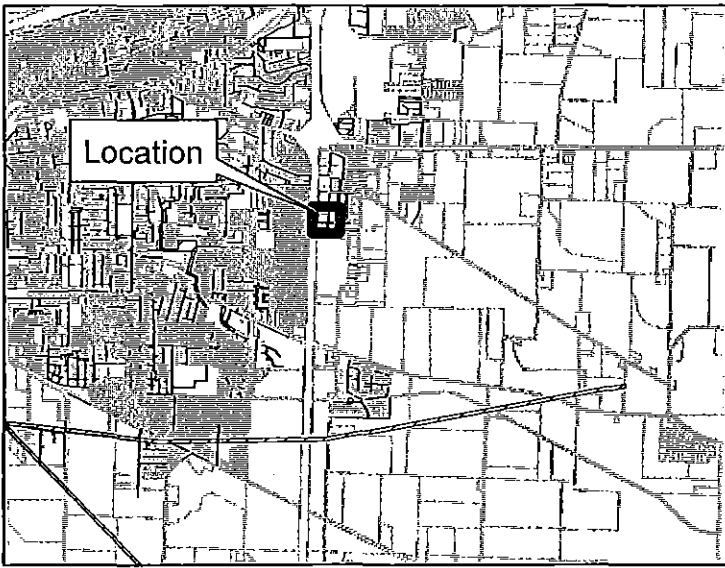
EXHIBIT C

11SO3W16 00704

A 40-foot wide easement over a new deep trunk sewer main east of I-5 as part of the Lawndale sewer pump station elimination project, SS-11-01.



Geographic Information Services





TO: Albany City Council

VIA: Wes Hare, City Manager
Ed Hodney, Director of Parks and Recreation *EH*

FROM: Craig Carnagey, Parks and Facilities Maintenance Manager *cc*

DATE: March 2, 2011, for the March 9, 2011, City Council Meeting

SUBJECT: Award of Bid—Mowing Contract

RELATES TO STRATEGIC PLAN THEME: • An Effective Government

Action Requested:

Staff requests that the City Council award a contract for mowing services to low bidder Chorak Mowing and authorize the Director of Parks and Recreation to execute contract documents on behalf of the City.

Discussion:

The Parks and Recreation Department relies on contractors to mow most City parks. The department's previous five-year contract has expired, and bids have been solicited for a new five-year contract. Six base bids were received, ranging from an estimated annual cost of \$114,966 to \$170,006. Chorak Mowing, the department's contractor for the last five years, is the apparent successful low bidder. Additive 1, Ball Field Mowing and Additive 2, Park Edging will be also be awarded as part of the contract. A copy of the bid tabulation is attached.

The annual costs are estimates, although bids were submitted on a unit cost basis. Weather and turf management practices may affect actual mowing requirements. The proposed contract allows the City to adjust mowing frequencies and schedules as necessary to manage contract expenses and meet budgeting requirements in any given fiscal year.

Budget Impact:

The estimated annual total cost for this contract is \$141,906. The current and proposed Parks and Recreation Department budgets include the necessary funds for this contract.

Attachment: 5 Year Mowing Contract Bid Tabulation Sheet

CITY OF ALBANY FINANCE DEPARTMENT BID FORM



Project: Five-year Parks Mowing Contract

Bid Date: Tuesday, March 1, 2011

Bid Time: 2:30 p.m.

Contractor	Base Bid	Additive 1	Additive 2	Addenda	Bid Bond	Ck
Cherak Mowing	114,966.00	23,997.00	2,943.00	✓		✓
R & R Nursery	127,009.27	11,685.00	5,029.90	✓		
Burch Landscape	149,656.00	27,873.00	57,053.70	✓	✓	
Bizon Landscape	139,910.00	11 5,985.00	needs to be added	✓		✓
Toru Green Land.	170,006.00	11,869.00	7,605.44	✓	✓	
Grounds Guy	152,441.85	31,578.00	17,542.26	✓		

11 Purchasing Coordinator: Diane Wood

Engineer's Estimate: _____

Deputy City Clerk: MATTHEW A. DIBBON