



NOTICE OF PUBLIC MEETING

CITY OF ALBANY
CITY COUNCIL
Council Chambers
333 Broadalbin Street SW
Wednesday, December 7, 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 Meetings

1. CALL TO ORDER

2. PLEDGE OF ALLEGIANCE TO THE FLAG

3. ROLL CALL

4. PRESENTATION

a. Target Community Giving Check Presentation to Parks & Recreation. [verbal]

Action: _____

5. PROCLAMATION

a. National Pearl Harbor Remembrance Day. [Page 1]

Action: _____

6. SCHEDULED BUSINESS

a. Communications

1) Accepting resignation from Bob Kish from the Planning Commission. [Page 2]

Action: _____

2) Accepting resignation from Bodie Dickerson from the City Tree Commission. [Page 3]

Action: _____

b. Quasi-Judicial Public Hearing

1) CI-02-11, code interpretation to allow financial assurances to be used to meet substantial construction requirements specific to Lowe's HIW, Inc. [Pages 4-28]

Action: _____

c. Legislative Public Hearings

1) DC-02-11, staff-initiated amendments to the Albany Development Code related to the Site Plan Review standards and procedures. [Pages 4-5 & 29-53]

Action: _____ ORD. NO. _____

2) DC-03-11, legislative amendments to the Albany Development Code clarifying existing standards and improving the land use review process. [Pages 4-5 & 54-75]

Action: _____ ORD. NO. _____

d. Business from the Public

e. Second Reading of Ordinances

1) Amending Albany Municipal Code (AMC) 6.18, "Dangerous Dogs," and declaring an emergency. [Pages 76-81]

Action: _____ ORD. NO. _____

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.

f. First Reading of Ordinance

- 1) Amending Albany Municipal Code 11.01.010, 11.01.235, and 11.01.285, and adding a new section 11.01.287 to revise and expand language relating to water curtailment and declaring an emergency. [Pages 82-86]

Action: _____ ORD. NO. _____

g. Adoption of Resolutions

- 1) Accepting a grant from the Local Government Grant Program through the Oregon Parks & Recreation Department for the purchase of East Thornton Lake Natural Area and delegating authority to the Parks & Recreation Director to sign the grant agreement and related documents. [Pages 87-88]

Action: _____ RES. NO. _____

- 2) Adopting fees to coincide with amendments to the Albany Development Code that changes the procedures for the Site Plan Review application process. [Pages 89-97]

Action: _____ RES. NO. _____

- 3) Adopting fees to support the Natural Resource Impact Review process to implement Statewide Planning Goal 5. [Pages 92-94]

Action: _____ RES. NO. _____

h. Adoption of Consent Calendar

1) Approval of Minutes

- a) February 23, 2011, Transient Room Tax Task Force Meeting [Pages 95-96]
- b) October 10, 2011, City Council Work Session [Pages 97-100]
- c) October 12, 2011, City Council Regular Session [Pages 101-105]
- d) October 24, 2011, City Council Work Session [Pages 106-109]
- e) November 1, 2011, Dangerous Dog Work Group Meeting [Pages 110-111]
- f) November 2, 2011, City Council Regular Session [Pages 112-114]
- g) November 9, 2011, City Council Regular Session [Pages 115-117]

- 2) Appropriating funds for the 2011-2012 State Hazardous Materials Emergency Preparedness Grant on behalf of the Mid-Valley Local Emergency Planning Committee for a hazardous materials full-scale exercise and training. [Pages 118-119] RES. NO. _____

- 3) Reclassifying staff positions in the Information Technology Department. [Pages 120-121]

- 4) Accepting a grant from Oregon Department of Human Services for drinking water source protection. [Pages 122-124] RES. NO. _____

- 5) Accepting a franchised utility easement from Benton Woods Homeowners' Association, an Oregon nonprofit organization. [Pages 125-131] RES. NO. _____

Action: _____

7. BUSINESS FROM THE COUNCIL

8. NEXT MEETING DATE: Work Session December 12, 2011, 4:00 p.m.
Joint Work Session with Planning Commission, 5:15 p.m.
Regular Session December 14, 2011

9. ADJOURNMENT

City of Albany Web site: www.cityofalbany.net

P R O C L A M A T I O N

NATIONAL PEARL HARBOR REMEMBRANCE DAY

December 7, 2011

WHEREAS, President Franklin D. Roosevelt declared December 7, 1941, a "date which will live in infamy"; and

WHEREAS, with over 3,500 Americans killed or wounded, the surprise attack by the Imperial Japanese on Pearl Harbor was an attempt to break the American will and destroy our Pacific Fleet, and they succeeded in doing neither; and

WHEREAS, on National Pearl Harbor Remembrance Day, we pay tribute to the brave men and women who made the ultimate sacrifice for our country, and we honor all those who selflessly served our nation at home and abroad during World War II; and

WHEREAS, on a tranquil Sunday morning, as war raged around the globe, the attack on Pearl Harbor effectively ended American isolation – thrusting our nation into action. Japanese airplanes had launched an unprovoked assault on our military with immense firepower, and our service members valiantly answered the call. They defended their positions, fought back against the attackers, and cared for the wounded. In that darkest hour, men and women who had considered themselves ordinary found within themselves the ability to do something extraordinary; and

WHEREAS, in the months and years that followed, Americans all across the country would respond to Pearl Harbor with firm resolve, many joining our Armed Forces to defend our shores and our freedom; and

FURTHERMORE, this courage is not uncommon in the story of America – a story of heroes whose sacrifice and valor speak to their love of comrades and country; and whose goodness guides our quest for lasting peace. Today, and every day, we draw strength from the moment when the best among us defended an island and a nation from the onslaught of tyranny and forever altered the course of our history.

NOW, THEREFORE, I, Sharon Konopa, Mayor of the City of Albany, Oregon, do hereby proclaim the December 7, 2011, as

NATIONAL PEARL HARBOR REMEMBRANCE DAY

and I encourage all Albany citizens to observe this solemn day of remembrance with appropriate ceremonies and activities.



In witness whereof, I have hereunto placed my hand and caused the seal of the City of Albany to be affixed this 7th day of December 2011.

- Sharon Konopa, Mayor

Hyde, Laura

From: bobkish@hotmail.com
Sent: Monday, November 07, 2011 10:37 AM
To: Hayes, Tari; Hyde, Laura
Cc: Hansen, Heather; Byrne, Greg; Hayes, Tari
Subject: Re: Bob Kish is going to resign from Planning Commission

I just got your email and if you were sending me a form it came across as 8.9 kb unsupported file type. If this email can suffice, then let it serve as my letter of resignation. I regret having to do this but it is best given the fact that I cannot devote the time necessary to fulfill the obligations the job requires since I am gone a majority of the time.

Effective immediately

Connected by DROID on Verizon Wireless

Term expires 12-31-2014

-----Original message-----

From: "Hayes, Tari" <tari.hayes@cityofalbany.net>
To: "Hyde, Laura" <laura.hyde@cityofalbany.net>
Cc: "Hansen, Heather" <heather.hansen@cityofalbany.net>, "Byrne, Greg" <Greg.Byrne@cityofalbany.net>, "EXTERNAL - Kish, Bob" <bobkish@hotmail.com>, "Hayes, Tari" <tari.hayes@cityofalbany.net>
Sent: Mon, Nov 7, 2011 18:23:20 GMT+00:00
Subject: Bob Kish is going to resign from Planning Commission

Hi Laura,

Bob Kish would like to resign his position on the Planning Commission. With the economic downturn in the construction industry, he's taken a job as a long haul trucker and is out on the road 90% of the time.

His access to email is sketchy at best and we're going to see if he can respond to this email. Will that work for a resignation request?

Let me know if you have any questions.

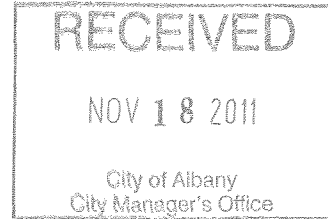
Thanks!

Tari

Tari Hayes, CAP-OM
Administrative Assistant
Community Development
333 Broadalbin St. SW
Albany, OR 97321-0144
Phone: 541-917-7566
Fax: 541-791-0150
tari.hayes@cityofalbany.net

DISCLAIMER: This e-mail is a public record of the City of Albany and is subject to the State of Oregon

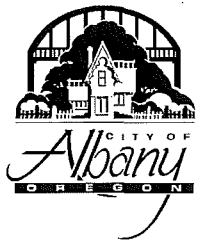
November 18th, 2011



To whom it may concern:

I've always said that when I could no longer be an effective advocate for trees on the Albany Tree Commission, I would step aside and let someone else do it. Therefore I will not be applying again. I have learned so much and I appreciate getting to know all of you.

*Sincerely,
Bodie Dickerson*



TO: Albany City Council

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

FROM: David Martineau, Lead Current Planner
Evan Fransted, Planner II
Anne Catlin, Planner II

DATE: November 30, 2011, for the December 7, 2011 City Council Meeting

SUBJECT: Public Hearings (Planning Files CI-02-11, DC-02-11, DC-03-11)

RELATES TO STRATEGIC PLAN THEME: ● Great Neighborhoods
● A Safe City
● Effective Government

Action Requested:

Conduct three public hearings, hear testimony, deliberate and make a decision on three land use applications.

Discussion:

Planning File CI-02-11

This is a quasi-judicial public hearing regarding a request for a Code Interpretation to allow financial assurances to be used to meet substantial construction requirements specific to Lowe's HIW, Inc. Quasi-judicial Code Interpretations may be approved by the Community Development Director; however the applicants have requested the Code Interpretation to be reviewed by City Council, consistent with their original development proposal. The following documents are attached related to this public hearing:

- Staff Report with Draft Findings and Conclusions for CI-02-11
- Exhibit A: Applicant's Written Request with Attachments
- Exhibit B: Location Map
- Exhibit C: Notice of Decision for SP-37-08; SP-38-08; and VR-09-08, dated January 15, 2010

Planning File DC-02-11

This is a legislative public hearing on staff-initiated amendments to the Albany Development Code related to the Site Plan Review standards and procedures. The Planning Commission hearing on these amendments was November 7, 2011. The Planning Commission voted unanimously to recommend the Council approve these amendments with one modification. Late on this evening you will be asked to consider fees to support the Site Plan Review amendments. The following documents are attached related to this public hearing:

- Ordinance
- Exhibit A: Staff Report Findings and Conclusions for DC-02-11
- Exhibit B: Amendments to the Albany Development Code (Articles 1, 2, 3, 4, 5, 6, 9, 10, 11, 12, and 13)

Planning File DC-03-11

This is a legislative public hearing on a semi-annual package of legislative amendments to the Albany Development Code. Most of these amendments are staff suggestions to clarify existing standards and improve the land use review process. Two amendments respond to public requests. The Planning Commission hearing on these amendments was November 7, 2011. The Planning Commission voted unanimously to recommend the Council approve these amendments. The following documents are attached related to this public hearing:

Ordinance

Exhibit A: Staff Report Findings and Conclusions for DC-03-11

Exhibit B: Amendments to the Albany Development Code (Articles 1, 3, 4, 5, 9, 11, 13 and 22)

Budget Impact: none

TH

Attachments: are noted above



Community Development Department

333 Broadalbin Street SW, P.O. Box 490
Albany, OR 97321

Phone: 541-917-7550 Facsimile: 541-917-7598
www.cityofalbany.net

STAFF REPORT

Development Code Interpretation CI-02-11

EXECUTIVE SUMMARY

On November 7, 2011, attorney Michael C. Robinson, representing Lowe's HIW, Inc., submitted a letter requesting a Code Interpretation to allow financial assurances to be used to meet substantial construction requirements for Lowe's proposed development on the 11.54 acre site at the southeast corner of Ninth Avenue and Oak Street SE. The original Site Plan Review application was approved by the City Council on January 13, 2010, under file numbers SP-37-08; SP-38-08; and VR 09-08.

Quasi-judicial Code Interpretations may be approved by the Community Development Director; however the applicants have requested the Code Interpretation to be reviewed by City Council, consistent with their original development proposal.

The applicants' representatives request that the City Council interpret the Albany Development Code in accordance with ADC 1.040 and conclude the following:

1. That substantial construction has occurred because of the initiation of the Local Improvement District (LID) and the execution of the Infrastructure Funding Agreement (IFA). The first is the execution of an Infrastructure Funding Agreement (IFA) between Lowe's and the City at the closing of Lowe's purchase of the property. Those two events assure substantial construction of public improvements and are the equivalent of bonding, which would satisfy vesting of the application under present ADC 1.080(1).
2. That Lowe's has vested its approval and thus site plan approvals (SP-37-08; SP-38-08; and VR 09-08) will not expire on January 15, 2013.

GENERAL INFORMATION

DATE OF REPORT:	November 28, 2011
FILE:	CI-02-11
TYPE OF APPLICATION:	Code Interpretation to allow financial assurances to be used to meet substantial construction requirements specific to Lowe's HIW, Inc. a development proposal on an 11.54 acre site located at the southeast corner of Ninth Avenue SE and Oak Street SE, approved by City Council on January 13, 2010, under file numbers SP-37-08; SP-38-08; and VR 09-08.

Proposed refinements referenced above may be approved with the Code Interpretation by the Community Development Director, however the applicants have requested the Code Interpretation to be reviewed by City Council, consistent with their original development proposal.

REVIEW BODY: City Council

PROPERTY OWNERS/
APPLICANTS:

Tax Lot 1000: Randy and Sabra Killen; Conser Homes Inc., Agent et al; c/o Conser Design and Construction; 1010 Airport Road SE; Albany, OR 97322

Tax Lot 1100: Phyllis Perlenfein, Trustee et al; c/o Edward Perlenfein; 2910 Alexander Lane NE; Albany, OR 97321

Tax Lots 1201, 1202, 1300: J Conser & Sons LLC; 1010 Airport Road SE; Albany, OR 97322

APPLICANTS' REPS:

Perkins Coie LLP; c/o Michael C. Robinson; 1120 NW Couch Street, Tenth Floor; Portland, OR 97209-4128

Lowe's HIW, Inc.; c/o Jack Mandel; 1605 Curtis Bridge Road; Wilkesboro, NC 28697

LOCATION:

A new address will be assigned for the building. The property is located on the southeast corner of Ninth Avenue SE and Oak Street SE.

MAP/TAX LOTS:

Linn County Assessor's Map No. 11S-3W-8BC; Tax Lots 1000, 1100, 1201, 1202 and 1300. (Approval has been granted to consolidate these five tax lots into one parcel, File LA-13-08.)

ZONING:

CC (Community Commercial) District

NOTICE INFORMATION

ADC 1.040(2) says an interpretation by the Community Development Director is a Type II decision. For a Type II decision, ADC 1.350(2) requires that a Notice of Filing be mailed to persons who reside on or own property within 200 feet of the property that will be affected by the interpretation. Because the applicants requested the review body be City Council, a Notice of Public Hearing is being issued instead of a Notice of Filing. The Notice of Public Hearing was mailed on November 17, 2011, which was at least 20 days before the evidentiary hearing. The site was posted on November 28, 2011, in accordance with Section 1.410 of the Albany Development Code.

APPEALS

Within five days of the City Council's final decision on this application, the Community Development Director will provide written Notice of Decision to the applicant and any other parties entitled to notice. Any person who submitted written comments during the comment period or testified at the public hearing has standing to appeal the decision of City Council by filing a Notice of Intent to Appeal and associated filing fee not later than 21 days from the date the City mails the Notice of Decision.

BACKGROUND INFORMATION

The Planning Division is processing a Code Interpretation to allow financial assurances to be used to meet substantial construction requirements specific to Lowe's HIW, Inc. a development proposal on an 11.54 acre site located at the southeast corner of Ninth Avenue SE and Oak Street SE, approved by City Council on January 13, 2010, under Site Plan Review and Variance file numbers SP-37-08; SP-38-08; and VR 09-08.

According to the Albany Development Code in effect at the time the completed Site Plan Review and Variance application was made, "All land use approvals shall expire three years from the date of approval, unless 'substantial construction' of the project has been accomplished within that time. Substantial construction is defined in the 'Definitions' section of this Code as 'Any physical improvement of a property, the cost of which equals or exceeds fifty percent of the fair market value of the property before the improvement was started.' If substantial construction has been accomplished, development may continue to completion without a limit on the

time allowed. The Development Code standards for development within these time periods are those in effect at the time the original approval was granted,” (ADC Section 1.060(5), September 2007).

Section 12.590 – 12.610 of the Albany Development Code, also in effect at that time, specifically authorized ‘Improvement Assurances’ to guarantee that public improvements would be made. Section 12.600 states that improvement assurances may take the form of a surety or performance bond, cash, a negotiable security deposit, a mutual improvement agreement, a monetary contribution to a fund for future improvements if established by a separate city ordinance, or other guarantees approved by the City Attorney sufficient to cover the cost of the work as estimated by the City. The bond shall be conditioned upon the developer’s carrying out the obligation and fulfilling the other requirements of this Title that bear on the approval of the development. The deposit or bond shall be forfeited to the City if the developer does not fulfill the requirements. The bond or deposit shall remain in the custody of the City until the obligation is completed or the bond or deposit is forfeited, or shall be placed in an escrow account subject to City control. In July 2010, Section 1.080 of the Albany Development Code was changed to recognize the City’s ongoing practice of allowing bonding for all public improvements related to the development. It reads:

1.080 Expiration of Land Use Approvals.

- (1) *All land use approvals, except as provided in (2) below and land divisions (see Article 11), shall expire three years from the date of approval, unless:*
 - (a) *The applicant has installed and/or bonded for all public improvements related to the development – or the first phase, if the development was approved for phased construction; or*
 - (b) *A valid building permit exists for the approved development or for at least one building approved as part of the development; or*
 - (c) *If the final decision became effective between January 1, 2007, and June 30, 2008, any approval that would expire prior to June 30, 2011, will be extended to June 30, 2011. Either (a) or (b) of this section must be completed by the extended approval time period, or the approval expires.*

[Ord. 5728, 1/27/10]

The Development Code standards for development within these time periods are those in effect at the time the original approval was granted. [Ord. 5475, 4/11/01]

The applicants, therefore, are requesting a Code Interpretation to allow financial assurances to be used to meet substantial construction requirements, in accordance with the City’s ongoing practices and Sections 12.590 – 12.610 of the Albany Development Code that was in effect at the time their Site Plan Review and Variances applications were deemed complete.

SUMMARY OF REQUEST

The applicants’ representatives request that the City Council interpret the Albany Development Code in accordance with ADC 1.040 and conclude the following:

1. The City Council interpret that substantial construction has occurred because of the initiation of the Local Improvement District (LID) and the execution of the Infrastructure Funding Agreement (IFA). The first is the execution of an Infrastructure Funding Agreement (IFA) between Lowe’s and the City at the closing of Lowe’s purchase of the property. Those two events assure substantial construction of public improvements and are the equivalent of bonding, which would satisfy vesting of the application under present ADC 1.080(1).
2. The effect of the City Council’s interpretation is to determine that Lowe’s has vested its approval and thus site plan approvals (SP-37-08; SP-38-08; and VR 09-08) will not expire on January 15, 2013.

CODE INTERPRETATION CRITERIA

Albany Development Code (ADC) Section 1.040 includes an explanation of how interpretations of the Albany Development Code will be made. ADC 1.040 is listed below. Each part of ADC 1.040 is considered to be a review criterion for the purpose of evaluating the Community Development Director's interpretation above against the relevant review criteria. ADC 1.040 references ADC 1.020. Applicable elements of ADC 1.040 and 1.020 are written below in *bold italic* print. The Findings of Fact and Conclusions explain how the Director's interpretation meets the review criteria.

- (1) *Except as otherwise specified, the definitions included in Article 22 shall be used to interpret the provisions of this Code.*

FINDINGS OF FACT

- 1.1 According to the Albany Development Code (ADC) in effect at the time the completed Site Plan Review and Variance application was made, "All land use approvals shall expire three years from the date of approval, unless 'substantial construction' of the project has been accomplished within that time. Substantial construction was defined in the 'Definitions' section of that Code as 'Any physical improvement of a property, the cost of which equals or exceeds fifty percent of the fair market value of the property before the improvement was started,'" (ADC, September 2007, Article 22, p. 27.)
- 1.2 In the same edition of the ADC, "Bond, Performance or Security" is defined: "Collateral security for the performance of a specific action or duty imposed by the City," (ADC, September 2007, Article 22, p. 18).
- 1.3 Section 12.590 – 12.610 of the ADC, also in effect at that time, specifically authorized 'Improvement Assurances' to guarantee that public improvements would be made. Section 12.600 stated that improvement assurances "may take the form of a surety or performance bond, cash, a negotiable security deposit, a mutual improvement agreement, a monetary contribution to a fund for future improvements if established by a separate city ordinance or other guarantees approved by the City Attorney sufficient to cover the cost of the work as estimated by the City," (ADC, March 2008, Article 12, p. 17).
- 1.4 In July 2010, Section 1.080 of the ADC was changed to recognize the City's ongoing practice of allowing bonding for all public improvements related to the development. It reads:

1.080 Expiration of Land Use Approvals.

- (1) All land use approvals, except as provided in (2) below and land divisions (see Article 11), shall expire three years from the date of approval, unless:
- (a) The applicant has installed and/or bonded for all public improvements related to the development – or the first phase, if the development was approved for phased construction; or
 - (b) A valid building permit exists for the approved development or for at least one building approved as part of the development; or
 - (c) If the final decision became effective between January 1, 2007, and June 30, 2008, any approval that would expire prior to June 30, 2011, will be extended to June 30, 2011. Either (a) or (b) of this section must be completed by the extended approval time period, or the approval expires.

[Ord. 5728, 1/27/10]

The Development Code standards for development within these time periods are those in effect at the timethe original approval was granted. [Ord. 5475, 4/11/01]

- 1.5 The definition for “substantial construction” was removed from Article 22 of the Albany Development Code when ADC Section 1.080 was changed in 2010.
- 1.6 ADC Section 12.600 continues to authorize financial assurances that “take the form of a surety or performance bond, cash, a negotiable security deposit, a mutual improvement agreement, a monetary contribution to a fund for future improvements if established by a separate city ordinance, or other guarantees approved by the City Attorney sufficient to cover the cost of the work as estimated by the City,” (ADC, August 2009, Article 12, p. 17).
- 1.7 The applicants, therefore, are requesting a Code Interpretation to allow financial assurances to be used to meet substantial construction requirements, in accordance with the City’s ongoing practices and Sections 12.590 – 12.610 of the ADC that were in effect at the time their Site Plan Review and Variance applications were deemed complete.

CONCLUSIONS

- 1.1 The definitions contained in Article 22 of the Albany Development Code in effect at the time were used to interpret the provisions of the Code.
- 1.2 This criterion is met.
- (2) *The Director shall have the initial authority and responsibility to interpret all terms, provisions, and requirements of this ordinance. For quasi-judicial interpretations, the Type II procedure set forth in Section 1.350 shall be followed. For legislative interpretations, Type IV procedures as set forth in Section 1.370 shall be followed. A person requesting such an interpretation shall do so in writing to the Director.*

FINDINGS OF FACT

- 2.1 The Community Development Director has the initial authority and responsibility to interpret all terms, provisions, and requirements of this ordinance. This staff report includes the Community Development Director’s interpretation of applicable ADC terms, provisions, and requirements as they apply to the request for the interpretation.
- 2.2 The application for the interpretation is a quasi-judicial request because it applies to a particular development and involves the application of ADC requirements to this development only. A quasi-judicial Code Interpretation is a Type II procedure, which can be processed by staff or through a hearing if one is requested. The hearing body for the original Site Plan Review and Variance applications was the Albany City Council. The applicants’ representatives have requested in writing that the Albany City Council consider this application for the Code Interpretation.
- 2.3 The Type II procedure set forth in ADC 1.350 has been followed, however because the applicants’ representatives requested City Council consideration of this Code Interpretation, a Notice of Public Hearing was provided in lieu of a Notice of Filing to property owners and residents within 200 feet of the subject property. In addition, the Notice of Public Hearing was provided to all persons who were sent the Notice of Decision following City Council’s approval of the Site Plan Review and Variance applications at the January 13, 2010 public hearing. The Notice of Public Hearing was sent November 16, 2011, at least 20 days prior to the evidentiary public hearing, in accordance with ADC Section 1.400(4).
- 2.4 The Notice of Public Hearing for the Code Interpretation was posted on the future Lowe’s property in two conspicuous locations beginning November 28, 2011.

CONCLUSIONS

- 2.1 The Director has initial authority and responsibility to interpret all terms, provisions, and requirements of this ordinance.
 - 2.2 Procedures set forth in Section 1.350 were followed for this quasi-judicial request.
 - 2.3 A Notice of Public Hearing was issued in lieu of a Notice of Filing because the applicants' representatives requested the Code Interpretation by considered by City Council, the review body for the original site plan and variance approvals.
 - 2.4 Representatives of the applicants requested this Code Interpretation in writing.
 - 2.5 This criterion is met.
- (3) *The terms of this ordinance shall be liberally construed to give maximum effect to the purposes set forth in Section 1.020.*

FINDINGS OF FACT

- 3.1 ADC 1.020 says the general purpose of this Code is to set forth and coordinate City regulations governing the development and use of land. The Code is more specifically intended to do the following:

- (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.*

This is simply a statement that explains the ADC implements the Comprehensive Plan.

- (2) *Satisfy relevant requirements of federal law, state law, statewide goals, and administrative rules.*

Applicable federal law, state law, statewide goals, and administrative rules are incorporated in ADC requirements where necessary and appropriate. This interpretation applies applicable requirements of the ADC for the City Council to interpret that substantial construction has occurred because of the initiation of the Local Improvement District (LID) and the execution of the Infrastructure Funding Agreement (IFA).

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

Discussions that included the applicants' representatives, city planning staff, and the city attorney resulted in a consensus that the most effective way to facilitate a prompt review of the proposed request was to render an interpretation of the ADC that concludes that substantial construction has occurred because of the initiation of the Local Improvement District (LID) and the execution of the Infrastructure Funding Agreement (IFA). The effect of the City Council's interpretation is to determine that Lowe's has vested its approval and thus site plan approvals (SP-37-08; SP-38-08; and VR 09-08) will not expire on January 15, 2013.

- (4) *Provide for public information, review, and comment on development proposals that may have a significant impact on the community.*

ADC 1.040(2) says the Type II procedure set forth in ADC 1.350 shall be followed for code interpretations made by the Community Development Director. The Type II

procedure requires notice and an opportunity to comment for surrounding property owners and residents within 200 feet of the property affected by the interpretation. The Notice of Public Hearing fulfills this requirement. For this application, notice was provided to those property owners and residents within 200 feet and the subject property was posted in two conspicuous locations. The notice was also sent to all persons who participated during the original review. Additionally, there will be opportunities for comment at the public hearing.

- (5) *Guide public and private planning policies and actions to ensure provision of adequate water, sewage, transportation, drainage, parks, open space and other public facilities and services for each development.*

The formation of the Local Improvement District (LID) and the execution of an Infrastructure Funding Agreement (IFA) assure substantial construction of public improvements and are the equivalent of bonding, which would satisfy vesting of the application under present ADC 1.080(1). Rendering this interpretation of the Code will not adversely impact the provision of adequate water, sewage, transportation, drainage, parks, open space or other public facilities and services for development.

- (6) *Establish procedures and standards requiring that the design of site improvements and building improvements consistent with applicable standards and design guidelines.*

Initiation of the LID and the execution of the IFA between Lowe's and the City will ensure the design of site improvements and building improvements will comply with applicable standards and design guidelines.

- (7) *Provide for review and approval of the relationship between land uses and traffic circulation in order to minimize congestion, with particular emphasis on not exceeding the planned capacity of residential streets.*

The proposed Code Interpretation will not change the relationship between land uses and traffic circulation already addressed in the original site plan and variance approval. If the LID and IFA proceed forward as expected, design and infrastructure improvements to Oak Street and 9th Avenue will improve capacity of nearby residential streets.

- (8) *Require that permitted uses and development designs provide reasonable protection from fire, flood, landslide, erosion, or other natural hazards, as well as prevent the spread of blight, and help prevent crime.*

This criterion is not applicable.

- (9) *Protect and enhance the city's beauty and character.*

The proposed Code Interpretation will have no adverse impact on the city's beauty and character.

- (10) *Protect constitutional property rights, provide due process of law, and give consideration in all matters to affected property owner interests in making land use decisions.*

The reference to "constitutional property rights" as applied to land use decisions typically refers to rights granted by the Fifth and Fourteenth Amendments to the U.S. Constitution that have been interpreted by courts to require compensation for takings of private property. Both the Fifth and Fourteenth Amendments reference due process of law. Due

process of law and giving consideration to affected property owner interests is provided by giving notice and the opportunity for comment to the applicant and surrounding property owners and residents through the Type II review process.

CONCLUSION

- 3.1 The terms of this ordinance are liberally construed to give maximum effect to the purposes set forth in Section 1.020.
- (4) *Where the conditions imposed by a provision of this Code are less restrictive than comparable conditions imposed by other provisions of this Code or other sections of the Albany Municipal Code, the more restrictive shall govern.*

FINDINGS OF FACT

- 4.1 The requested interpretation application does not involve conflicting provisions of the Code.

CONCLUSIONS

- 4.1 The Community Development Director has followed the Type II procedure described in ADC 1.350 in rendering the interpretation above. The ADC has been interpreted by the Director to give maximum effect to the purposes set forth in ADC 1.020 as described in the findings above.
- 4.2 The Community Development Director's interpretation meets the procedural and substantive requirements listed in ADC 1.040.

RECOMMENDED CONDITIONS OF APPROVAL

1. Approval of the proposed Code Interpretation is limited to those items specifically referenced in the staff report and approved herein. Approval of those items does not change any other requirements of approval of the original site plan or variance, including the conditions of approval. The original conditions of approval still apply.
2. In the event that the financial assurances for the public improvements, whether in the form of the Local Improvement District (LID) or Infrastructure Funding Agreement (IFA), should become invalidated, breached by Lowes, or otherwise fail to assure the required public improvements, vesting of the project shall revert back to its original terms of approval which are contained in the Notice of Decision for SP-37-08; SP-38-08; VR-09-08, dated January 15, 2010.

ATTACHMENTS

- A Written request submitted by the applicants' representatives and dated November 7, 2011
- B Location map for proposed Lowe's site
- C Notice of Decision for SP-37-08; SP-38-08; VR-09-08, dated January 15, 2010.



1120 N.W. Couch Street, Tenth Floor
Portland, OR 97209-4128
PHONE: 503.727.2000
FAX: 503.727.2222
www.perkinscoie.com

Michael C. Robinson
PHONE: (503) 727-2264
FAX: (503) 346-2264
EMAIL: MRobinson@perkinscoie.com

November 7, 2011

VIA E-MAIL AND OVERNIGHT MAIL

Mr. Greg Byrne, Community Development Director
City of Albany Planning Department
333 Broadalbin St., SW
Albany, OR 97321

**Re: Request for Planning Director's Interpretation Pursuant to ADC 1.040 of Former
ADC 1.060(5)**

Dear Mr. Byrne:

This office represents Lowe's HIW, Inc. ("Lowe's"). This letter requests that the Planning Director (the "Director") refer an interpretation of former Albany Development Code ("ADC") 1.060(5) as described below to the Albany City Council.

I have provided under separate cover a check made payable to the City of Albany in the amount of \$640.00 as the applicable application fee. I understand that there is no application form for a Director's Interpretation.

1. Introduction and Procedure.

A pre-application conference pursuant to ADC 1.202 is not required because the applicant and Director have agreed that a pre-application conference is not required. A neighborhood meeting pursuant to ADC 1.203 is not required because this request is not one of the applications described in ADC 1.203(1)-(6) and because the request will not have a neighborhood impact under ADC 1.203(7).

The Director has the initial authority for an interpretation pursuant to ADC 1.040(2). Because this is a quasi-judicial interpretation, the Type II procedure is followed. ADC 1.040(2). The

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Perkins Coie LLP and Affiliates

Mr. Greg Byrne, Director
November 7, 2011
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applicant requests that the Director refer the interpretation to the City Council to be made in a public hearing.

2. Request.

The City Council approved an application by Lowe's HIW, Inc. ("Lowe's") for site plan approval on January 15, 2010. Pursuant to former ADC 1.060(5), the City included the following statement in the Lowe's decision (the first full paragraph on page 2 of the decision): "The approvals for these land use applications expire in three years unless substantial construction of the development has been accomplished. Substantial construction is defined as 'any physical improvement of a property, the cost of which equals or exceeds 50 percent of the fair market value of the property before the improvement was started.' If substantial construction has been accomplished, construction can continue to completion." Thus, substantial construction vests the approval and it does not expire.

Since the issuance of the site plan decision by the City Council, two important events have occurred which assure the construction of various public improvements. The first is the execution of an Infrastructure Funding Agreement ("IFA") between Lowe's and the City at the closing of Lowe's purchase of the property. The second major event is the establishment of a Local Improvement District ("LID") for the purpose of constructing an Oak Street "punch through" and which the Lowe's property will be subject to assessment for the LID improvements. As requested below, the applicant believes that these events are the equivalent of assuring substantial construction as anticipated by the former ADC 1.060(5). Moreover, under present ADC 1.080(1), bonding of a public improvement by the applicant can be used to vest the site plan approval.

The applicant respectfully requests that the City Council interpret that substantial construction has occurred because of the initiation of the LID and the execution of the IFA. The first is the execution of an Infrastructure Funding Agreement ("IFA") between Lowe's and the City at the closing of Lowe's purchase of the property. Those two (2) events assure substantial construction of public improvements and are the equivalent of bonding, which would satisfy vesting of the application under the present ADC 1.080(1).

The effect of the City Council's interpretation is to determine that Lowe's has vested its approval and thus the site plan approval will not expire on January 15, 2013. **Exhibit 1** to this letter is the City Council's adopted resolution establishing the LID. **Exhibit 2** is the IFA cover page.

In order for this interpretation to have binding effect and deference in the event of an appeal of the interpretation to the Oregon Land Use Board of Appeals ("LUBA"), the applicant has requested, and the Director has agreed, that this request should be referred to the City Council.

Mr. Greg Byrne, Director
November 7, 2011
Page 3

3. Supporting Past Decisions.

The City Council and the Director have used the interpretative authority in the past to interpret provisions of the ADC. The City Council and the Director have interpreted the ADC in the context of prior land use and limited land use decisions. The interpretation authority is an appropriate use of the City Council's authority to clarify ambiguous provisions contained in past land use decisions. Decisions supporting this authority include City of Albany File Nos. CI-01-11, Albany Redevelopment LLC, and CI-02-10, Oregon Acquisition One, LLC.

4. Conclusion.

For the reasons contained in this letter, the applicant respectfully requests that the Director refer this request to the City Council and that the City Council approve the requested interpretation.

I am the applicant's representative. Please provide me with copies of all correspondence to and from the City concerning this application, determination of completeness of this application, notice of the City Council public hearing and copies of any staff reports.

Very truly yours,



Michael C. Robinson

MCR/cfr

Enclosures

Cc: Mr. Rob Doane (w/encls.) (via email)
Mr. Jack Mandel (w/encls.) (via email)
Mr. Mark Stoner (w/encls.) (via email)
Mr. David Martineau (w/encls.) (via email)
Mr. Jim Delapoer (w/encls.) (via email)

RESOLUTION NO. 5911

A RESOLUTION FOR THE ADOPTION OF ENGINEERING AND FINANCIAL INVESTIGATION REPORTS, AUTHORIZATION TO SECURE EASEMENTS AND RIGHT-OF-WAY, TO OBTAIN BIDS, AND TO ISSUE DEBT FOR THE CONSTRUCTION OF ST-09-03, OAK STREET LOCAL IMPROVEMENT DISTRICT.

WHEREAS, the City Council held a public hearing regarding the Engineer's Report at the May 12, 2010, City Council Meeting and the formation of a Local Improvement District for the improvements of Oak Street; and

WHEREAS, the City Council directed that staff proceed with an assessment methodology developed by the Lowe's development team and said methodology is set forth in the Engineer's Report dated June 3, 2010.

NOW THEREFORE BE IT RESOLVED that in the Engineer's Report of the Public Works Director dated June 3, 2010, and the Financial Investigation Report of the Finance Director filed with the City Recorder on January 21, 2010, concerning ST-09-03, Oak Street Local Improvement District, are hereby adopted.

BE IT FURTHER RESOLVED that, upon negotiations and execution of the agreements and commitments identified in the above referenced Engineer's Report to the satisfaction of the City Manager and City Attorney, the Council authorizes the Mayor and City Recorder to sign agreements on behalf of the City of Albany for the purpose of obtaining easements and right-of-way to construct the said improvements, direct the City Manager to obtain bids for the construction of said projects as required by law, and authorize the Mayor and City Recorder to make, issue, and negotiate debt to finance the design and construction of the improvements.

DATED AND EFFECTIVE THIS 9TH DAY OF JUNE 2010.


Mayor

ATTEST


INFRASTRUCTURE FUNDING AGREEMENT

THIS AGREEMENT ("Agreement") is entered into this ____ day of _____, 2011 ("Effective Date"), by and between **LOWE'S HIW, INC.**, a Washington corporation (hereinafter "Lowe's"), and **THE CITY OF ALBANY, OREGON**, a Municipal corporation organized under the laws of the State of Oregon (hereinafter "City").

RECITALS:

A. Lowe's intends to purchase property from Conser Homes Inc. at the intersection of Oak Street and Ninth Avenue in Albany, Oregon upon which Lowe's intends to develop a Lowe's retail store (the "Lowe's Property"). Also, Lowe's intends to construct such retail store in conformance with City of Albany Site Plan No. SP-37-08, SP-38-08, and VR-09-08. Additionally, Lowe's intends to have two closings to purchase all of the Lowe's Property. A first closing on a portion of the Lowe's Property that has no tenants thereon (the "First Lowe's Closing") and a second closing on the remaining portion of the Lowe's Property after any tenants have been vacated such property (the "Second Lowe's Closing").

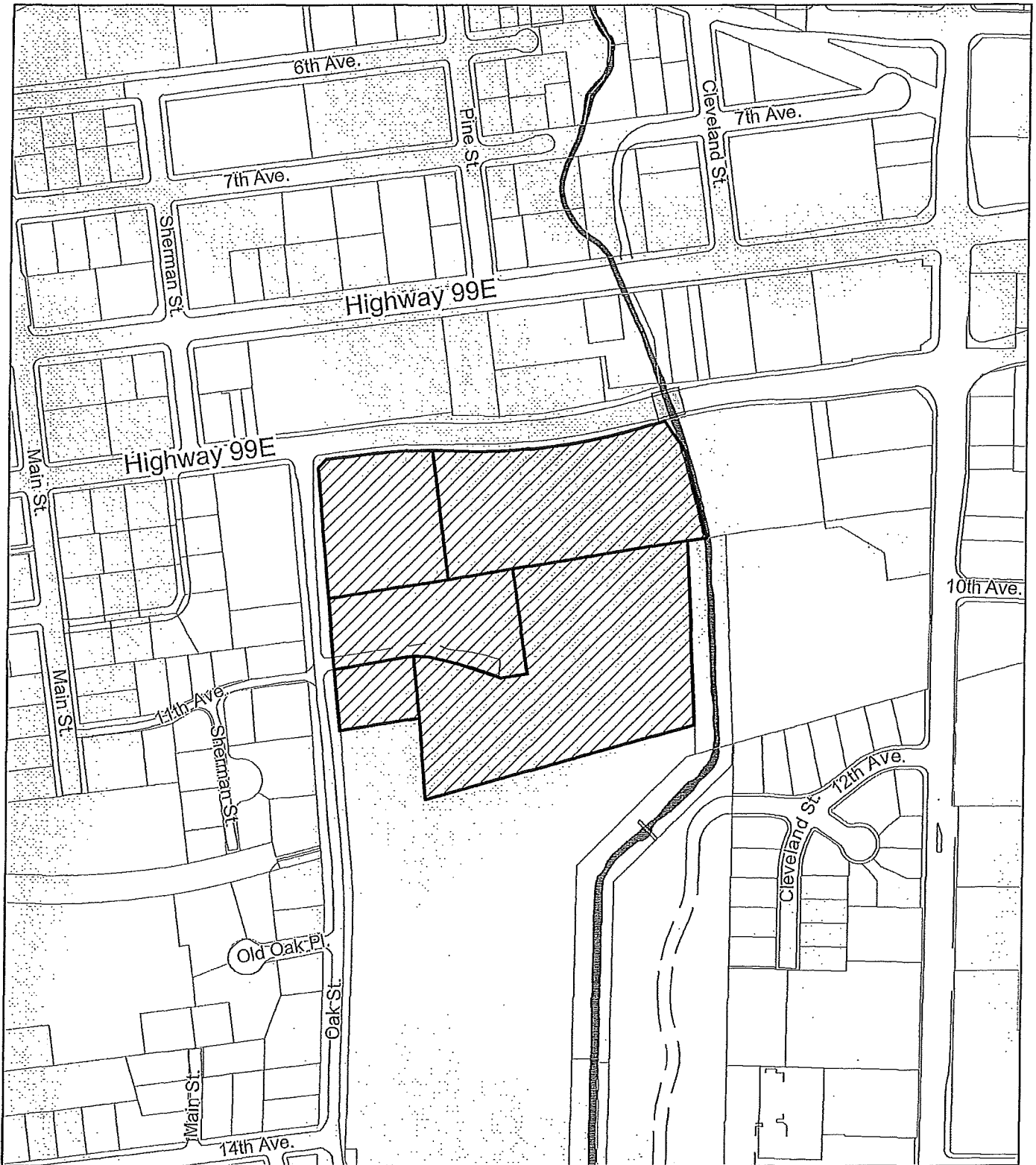
B. Pursuant to the terms of the land use approval given by City to Lowe's authorizing construction of the Lowe's proposed store, and as provided herein, the construction of necessary infrastructure improvements including, but not limited to, the extension of Oak Street between Pacific Boulevard and Ninth Avenue (hereinafter the "Punch Through") along with improvements to the Lowe's Property frontage on Oak Street, has been secured through the Albany City Council's establishment of a Local Improvement District ("LID") to make these improvements. All of said improvements are required to be constructed to City standards. Pursuant to this Agreement, City has agreed to construct the Punch Through and the Oak Street Frontage Improvements (as defined below) as a Local Improvement District Project.

C. City has allowed Lowe's to participate in the Local Improvement District referred to above which will provide for the City completing infrastructure improvements along the frontage of the Lowe's Property on Oak Street ("Oak Street Frontage Improvements") and the Punch Through and assessments against specially benefitted properties in order to reimburse the City for the cost of constructing such improvements.


D. City intends to construct the Required City Infrastructure Improvements (as defined below) which shall include the Oak Street Frontage Improvements as provided in the Engineer's Report adopted as a part of Resolution No. 5911 discussed below.

E. On June 9, 2010, Resolution No. 5911 was adopted by City, at the request of Lowe's, Conser, and the Perlenfeins, and with their expressed acceptance and approval in order to provide a mechanism for funding of the required improvements.

F. As a part of Resolution No. 5911, City and Lowe's were required to enter into an




LOCATION MAP: Future Lowe's Site, SE corner of 9th & Oak



The City of Albany's Infrastructure records, drawings, and other documents have been gathered over many decades, using differing standards for quality control, documentation, and verification. All of the data provided represents current information in a readily available format. While the data provided is generally believed to be accurate, occasional errors may be discovered. This is not a warranty. Please do not rely on this information for any purchase or other investment based in full or in part upon the material provided. It is specifically advised that you independently verify the data.

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November 15, 2011

Planning Division

City of Albany - 333 Broadalbin St. SW, Albany, Oregon 97321 (541) 917- 7550



Community Development Department

333 Broadalbin Street SW, P.O. Box 490
Albany OR 97321

Ph: 541-917-7550 Fax: 541-917-7598
www.cityofalbany.net

NOTICE OF DECISION

DATE OF NOTICE: January 15, 2010

FILES: SP-37-08; SP-38-08; VR-09-08

TYPES OF APPLICATIONS:

- 1) SP-37-08: Site Plan Review to construct a Lowe's home improvement and garden center on an 11.54 acre site located at the southeast corner of Ninth Avenue SE and Oak Street SE.
- 2) SP-38-08: Site Plan Review to remove from the proposed Lowe's site 42 identified trees that have trunks larger than 25 inches in circumference.
- 3) VR-09-08: To allow the building area of the proposed Lowe's building to be 152,236 square feet when ADC 4.090, Table 1, Development Standards, shows the maximum building area in the Community Commercial zoning district is 100,000 square feet. The building area is divided as follows: home improvement retail space is 120,578 square feet and the garden center space is 31,658 square feet.

REVIEW BODY: Albany City Council

**PROPERTY OWNERS/
APPLICANTS:**

Tax Lot 1000: Randy and Sabra Killen; Conser Homes Inc., Agent et al; c/o Conser Design and Construction; 1010 Airport Road SE; Albany, OR 97322

Tax Lot 1100: Phyllis Perlenfein, Trustee et al; c/o Edward Perlenfein; 2910 Alexander Lane NE; Albany, OR 97321

Tax Lots 1201, 1202, 1300: J Conser & Sons LLC; 1010 Airport Road SE; Albany, OR 97322

APPLICANTS' REPS:

Baysinger Partners Architecture PC; c/o Jerry Baysinger; 1006 SE Grand Avenue, Suite 300; Portland, OR 97214

Cardno WRG; c/o Jeremy McPherson; 5415 SW Westgate Drive; Suite 100; Portland, OR 97221

Lowe's Home Centers, Inc.; c/o Jack Mandel; 1605 Curtis Bridge Road; Wilkesboro, NC 28697

LOCATION: A new address will be assigned for the building. The property is located on the southeast corner of Ninth Avenue SE and Oak Street SE.

MAP/TAX LOTS: Linn County Assessor's Map No. 11S-3W-8BC; Tax Lots 1000, 1100, 1201, 1202 and 1300. (Approval has been granted to consolidate these five tax lots into one parcel, File LA-13-08.)

ZONING: CC (Community Commercial)

On January 13, 2010, the City of Albany City Council granted **APPROVAL WITH CONDITIONS** of the three land use applications referenced above.

The approvals for these land use applications expire in three years unless substantial construction of the development has been accomplished. Substantial construction is defined as "any physical improvement of a property, the cost of which equals or exceeds fifty percent of the fair market value of the property before the improvement was started." If substantial construction has been accomplished, construction can continue to completion.

The City based its decision on the development's conformance with the review criteria listed in the Albany Development Code and testimony at the hearing. The supporting documentation relied upon in making this decision is available for review at City Hall, 333 Broadalbin Street SW.

A decision of the City Council may be appealed to the Land Use Board of Appeals by filing a notice of intent to appeal not later than 21 days after the decision becomes final [ADC 1.520(6)].

For more information, please contact Planners Janet Morris or Don Donovan at 541-917-7550.

Mayor

Date Signed: _____

Attachments: Conditions of Approval, Information for Applicants, Location Map, Site Plan, Building Elevations, Tree Felling Plan

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Routing: (For Department Use Only)

Applicants/Property Owners	3
Applicants' Representatives	<u>4</u>
Building Division (M. Adams)	<u>1</u>
Building Division (K. Johns)	<u>1</u>
Finance Department (Linda Lamer)*	<u>0</u>
Fire Department (M. Trabue)	<u>1</u>
Public Works Engineering (Gordon S.)	<u>1</u>
Public Works Traffic Engineering (R. Irish)	<u>1</u>
ODOT (Gerry Juster)	<u>1</u>
Participating Parties	<u>11</u>
Linn County Surveyor ***	<u>0</u>
GAPS (Wayne Goates/Russ Allen)****	<u>0</u>
Files SP-37-08; SP-38-08; VR-09-08	<u>3</u>

* LA, PA, PD, RL & SD only.

** CP &/or ZC map amendments only.

*** PA, LA, and SD only.

**** SD only

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**CONDITIONS OF APPROVAL
LOWE'S HOME CENTERS, INC.**

SP-37-08 - Lowe's Home Center

- 1.1 Before issuance of a building permit or performance of any work within Ninth Avenue or Pacific Boulevard right-of-way, the applicants shall secure all necessary construction permits and approvals from ODOT for improvements to the Ninth Avenue/Oak Street and Pacific Boulevard/Oak Street intersections.
- 1.2 Before issuance of a building permit, the applicants shall dedicate six feet of public right-of-way along the site's frontage on Oak Street.
- 1.3 Before issuance of a building permit, the applicants shall secure and dedicate as public right-of-way the land needed for the extension of Oak Street between Ninth Avenue and Pacific Boulevard.
- 1.4 Before issuance of a building permit, the applicants shall construct, or financially assure the construction of the following for the extension of Oak Street between Ninth Avenue and Pacific Boulevard:
 - Curb, gutter, and sidewalk along both sides of the street. Sidewalk on the east side of the street may be attached to the curb in order to minimize impacts on the adjoining building.
 - Number of lanes in each direction shall be a function of the Progression Analysis to be performed by Lowe's Traffic Engineer.
 - On street bike lanes in each direction. The bike lanes shall be 5 feet in width.
- 1.5 In the event the City Council forms a Local Improvement Assessment District for the extension of Oak Street, the applicants shall participate in the assessment district in lieu of constructing the improvements outlined above. All required ODOT approvals and permits will still need to be acquired prior to issuance of a building permit.
- 1.6 Before issuance of a building permit, the applicants shall construct or financially assure the construction of the following for the improvement of Oak Street along the frontage of the development:
 - Curb, gutter, and setback sidewalk along the east side of the street.
 - A 12 foot vehicle travel lane in both directions.
 - A 12 foot center turn lane together with a transition to a two lane section south of the site's southern driveway. The center lane shall be striped to provide for two northbound through lanes at the Ninth Avenue/Oak Street intersection.
 - A 6 foot bike lane in both directions.
 - Curb and gutter along the west side of the street, or a swale and drainage improvements sufficient to accommodate stormwater runoff directed to the west side of the street.
- 1.7 In the event the City Council forms an Assessment District for the improvement of Oak Street, the applicants shall participate in the assessment district. The applicant may choose to construct frontage improvements along Oak Street and receive a credit from the assessment district for those improvements.
- 1.8 Before issuance of final occupancy of the Lowe's development the applicants shall construct to City standards a 10-foot-wide multi-use path on the east side of the development from Ninth Avenue to the existing path located on Kinder Park to the south. The design of the path connection to Ninth Avenue shall: (1) include a ramp allowing cyclist's access between the path and the bike lane on Ninth Avenue; (2) meet the AASHTO clear-distance standard of a minimum of two feet between the path pavement and any adjacent barriers; (3) shall provide safety fencing as require by the City along the top of the bank of Periwinkle Creek. The final path design of all improvements related to the path shall be reviewed and approved by the Directors of the Community Development and Parks and Recreation Departments.
- 1.9 Before issuance of building permits, the applicants shall provide the City with an access easement and maintenance agreement over the public path to be constructed on the east side of the applicants' property.

- 1.10 The final landscape plans submitted to the City shall show installation of new and/or replacement street trees as the case may be within the landscape planters to be provided along the development's two street frontages of Ninth Avenue and Oak Street.
- 2.1 Before performing any work within Ninth Avenue right-of-way, the applicants shall secure all required approvals and permits from ODOT.
- 2.2 The three driveways proposed for construction with the project shall be designed and located in accordance with the approved site plan.
- 2.3 The applicants shall construct the eastbound right turn lane and sidewalk on Ninth Avenue as shown on the site plan. The new sidewalk shall have a minimum width of 7 feet. The applicant shall dedicate public right of way to a point 6 inches behind the new sidewalk.
- 2.4 Crosswalks that are an extension of the public sidewalk shall be striped across all three driveways proposed with the development.
- 2.5 A minimum of 281 vehicle parking spaces shall be provided to serve the proposed development (415 are shown). Accessible parking for the disabled must be provided per Oregon Transportation Commission Standards for Accessible Parking Places and the Oregon Structural Specialty Code 1103.1.e. With 415 parking spaces to be provided, nine of them must be designed and designated for the disabled.
- 2.6 Parking for a minimum of 22 bicycles shall be provided. The parking spaces must meet the standards of ADC 9.120(13).
- 2.7 Before occupancy of the building, the applicant must construct all on-site and off-site pedestrian connections.
- 2.8 Before installation of plant materials, a final landscape plan shall be submitted for staff approval. The final landscape plan must meet the shall show meeting the landscape planting requirements of parking lots per ADC 9.150 and ADC 8.380:
- (1) Parking Lot Planting Areas. Each planter shall contain 1 tree at least 10 feet high and decorative ground cover containing at least 2 shrubs for every 100 square feet (or less) of planter area
 - (2) Entryway Landscaping. Entryways into parking lots shall be bordered by a minimum 5-foot-wide landscape planter strip meeting the same landscaping provisions as for planter bays, except that no sight obscuring trees or shrubs are permitted.
 - (3) Parking Space Buffers. Parking areas shall be separated from the exterior wall of a structure by pedestrian entrance ways, or loading areas, or by a 5-foot strip of landscaping materials.
 - (4) Landscaping for large parking areas shall consist of a minimum of seven percent of the total parking area plus a ratio of one tree per eight parking spaces to create a canopy effect. The total parking area includes parking spaces, travel aisle, sidewalks and abutting landscaped areas.
- 3.1 Before the City will issue building permits for the proposed project, the applicants must construct a 12-inch public water main along the property's west boundary (Oak Street) to complete the necessary loop in the public water system.
- 3.2 Before the City will issue building permits for the proposed project, the applicants must install a sanitary sewer cleanout at the north property line where the existing public sewer enters the subject property. This cleanout will delineate between the public sewer system (north of the subject property) and the privatesewer system (within the boundaries of the subject property). The City will afterwards have no ownership or maintenance responsibility for any sewer facilities within the boundaries of the subject property.

- 3.3 Before the City will issue building permits for the proposed project, the applicants must construct the necessary public storm drainage improvements that will be associated with the required street improvements along their Oak Street frontage and the Oak Street connection between Ninth Avenue and Pacific Boulevard. The design of these improvements must be included for City review as part of the required *Permit for Private Construction of Public Improvements*.
- 3.4 Before the City will issue building permits for the proposed project, the applicants must submit detailed engineering drawings for all public utility work associated with this project. This includes, but is not limited to: public water extension in Oak Street, connections to the public water system in Ninth Avenue, installation of sewer cleanout at north property boundary, public storm drainage improvements in the required street construction (Oak Street), and storm drainage outfalls to Periwinkle Creek. Note: As an alternative to constructing the public improvements, the applicant must provide financial assurances for the required improvements before building permits will be issued. The financial assurance must be in a form approved by the City Attorney.
- 3.5 Ninth Avenue is an ODOT right-of-way. Any work to be done in an ODOT right-of-way must be approved and permitted by ODOT.
- 3.6 Before doing any site work, the applicants must obtain a National Pollution Discharge Elimination System (NPDES) permit from the Oregon Department of Environmental Quality (DEQ). In addition, the City requires that, prior to beginning any excavation or fill on the site, the applicant must submit an erosion control/prevention plan to the City of Albany Engineering Division for review and approval.
- 4.1 Before applying for building permits, the applicant must generate and have certified by a registered engineer, the base flood elevation of Periwinkle Creek on the east. A copy of this certified base flood elevation information must be provided with first construction plans submitted to the City for review. If it is found that the floodplain is located beyond the top of the bank of the Creek, all site and building plans must meet the standards for construction in the floodplain.
- 5.1 Except as modified by any conditions of approval, the development shall be constructed as shown on the reviewed plans. Any changes must have prior approval by the Planning Division.
- 5.2 Before issuance of building permits, provide the City with evidence that the property line adjustment (file LA-13-08) has been completed and the necessary documents recorded at Linn County to consolidate the tax lots into a single parcel.
- 5.3 The color pallet of the exterior of the building will be three shades of brown with blue accents as shown on the submitted rendering.
- 5.4 Outdoor display of merchandise is restricted to plants. All other products and merchandise must be located behind the enclosed areas or screened as shown on the reviewed and approved plans.
- 5.5 To mediate the impact of the exterior lighting on the area residences, the applicant shall provide a photometric diagram showing the light levels at the perimeter of the site complies with the Albany Development Code. Overall height of pole lighting shall be not more than 38 feet. All lighting fixtures must include full cut-off shields that are oriented parallel to the adjacent ground. Angling the light fixtures is not allowed as it creates glare.
- 5.6 Rooftop mechanical equipment that is not screened from public view by parapet walls shall be painted to match the color of the building walls. Other mechanical equipment and vents, such as, but not limited to, exterior drain pipes and electrical equipment/meters, shall be screened from public view either by use of paint, landscaping, or other type of screening acceptable to City staff.
- 5.7 All fences and screening walls must be installed before building occupancy. Fences and walls must be maintained by the property owner. 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. Fencing cannot exceed the location and height standards of the Development Code.

- 5.8 Signage along the Oak Street frontage shall be restricted to a one-foot by two-foot directional sign (e.g. enter/exit) for each driveway. The directional signage may have low intensity internal illumination.
- 5.9 Signage for the building and a freestanding sign on Ninth Avenue shall follow the regulations found in Article 13 of the Albany Development Code for development within the Community Commercial zoning district.
- 5.10 Minimum landscaping required within the **Ninth Avenue** front yard setback (10 feet x approximately 700 feet) and it includes buffer landscaping due to abutting arterial:
 - a. A row of either deciduous or evergreen trees. If deciduous trees: 23 trees that are not less than 10 feet high at time of planting, and spaced 30 feet apart.
If evergreen trees: 46 trees that are not less than 5 feet high at time of planting and spaced 15 feet apart; **and**
 - b. 35 five-gallon shrubs **or** 70 one-gallon shrubs; **and**
 - c. The remaining area treated with ground cover (e.g., lawn, bark, rock, ivy, etc.).

Minimum landscaping required within the **Oak Street** front yard from Ninth Avenue south to the first driveway (10 feet x approximately 235 feet):

- a. 2 trees not less than six feet high at time of planting; **and**
- b. 12 five-gallon shrubs **or** 19 one-gallon shrubs; **and**
- c. The remaining area treated with ground cover (e.g., lawn, bark, rock, ivy, etc.).

Minimum landscaping required within the **Oak Street** front yard south of the northern driveway to the southern driveway plus the south side of that driveway: (10 feet x approximately 225 + 13 = 238 feet); includes buffering and screening due to residential across from parking lot.

- a. A row of either deciduous or evergreen trees. If deciduous trees: 8 trees that are not less than 10 feet high at time of planting, and spaced not more than 30 feet apart. If evergreen trees: 16 trees that are not less than 5 feet high at time of planting and spaced not more than 15 feet apart; **and**
- b. one of the following:
 - One row of evergreen shrubs which will grow to form a continuous hedge at least four feet in height within two years of planting, *or*
 - A minimum five-foot-tall fence or masonry wall to provide a uniform sight-obscuring screen, *or*
 - An earth berm combined with evergreen plantings or a fence that will form a sight and noise buffer at least six feet in height within two years of installation
- c. The remaining area treated with ground cover (e.g., lawn, bark, rock, ivy, etc.).

Where planting counts overlap (such as at corners) the planting can be counted against each requirement rather than requiring both requirements.

- 5.11 The applicant will need to replace removed or damaged street trees located in the Ninth Avenue right-of-way planter strip. City Staff will work with the applicant as to appropriate locations along the frontage.
- 5.12 All landscaping and fencing must meet the vision clearance standards of ADC 12.180.
- 5.13 Before landscaping is installed Planning staff must approve a final landscape plan for the development. The final plan must show the location of all plants and ground cover; include a legend that identifies the quantity of each type of plant, their common and botanical names, the pot size at time of planting (gallons/inches), and the spacing between plants. Landscaping must not conflict with vision clearance standards found at ADC 12.180.

- 5.14 All landscaped areas must be provided with a piped underground water supply irrigation system. This must be identified on the final landscape plan.
- 5.15 Any irrigation system installed in the Ninth Avenue public right-of-way requires a permit from ODOT. Any irrigation system installed in the Oak Street public right of way requires a City encroachment permit.
- 5.16 All landscaping and irrigation must be installed as shown on the approved final plans. If occupancy is requested between December 1 and March 1, the Development Code allows a short-term deferral on installation of the landscaping subject to meeting certain conditions outlined at ADC 9.190.
- 5.17 It shall be the continuing obligation of the property owner to maintain the landscaping as approved and keep it free of weeds and noxious vegetation. Trees or shrubs growing in the right-of-way or on private property must be trimmed to maintain a minimum canopy height of 8 feet above sidewalks or 14 feet above streets or alleys.

SP- 38-08 – Tree Felling

- 1.1 The applicants shall obtain an ODF logging permit if the felled trees are to be used for commercial purposes (i.e. sold).
- 3.1 Before any tree felling, earthmoving, or construction activity occurs on the site, the applicant shall prepare a specific plan for protection of the retained existing trees. The City Forester must approve this plan.
- 3.2 Before any tree felling, earthmoving, or construction activity occurs on the site, the City Forester must verify in the field that all tree protection measures are in place at the locations and of the types protection measures approved by him.
- 3.3 All construction plans shall include the following notes:
- a) “All protected trees shall have protective fencing placed around them that matches the drip line of those trees. Tree protection fencing shall consist of either orange barrier fencing or chain-link fencing. Once the tree protection area is established and the protection fence is installed, it should not be moved under any circumstances unless approved by the City.”
 - b) “No grading, construction, storage of materials, underground utilities, etc., shall occur within the tree protection area.”
 - c) “Surface drainage shall not be altered in any way that directs water in or out of the tree protection area unless approved by the City Forester.”
 - d) “Any installation of public infrastructure, irrigation, or utilities within the drip line of protected trees will require construction methods that minimize impacts to the tree roots and are approved by the City Forester.”
 - e) “All tree protection measures shall be in place before there is any earthmoving or construction activity on the property.”
 - f) “Within the drip line of any protected existing tree, there shall be no cut or fill over a four-inch depth unless a qualified arborist or forester has evaluated and approved the disturbance.”
 - g) “There shall be no storage or movement of equipment, material, debris or fill within the fenced tree protection zone.”

- h) "During the construction stage of development, the applicant shall prevent the cleaning of equipment or material or the storage and disposal of waste material such as paints, oils, solvents, asphalt, concrete, motor oil or any other material harmful to the life of a tree within the drip line of any protected tree or group of trees."
- i) "No damaging attachment, wires, signs or permits may be fastened to any retained tree."
- j) "The installation of utilities, irrigation lines or any underground fixture requiring excavation deeper than six (6) inches shall be accomplished by boring under the root system of protected existing trees at a minimum depth of twenty-four (24) inches. The auger distance is established from the face of the tree (outer bark) and is scaled from tree diameter at breast height as described in the chart below.

Tree Diameter at Breast Height (inches)	Auger Distance from Face of Tree(feet)
8-9	5
10-14	10
15-19	12
Over 19	15

- k) "Any required infrastructure improvements within ten (10) feet of the drip line of retained trees will require installation and construction methods that minimize impacts to the tree roots." The City Forester must approve the construction method.

VR-09-08 - Variance

- 1.1 The Lowe's development plans shall be revised to show the applicants constructing a City standard bike/pedestrian path on the west side of Periwinkle Creek from Ninth Avenue south to existing path on Kinder Park. The pathway shall be designed to include 10 feet of pavement, a minimum of two feet of unobstructed clear space on both sides of the paving, and safety fencing as deemed necessary by the City. The final plans shall be reviewed and approved by the City's Community Development and Parks and Recreation Directors.
- 3.1 The developer or its successor shall construct a master plan bikepath section on the west side of Periwinkle Creek from Ninth Avenue south and connected to the existing path on Kinder Park. The path shall be constructed to City standards, which includes 10 feet of pavement and a minimum of two feet of unobstructed clear space on both sides of the paving. Safety fencing shall be constructed as deemed necessary. The final plans for the path shall be reviewed and approved by the City's Community Development and Parks and Recreation Directors. Any changes to the site plan to accommodate the pathway shall be reviewed and approved by the Planning Division in accordance with Condition 5.1.
- 4.1 The developer or its successor shall construct a master plan bikepath section on the west side of Periwinkle Creek from Ninth Avenue south and connected to the existing path on Kinder Park. The path shall be constructed to City standards, which includes 10 feet of pavement and a minimum of two feet of unobstructed clear space on both sides of the paving. Safety fencing shall be constructed as deemed necessary. The final plans for the path shall be reviewed and approved by the City's Community Development and Parks and Recreation Directors. Any changes to the site plan to accommodate the pathway shall be reviewed and approved by the Planning Division in accordance with Condition 5.1.

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 SITE PLAN REVIEW (FILE DC-02-11) AND DECLARING AN EMERGENCY.

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

WHEREAS, these amendments are proposed as a part of the on-going process of evaluating and updating the Code to ensure the regulations are clear and there are no inconsistencies; and

WHEREAS, these amendments are proposed to ensure that any Site Plan Review process that involves interpretation is a land use decision; and

WHEREAS, these amendments are proposed to streamline and simplify the Site Plan Review process; and

WHEREAS, these amendments are proposed to fix conflicting sections and grammatical errors concerning Site Plan Review; and

WHEREAS, on October 24, 2011, the Planning Commission held a work session on the proposed amendments; and

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

WHEREAS, on December 7, 2011, the Albany City Council held a public hearing on the proposed amendments; reviewed the amendments recommended by the Planning Commission and any testimony presented at the public hearing 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 Exhibit B, attached. It includes revisions in the following articles:

Article 1, Administration and Procedures: When Land Use Applications Are Not Required, Change of Use and Minor Additions, Modification of Approved Site Plan Review and Conditional Use Applications, Type I Procedure, Type I-L Procedure.

Article 2, Review Criteria: Site Plan Review

Article 3, Residential Zoning Districts: Schedule of Permitted Uses, Special Conditions

Article 4, Commercial and Industrial Zoning Districts: Schedule of Permitted Uses, Special Conditions, Parking Requirements for Commercial and Industrial Uses

Article 5, Mixed Use Village Center Zoning Districts: Schedule of Permitted Uses, Special Conditions, Non-Residential Parking Space Requirements

Article 6, Special Purpose Districts: Floodplain Development Permit Required, Hillside Development Procedure

Article 9, On-Site Development and Environmental Standards: Tree Felling Permit

Article 10, Manufactured Home Development Standards: Plot Plans Required, Temporary Uses

Article 11, Land Divisions and Planned Developments: Interim Submittal Review Criteria

Article 12, Public Improvements: Water and Sewer Approval, General Provisions

Article 13, Signs: Nonconforming Signs

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: _____

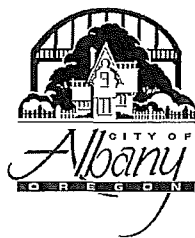
Approved by the Mayor: _____

Effective Date: _____

Mayor

ATTEST:

City Clerk



Community Development Department

333 Broadalbin Street SW, P.O. Box 490
Albany, OR 97321

Phone: 541-917-7550 Facsimile: 541-917-7598
www.cityofalbany.net

STAFF REPORT FINDINGS AND CONCLUSIONS Development Code Amendments - DC-02-11

<u>HEARING BODY</u>	CITY COUNCIL
<u>HEARING DATE</u>	Wednesday, December 7, 2011
<u>HEARING TIME</u>	7:15 p.m.
<u>HEARING LOCATION</u>	Council Chambers, Albany City Hall, 333 Broadalbin Street SW

EXECUTIVE SUMMARY

The Albany Development Code (ADC) allows for the Community Development Director to initiate legislative amendments. The City has implemented a process to periodically evaluate and adopt changes to the ADC – to include both clarifying and policy edits. The proposed amendments include changes to Site Plan Review standards and procedures.

The purpose of the amendments is to: 1) ensure that any Site Plan Review process that involves interpretation is a land use decision; 2) streamline and simplify the process; 3) fix conflicting sections and grammatical errors.

There are currently three levels of Site Plan Review:

- Option A (new development, Type I-L, limited land use decision);
- Option B (additions or increased intensity to existing site or development, Type I-L limited land use); and
- Option C (change of uses, Type I administrative level review)

The Type I process is a review based on standards specified in the Code that do not require interpretation or the exercise of policy or legal judgment. It does not require notice to surrounding property owners or ability to appeal the decision. Unfortunately, the review criteria for the Option C application often require staff interpretation and legal judgment. We recommend that the Option C application be eliminated and replaced with a Site Plan Review Type I-L process. The proposed amendments will allow some development activities to no longer require Site Plan Review and would only require building permits. For example, the current regulations require Site Plan Review for building additions of 500 square feet or more. The proposed amendments would require Site Plan Review for building additions greater than 1,000 square feet as long as the addition isn't greater than 20 percent of the existing building area.

The three different types of Site Plan Review applications (Options A, B and C) would be combined and streamlined to reduce staff time and paper. Projects currently reviewed through the Site Plan Option C process that qualify for the Type I process will be processed administratively but the process will no longer be called "site plan review". Also, there are several ADC sections that conflict and would be corrected with the proposed amendments.

The Planning Commission hearing on these amendments was November 7, 2011. The Planning Commission voted unanimously to recommend the Council approve these amendments with a modification. The approval modified Section 2.430 to remove proposed bold language that read "In general, a Site Plan Review covers all proposed exterior alterations included in the development proposal, but does not cover portions of the existing

development that are not being modified **unless non-conforming with provisions of code.**” The Planning Commission was concerned that the language was too broad and would apply to all areas of development. The intent of the language was to reference non-conforming development as stated in Section 2.370 in order to be clear that the non-conforming section would apply. Staff has revised this section to read “In general, a Site Plan Review covers all proposed exterior alterations included in the development proposal, but does not cover portions of the existing development that are not being modified **except for non-conforming development as stated in Section 2.370.**”

STAFF RECOMMENDATION

Staff is recommending APPROVAL of the proposed Development Code amendments.

GENERAL INFORMATION

DATE OF REPORT:	November 30, 2011
FILE:	DC-02-11
TYPE OF APPLICATION:	Legislative amendments to the following Development Code Articles that include Site Plan Review procedures and standards (Exhibit A): <ul style="list-style-type: none"> • Article 1, Administration and Procedures; • Article 2, Review Criteria; • Article 3, Residential Zoning Districts; • Article 4, Commercial and Industrial Zoning Districts; • Article 5, Mixed Use Village Center Zoning Districts; • Article 6, Special Purpose Districts – reference amendments; • Article 9, On-Site Development and Environmental Standards – grammar and reference amendments; • Article 10, Manufactured Home Development Standards – grammar corrections; • Article 11, Land Divisions and Planned Developments – grammar and reference corrections; • Article 12, Public Improvements – grammar corrections; • Article 13, Signs – grammar corrections.
REVIEW BODIES:	Planning Commission and City Council
APPLICANT:	City of Albany, Planning Division
APPLICANT REP:	Evan Fransted, Planner II
ADDRESS/LOCATION:	Not Applicable

NOTICE INFORMATION

A notice of public hearing was published in the *Albany Democrat Herald* October 28, 2011. The Development Code amendments were posted on the City’s Web site. No comments have been received.

The Planning Commission held a public hearing on the proposed amendments on November 7, 2011. No one testified at the hearing.

PLANNING COMMISSION RECOMMENDATION

RECOMMEND that the City Council APPROVE the proposed Development Code amendments.

The Planning Commission approval modified Section 2.430 to remove proposed bold language that read “In general, a Site Plan Review covers all proposed exterior alterations included in the development proposal, but does not cover portions of the existing development that are not being modified **unless non-conforming with provisions of code.**” The intent of the language was to reference non-conforming development as stated in Section 2.370 in order to be clear that the non-conforming section would apply. Staff has revised this section to read “In general, a Site Plan Review covers all proposed exterior alterations included in the development proposal, but does not cover portions of the existing development that are not being modified **except for non-conforming development as stated in Section 2.370.**”

CITY COUNCIL DECISION OPTIONS

The City Council may do one of the following:

- 1) Approve the proposed legislative amendments as summarized in the staff report, ordinance Exhibit A and ordinance Exhibit B;
- 2) Approve as modified the proposed legislative amendments; or
- 3) Deny some or all of the proposed legislative amendments.

The City Council may also continue the public hearing to a specified date in order to receive testimony, review modified language, or continue deliberation.

APPEALS

A City Council decision 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.

STAFF ANALYSIS**Development Code Amendment File DC-02-11**

The Albany Development Code (ADC) contains the following review criteria that must be met for these Development Code amendments to be approved. Code criteria are written in *bold italics* and are followed by the Proposed Amendments, 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 a separate review criterion following the description of the major revisions.

FINDINGS OF FACT

Planning Goal 1, Citizen Involvement, Goal: Ensure that local citizens and other affected groups, neighborhoods, agencies, and jurisdictions are involved in every phase of the planning process.

Planning Goal 1, Citizen Involvement, Policy 2: When making land use and other planning decisions:

- a. *Actively seek input from all points of view from citizens and agencies and assure that interested parties from all areas of the Urban Growth Boundary have the opportunity to participate.*
- b. *Utilize all criteria relevant to the issue.*
- c. *Ensure the long-range interests of the general public are considered.*

- d. Give particular attention to input provided by the public.
- e. Where opposing viewpoints are expressed, attempt to reach consensus where possible.

- 1.1 The Site Plan Review Option C is a Type I process that does not require notice to surrounding property owners, affected groups or neighborhood organizations. The proposed amendments would eliminate Site Plan Review Option C.
- 1.2 Type I-L Procedure, Section 1.330. The proposed amendments would require that surrounding properties owners within 300 feet are notified when any development requires a Site Plan Review application. Also, recognized neighborhood and community organizations should receive notice of any Site Plan Review application. Anybody that is notified will have the opportunity to submit comments on the proposed project and participate in the land use decision process.

Planning Goal 1, Citizen Involvement, Policy 4: Ensure information is made available to the public concerning development regulations, land use, and other planning matters including ways they can effectively participate in the planning process.

- 1.3 As mentioned above in 1.2, any development that requires Site Plan Review would require that project information is mailed to surrounding property owners, neighborhood and community organizations. The Albany Democrat Herald newspaper may also be notified and anybody from the public can review information on the proposed project.

Planning Goal 14, Urbanization, Development Review: Ensure that all new developments are reviewed expeditiously and thoroughly and result in compliance with Comprehensive Plan goals and policies and ordinance standards.

Planning 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. Consider variance, conditional use, and special request procedures where strict interpretation of regulations would impede fulfillment of these criteria.

- 1.4 The proposed amendment would change the Site Plan Review process to be entirely a Type I-L process that allows greater interpretation of policies and regulations by following quasi-judicial land use procedures.

Planning 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. Ensure the degree of application and review is commensurate with the size and complexity of various development requests.

- 1.5 There are currently two sets of criteria for Site Plan Review. Site Plan Review Option A and B share one set of criteria. Site Plan Review Option C has another set of criteria. The proposed amendments would eliminate Site Plan Review Option C criteria and combine the three options into one set of review criteria.
- 1.6 The remainder of the proposed amendments include grammatical corrections and fixing inconsistencies within the Code. These clarifying amendments will help make the Code more understandable for the staff and the public.
- 1.7 The proposed amendments will allow easier use of the Development Code for local officials, staff, and the public by simplifying the process.

CONCLUSIONS

- 1.1 The proposed Development Code amendments are consistent with the Comprehensive Plan goals and policies.
- 1.2 This criterion is satisfied.
- (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

(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.

2.1 As discussed in Review Criterion 1 above, the proposed amendments will be consistent with the goals and policies of the Comprehensive Plan.

(2) Satisfy relevant requirements of federal law, state law, statewide goals, and administrative rules.

2.2 Oregon Revised Statutes Section 197.015(12)(a)(B) defines a limited land use decision as “the approval or denial of an application based on discretionary standards designed to regulate the physical characteristics of a use permitted outright, including but not limited to site review and design review.”

2.3 The proposed amendments will create a single Site Plan Review application that will be reviewed based on existing discretionary standards and processed as a limited land use decision consistent with the Oregon Revised Statutes.

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

2.4 The proposed amendments will create a single Site Plan Review application process with one set of review criteria that will make the review of development quicker and the standards easier to understand.

(4) Provide for public information, review, and comment on development proposals that may have a significant impact on the community.

2.5 As discussed in Review Criterion 1 above, the proposed amendments would allow for greater public participation by notifying the public on more development proposals that could potentially have an impact on the community, which currently do not require notification with the Site Plan Review Option C process.

(6) Establish procedures and standards requiring that the design of site improvements and building improvements consistent with applicable standards and design guidelines.

2.6 The current Site Plan Review process involves the review of the design of site improvements and building improvements to ensure consistency with the standards in the Albany Development Code (ADC). The proposed amendments would be consistent with current policy.

(7) Provide for review and approval of the relationship between land uses and traffic circulation in order to minimize congestion, with particular emphasis on not exceeding the planned capacity of residential streets.

2.7 The current Site Plan Review process involves the review of the relationship between land uses and traffic circulation. The proposed amendments would be consistent with current policy.

(8) Require that permitted uses and development designs provide reasonable protection from fire, flood, landslide, erosion, or other natural hazards, as well as prevent the spread of blight, and help prevent crime.

2.8 The current Site Plan Review process involves the review of natural hazards to ensure reasonable protection and consistency with the standards in the Albany Development Code (ADC). The proposed amendments would be consistent with current policy.

(10) Protect constitutional property rights, provide due process of law, and give consideration in all matters to affected property owner interests in making land use decisions.

2.9 As discussed in Review Criterion 1 and Section 2.3 above, the proposed amendments will create a Site Plan Review process that follows Type I-L procedures that requires surrounding property owners to be notified. The proposed amendments will allow affected property owners the opportunity to participate in the land use decision making process.

CONCLUSIONS

2.1 The proposed Development Code amendments are consistent with the purposes of the Code.

2.2 This criterion is satisfied.

SITE PLAN REVIEW Code edits with collective notes in yellow. New Code language is shown in **bold** and removed language in ~~strikethrough~~.

ARTICLE 1

1.070 When Land Use Applications Are Not Required. Activities and developments within special-purpose districts must comply with the regulations **of the Code, including but not limited to setbacks, lot coverage, and building height; overlay district standards** described in Articles 4 (Airport Approach), 6 (Natural Resources), and 7 (Historic); **Article 8 (Design Standards); Article 9 (On-site Development and Environmental Standards)**, as applicable, and may require a land use application as described in each respective section. Activities and developments listed below that occur outside of overlay districts do not require a land use application but are nevertheless subject to the provisions of the Code: [Ord. 5764, 12/1/11]

- (1) Agricultural uses permitted outright in Articles 3, 4 and 5.
- (2) ~~New~~ **Detached single-family dwellings or a two-unit dwellings and additions to existing single-family dwellings or two-unit dwellings.**
- (3) Residential accessory buildings up to 750 square feet and/or walls not greater than 11 feet tall **or that meet the standards listed in** [See-Section 3.080(9).] [Ord. 5728, 1/27/10]
- (4) Non-residential accessory buildings of any size in the NC, CC, RC, IP, LI, HI and PB zones and non-residential accessory buildings up to 750 square feet in the CB, HD, ES, LE, MS, MUC, MUR, OP and WF zoning districts. [Ord. 5728, 1/27/10]
- (5) ~~Landseaping and~~ **Routine property maintenance.**
- (6) **New parking areas or expansions to existing parking areas that do not require Site Plan Review as stated in Section 2.430.** Improvement of existing or new parking areas containing less than 1,000 square feet that meet the provisions of this Code.

Staff Comments: Listing the standard here and in Section 2.430 was confusing and repetitive. So, Section 2.430 lists the full standard.

- (7) **Building additions to an existing building 200 square feet or less. For building additions greater than 200 square feet, see Section 2.430.**
- (8) A change internal to a building or other structure or use of land that does not constitute a change of use as **defined in Article 22 and listed in Articles 3, 4 or 5. If a nonconforming use of a building has been vacant for more than one year, refer to Articles 3, 4 or 5 for permitted uses in each zoning district.** *Staff Comments: The vacancy of a nonconforming building is discussed in ADC 2.340(1).*

Staff Comments: The definition in Article 22. Change of Use: Change of the primary use on a property from one use category to another or a change in use that may result in the need for additional parking or loading facilities, or other building or development standards to be brought into conformance with current regulations.

- (9) An emergency measure necessary for the safety or protection of property when authorized by the City Manager with written notice to the City Council.

- (10) Any temporary use of land of up to a 30-day duration (such as a promotional event, festival, carnival, or outdoor sale) that conforms with all other requirements of this Code and other applicable City regulations, public health, and safety requirements, some of which may further limit such uses in terms of location, scope, and duration.
- (11) The establishment, construction, alteration, or maintenance of a public facility authorized by the Director of Public Works, including streets, highways, traffic control devices, drainage ways, sanitary and storm sewers, pump stations, water lines, electrical power or gas distribution lines, or telephone or television cable systems. This includes construction of staging areas of less than six months' duration but does not include major substations, treatment facilities, storage tanks, reservoirs, and towers.
- (12) Excavation and fill for foundations and all other excavation or filling of land involving 50 cubic yards or less that does not adversely affect drainage patterns.
[Ord. 5764, 12/1/11; Ord. 5728, 1/27/10]

~~1.073~~ ~~Change of Use and Minor Additions. A change of use within an existing structure and/or building additions up to 500 square feet are reviewed through the Site Plan Option C process. See criteria in ADC 2.550 to 2.580. Additions within special purpose districts must comply with the regulations described in Articles 4, 6, and 7, as applicable.~~
[Ord. 5764, 12/1/11; Ord. 5728, 1/27/10; Ord. 5742, 7/14/10]

Staff Comments: The language above is no longer applicable because Site Plan Review Option C will be eliminated with the proposed changes.

- 1.226 Modification of Approved Site Plan Review and Conditional Use Applications. When a property owner wants to make changes to the approved plans and the approval has not expired, the following procedures shall be used to review the proposed modifications.
- (1) Definitions: When "property owner" is used here, it means the property owner, or the property owner's authorized agent. When "site plan" is used here, it means the site plan approved through either a **Site Plan Review application** or a review of a **Conditional Use application**.

ACTIONS NOT INCLUDED AS LAND USE DECISIONS

- 1.260 Definition. A "land use decision" does not include a decision of the City:
- (2) That is made under land use standards that do not require interpretation or the exercise of policy or legal judgment;
 - (3) That approves or denies a building permit under clear and objective land use standards;
 - (4) That is a limited land use decision; or
 - (5) That determines final engineering design, construction, operation, maintenance, repair or preservation of a transportation facility that is otherwise authorized by and consistent with the Comprehensive Plan and land use regulations.
- 1.270 Procedure. Land use applications that do not result in land use decisions are processed under the Type I Administrative procedure. The Director makes the decision based on the stated review criteria, without need for public hearing or notification.

- 1.280 Examples. Examples of applications that do not result in land use decisions include, but are not limited to, lot line adjustments, preliminary planned development plans, final subdivision plats, **and land use status letters**, and ~~site plan review Option C involving a change in use or minor addition to existing use in a conforming building.~~

ADMINISTRATIVE PROCESS

1.320 Type I Procedure.

- (1) The purpose of the Type I procedure is to provide for land use review based on standards specified in this Code that do not require interpretation or the exercise of policy or legal judgment. Approval of a Type I land use application is not a land use decision. ~~(See definitions in Article 22.)~~
- (2) Under the Type I procedure, the Director shall process an application without need for public hearing or notification.
- (3) ~~Examples of applications processed through a Type I procedure include, but are not limited to, -- lot line adjustments, preliminary planned development plans, final subdivision plats, **and land use status letters**, and site plan review Option C involving a change in use or minor addition to existing use in a conforming building.~~ [Ord. 5728, 1/27/10]

LIMITED LAND USE PROCESS

- 1.325 Definition. A "limited land use decision" is a final decision or determination made by the City pertaining to a site within its urban growth boundary that concerns approval or denial of applications based on discretionary standards to regulate the physical characteristics of a use permitted out right. Applications that result in limited land use decisions are not subject to the requirements of the Oregon Revised Statutes (ORS) and this Code relative to quasi-judicial public hearings. [Ord. 5728, 1/27/10]

1.330 Type I-L Procedure.

- (1) The purpose of the Type I-L procedure is to provide for land use review of partitions, subdivisions with fewer than 20 lots, and applications involving discretionary standards for design or **Site Plan Review of uses permitted outright permitted uses**.
- (2) In making a limited land use decision, the City will follow the applicable procedures contained within its acknowledged comprehensive plan and land use regulations and other applicable legal requirements.
- (3) Written notice will be provided to persons who reside on or own property within 300 feet of property on which applications are received for development of subdivisions, manufactured home parks, multi-family development, and **Site Plan Review** ~~Option A or B development~~. For all other limited land use decisions, the City will provide written notice to persons who reside on or own property within 100 feet of the entire contiguous site for which the application is made. The Director shall have discretion to increase the notice area up to 1,000 feet due to land use or transportation patterns or an expected level of public interest. For purposes of review, this requirement shall be deemed met when the City can provide an affidavit or other certification that such notice was given. Notice shall also be provided to any neighborhood or community organization recognized by the City Council and whose boundaries include the site and to other neighborhood associations recognized by the City Council located within 300 feet of the site. [Ord. 5728, 1/27/10]
- (4) The notice and procedures used by the City will:

- (a) Provide a 14-day period for submission of written comments before the decision;
 - (b) State that issues that may provide the basis for an appeal to the Land Use Board of Appeals shall be raised in writing before the expiration of the comment period. Issues shall be raised with sufficient specificity to enable the decision maker to respond to the issue;
 - (c) List, by commonly used citation, the applicable criteria for the decision;
 - (d) Provide the street address or other easily understood geographical reference to the subject property;
 - (e) State the place, date and time that comments are due;
 - (f) State that copies of all evidence relied upon by the applicant are available for review, and that copies can be obtained at cost;
 - (g) Include the name and phone number of a local government contact person;
 - (h) Provide notice of the decision to the applicant and any person who submits comments under subparagraph (a) of this paragraph. The notice of decision must include an explanation of appeal rights;
 - (i) Briefly summarize the local decision making process for the limited land use decision being made, and
 - (j) Include other information the Director deems appropriate.
- (5) Decisions and Appeals. Standing to appeal a limited land use decision shall be limited to the property owner of the subject development, the applicant, and/or any person who has provided written comments pursuant to Section 1.330(4)(b) or who spoke at the public hearing, if one was held.
- (a) For application types for which a neighborhood meeting is not required in Section 1.203, a limited land use decision made by the Director may be appealed to the Land Use Board of Appeals (LUBA) when a person with standing files a Notice of Intent to Appeal with LUBA not later than 21 days after the Director's notice of decision is mailed.
 - (b) For application types for which a neighborhood meeting is required in Section 1.203, a limited land use decision by the Director may be appealed to the Planning Commission when a person with standing files a Notice of Appeal with the City not later than 10 days after the Director's notice of decision is mailed.
 - (c) At the Director's discretion, a limited land use application may be referred to the Planning Commission or Hearings Board for the local decision.
 - (d) A limited land use decision made by the Planning Commission or Hearings Board may be appealed to the LUBA when a person with standing files a Notice of Intent to Appeal with LUBA no later than 21 days after the Planning Commission notice of decision is mailed. [Ord. 5338, 1/28/98; Ord. 5445, 4/12/00; Ord. 5562, 10/10/03]

ARTICLE 2

SITE PLAN REVIEW

- 2.400 Purpose. Site Plan Review is intended to promote functional, safe, and attractive developments that maximize compatibility with surrounding developments and uses and with the natural environment. It mitigates potential land use conflicts through specific conditions attached by the review body. ~~Site Plan Review is not intended to evaluate the proposed use or structural design. Rather, t~~ The review focuses on the layout of a proposed development, including building placement, setbacks, parking areas, external storage areas, open areas, and landscaping. [Ord. 5445, 4/12/00]
- ~~2.410~~ Levels of Review. ~~A site plan is reviewed at one of three levels, with the degree of detail required based on its projected land use impacts. Option A review is primarily for new development and is subject to~~

~~the greatest scrutiny. Option B review is primarily for expansions of existing development and for projects that will generally result in fewer impacts on the surrounding area than a new development. Option C review is used for a change in use or another modification to a developed site that will not result in a greater impact on the neighborhood or on public facilities. [Ord. 5445, 4/12/00]~~

- 2.420 Relationship to Other Regulations. When a land use application is approved based on review criteria in this Code, the applicant must still comply with other applicable codes, ordinances, statutes, and regulations. [Ord. 5445, 4/12/2000]
- 2.430 When Site Plan Review is Required. In general, a Site Plan Review covers all proposed exterior alterations included in the development proposal, but does not cover portions of the existing development that are not being modified **except for non-conforming development as stated in Section 2.370.** ~~An exception to this is parking areas where any proposed change to a parking lot will result in the entire parking area being reviewed.~~ Site Plan Review is required in all of the following instances:
- (1) ~~New development.~~ Any development listed in Articles 3, 4 or 5 that specifically requires Site Plan Review. [Ord. 5445, 4/12/00]
 - (2) A change internal to a building or other structure or use of land that constitutes a change of use as **defined in Article 22** and listed in Articles 3, 4 or 5.
 - (3) **Any development or change of use to a nonconforming use of a building, structure, or land not occupied by a permitted or legally nonconforming use for one continuous year may require Site Plan Review as listed in Articles 3, 4 or 5.** *Staff Comments: This is existing language from ADC 2.340(1).*
 - (4) Building expansions ~~additions of 500 square feet or more~~ **greater than 1,000 square feet or greater than 20% of existing building area, whichever is less,** or any expansion that results in a reduction of **required** parking spaces. **Any additions within special purpose districts must comply with the regulations described in Articles 4, 6, and 7, as applicable.**
 - (5) ~~Parking area expansions of 1,000 square feet or more~~ **New parking areas or expansions to existing parking areas greater than 1,000 square feet or greater than 10% of any existing parking area, whichever is less.**
 - (6) **Temporary placement of a manufactured home for: (a) night watchman; (b) business office space during construction or remodeling; (c) building space for education, non-profit, and government agencies. (See Sections 10.470-10.490.)**
- ~~2.440 When Site Plan Review is not Required. Activities and developments listed below do not require Site Plan Review, but are nevertheless still subject to the applicable provisions of the Code:~~
- ~~(1) Agricultural uses permitted outright in any zone.~~
 - ~~(2) A detached single family dwelling or one duplex.~~
 - ~~(3) Non-residential accessory buildings of any size in the NC, CC, RC, IP, LI, HI and PB zones and non-residential accessory buildings up to 750 square feet in the CB, HD, ES, LE, MS, MUC, MUR, OP and WF zoning districts that conform to the provisions of this Code and the adopted building code. [Ord. 5742, 7/14/10]~~
 - ~~(4) Accessory buildings in residential districts that meet the following standards. (The applicant must~~

submit information when he or she applies for building permits showing that the standards are met. The Community Development Director or his/her designee will determine whether the standards are met.)

- (a) ~~The proposed building is not taller than the tallest building on adjacent property. Height here means the height of the building at its highest point.~~
 - (b) ~~The area enclosed by the foundation of the proposed building is not larger than the area enclosed by the foundation of the largest building on adjacent property (in square feet).~~
 - (c) ~~The amount of land that will be covered by buildings if the proposed building is constructed is not more than the applicable lot coverage allowances of the Development Code.~~
 - (d) ~~The proposed building meets or exceeds the applicable setback requirements in the Code for the primary residential structure.~~
 - (e) ~~The materials of the proposed building (e.g. siding and roofing), and the color of those materials, are the same as those of the primary residential structure on the subject property.~~
 - (f) ~~If the proposed building is located in a special purpose district listed in Articles 6 or 7 of the Development Code, it must also conform with the requirements of that district.~~
- (5) ~~Landscaping and routine property maintenance.~~
- (6) ~~Improvement of parking areas containing less than 1,000 square feet and otherwise meeting the provisions of this Code.~~
- (7) ~~Internal changes to a building, structure, or use of land that is not a change of use.~~
- (8) ~~An emergency measure necessary for safety or protection of property when authorized by the City Manager with written notice to the City Council.~~
- (9) ~~Any temporary use of land of up to a 30-day duration (such as a promotional event, festival, carnival, or outdoor sale) that conforms with all other requirements of this Code and other applicable City regulations and public health and safety requirements, some of which may limit the location, scope, or duration of the use.~~
- (10) ~~Establishment, construction, alteration, or maintenance of a public facility authorized by the Public Works Director including streets, highways, traffic control devices, drainage ways, sanitary and storm sewers, pump stations, water lines, electrical power or gas distribution lines, or telephone or television cable systems. This includes construction of staging areas of less than six months duration but does not include major substations, treatment facilities, storage tanks, reservoirs, or towers.~~
- (11) ~~Excavation and fill for foundations and all other excavation or fill involving 50 cubic yards or less that does not adversely affect drainage patterns and is not located within a floodplain, or slope area. [Ord. 5381, 3/26/97; Ord. 5445, 4/12/00]~~

Staff Comments: *These are already list in Section 1.070.*

2.450 Review Criteria. A site plan **Site Plan Review** approval will be granted if the review body finds that the application meets all of the following criteria that are applicable to the proposed development.

- (1) Public utilities can accommodate the proposed development.
- (2) The transportation system can safely and adequately accommodate the proposed development.
- (3) Parking areas and entrance-exit points are designed to facilitate traffic and pedestrian safety and

avoid congestion.

- (4) The design and operating characteristics of the proposed development are reasonably compatible with surrounding development and land uses, and any negative impacts have been sufficiently minimized.
- (5) Activities and developments within special purpose districts must comply with the regulations described in Articles 4 (Airport Approach), 6 (Natural Resources), and 7 (Historic), as applicable.

[Ord 5764, 12/1/11; Ord. 5445, 4/12/00; Ord. 5635, 1/11/06; Ord. 5720, 08/12/09]

- 2.460 Conditions of Approval. The City may attach conditions to the approval of a Site Plan Review application in order to ensure that the proposal will conform to the applicable review criteria. **Conditions of approval should be specific to the proposal and the facts set in the staff report for the application. In addition to conditions of approval, a list of general Code provisions that apply to the application may be attached to the approval.**
- 2.465 Approved Plans are Final. Projects shall be completed according to the approved site plan and landscape plan. Modifications to approved plans are subject to the standards in Section 1.226. [Ord. 5720, 08/12/09]

OPTION A SITE PLAN REVIEW

- 2.470 Applicability. This level of review is intended for new development within the City. ~~Any proposal that is not appropriately reviewed under Options B or C will be reviewed under Option A.~~
[Ord. 5445, 4/12/00]
- 2.480 Procedure. A Type I-L limited land use procedure is followed for an ~~Option A~~ Site Plan Review application with the Director acting as the review body. [Ord. 5445, 4/12/00] **A Site Plan Review application that includes Hillside Development is reviewed as a Type III procedure. (See Section 6.190.)**
- 2.490 Application Contents. An Site Plan Review application for Option A Site Plan Review must include:
- (1) A completed application form.
 - (2) A mailing list of property owners within ~~100~~ **300** feet of the entire site, ~~except that a mailing list of property owners within 300 feet must be provided when a subdivision, manufactured home park, or multi-family development is proposed.~~ **The Director shall have discretion to increase the notice area up to 1,000 feet due to land use or transportation patterns or an expected level of public interest.** The list must be compiled from the most recent property tax assessment roll. Notice shall also be provided to any neighborhood or community organization recognized by the governing body and whose boundaries include the site.
Staff Comments: ADC 1.330, Type I-L procedures says notice is provided with 300 feet and Director's decision to increase notice area.
 - (3) One set of conceptual drawings, including floor plans, lighting details, and building elevations and materials.
 - (4) A conceptual landscape plan showing the type and location of proposed landscaping and screening.
 - (5) A site plan showing the following applicable information:

- (a) Assessor's map and tax lot number and lot and block description or other legal description.
- (b) Lot dimensions and total lot area.
- (c) North arrow.
- (d) Location of all existing and proposed structures, including minimum distances from all structures to property lines.
- (e) Percentage of the lot covered by all existing and proposed structures and paved areas.
- (f) Adjacent zoning designations and land uses including approximate location of buildings, accesses, streets, sidewalks, curbs, easements, and utilities.
- (g) Locations and dimensions of rights-of-way of all abutting streets (whether public or private) and existing and proposed driveways.
- (h) Size and location of all utilities.
- (i) Locations, dimensions, and nature of any existing and proposed easements.
- (j) Location of any non-access strips.
- (k) Natural drainage patterns, flow arrows showing existing and proposed drainage patterns, and existing and proposed finished grade contours at 1-foot intervals, or at a larger interval if approved by the City Engineer.
- (l) Clearly identify any existing and proposed swales, ditches, or other drainage ways.
- (m) Location, size, and capacity of the existing and proposed drainage system including pipe size, slope, detention facilities, and water quality facilities. Show existing and proposed finished grade elevations at collection points and property lines. Include the location, size, and capacity of the downstream drainage system that would serve the proposed development. Also provide any supporting calculations.
- (n) Typical cross sections at adjacent property boundaries showing pre-and post-development conditions and clearly identify any changes in elevation at the property line not captured in the typical section.
- (o) Location and species of trees larger than 25 inches in circumference measured at 4-1/2 feet above mean ground level from the base of the trunk.
- (p) Location and dimensions of delivery and loading areas.
- (q) Location and dimensions of parking and circulation areas.
- (r) Location and dimensions of trash disposal areas.
- (s) Location of proposed signs. [Ord. 5338, 1/28/98; Ord. 5445, 4/12/00]
- (t) Location and type of proposed pedestrian amenities and common areas (when applicable).
- (u) Location of airport height restrictions.
- (v) Location of floodplains.
- (w) Location of hillsides with slopes greater than 12 percent.
- (x) Location of wetlands.
- (y) Location of riparian corridors.
- (z) Location of Willamette Greenway.
- (aa) Location of historic districts, structures and sites on the City's adopted Local Historic Inventory, including individually designated National Register Historic Landmarks and archaeological sites.

[Ord. 5720, 08/12/09]

2.500 ~~Appeals.~~ An Option A Site Plan Review decision is a limited land use decision and may be appealed in accordance with Section 1.330. [Ord. 5445, 4/12/00]

OPTION B REVIEW

~~2.510 Applicability.~~ This level of review is intended for expansion of existing structures or development that will have a minimal impact on the surrounding area. An Option B Site Plan Review must be filed when the following developmental activities are proposed:

- ~~(1) An addition larger than 500 square feet to an existing structure.~~
- ~~(2) Accessory buildings greater than 750 square feet in the CB, HD, ES, LE, MS, MUC, MUR, OP and WF zoning districts. [Ord. 5742, 7/14/10]~~
- ~~(3) Parking lot additions of over 1000 square feet.~~
- ~~(4) A change in occupancy to a more intensive use in an existing building.~~
- ~~(5) Reduction in the number of existing parking spaces.~~

~~Any development consistent in scope and impact with those listed here may also be reviewed under an Option B review, at the Director's discretion. [Ord. 5265, 12/18/96; Ord. 5445, 4/12/00]~~

- ~~2.520 Procedure. A Type I-L limited land use procedure is followed for the Option B Site Plan Review with the Director acting as the review body. [Ord. 5445, 4/12/2000]~~
- ~~2.530 Application Contents. The Director may require any of the information listed for Option A Site Plan Review in Section 2.490. In many cases, not all of this information will be applicable. [Ord. 5445, 4/12/00]~~
- ~~2.540 Appeals. An Option B Site Plan Review decision is a limited land use decision and may be appealed in accordance with Section 1.330. [Ord. 5445, 4/12/00]~~

OPTION C REVIEW

- ~~2.550 Applicability. An Option C Site Plan Review is intended for review of development in existing buildings and building additions up to 500 square feet. It is appropriate for the following types of development proposals: [Ord. 5742, 7/14/10]~~
 - ~~(1) A change in occupancy to a use that is not more intense in off-site impacts.~~
 - ~~(2) A building addition to an existing or proposed use that is not greater than 500 square feet, and does not include additional outside storage or outside seating area of any size. [Ord. 5742, 7/14/10]~~
 - ~~(3) Resurfacing of nonconforming parking lots.~~
 - ~~(4) Other development with similar impacts. [Ord. 5445, 4/12/00]~~
- ~~2.560 Procedure. A Type I procedure is followed for the Option C Site Plan Review. [Ord. 5445, 4/12/00]~~
- ~~2.570 Application Contents. An Option C Site Plan Review requires submittal of only the completed application form. [Ord. 5445, 4/12/00]~~
- ~~2.580 Review Criteria. The following criteria must be met in order for the Director to approve the proposed development. If the criteria cannot be satisfied, then the development will be processed as a Site Plan Option B Review or may be denied. [Ord. 5742, 7/14/10]~~
 - ~~(1) Off-street parking is adequate to serve the proposed use.~~
 - ~~(2) The proposed use will not create additional adverse effects for abutting properties or the neighborhood (i.e., noise, or air pollution; increased parking requirements; increased traffic; or require improvements to public facilities.) [Ord. 5742, 7/14/10]~~

- ~~(3) Any non-conformity with the provisions of this Code will be brought into compliance to an extent commensurate with the proposed changes, including compliance with sign, landscaping, and parking requirements, except when restricted by building location or limiting site characteristics.~~
- ~~(4) Any applicable criteria from Section 2.450.~~

Staff Comments: Only sections with the reference to "Site Plan Review" are included; no changes are proposed to the standards in the rest of the Code.

ARTICLE 3 RESIDENTIAL ZONING DISTRICTS

Staff Comments: This section is at the end of the table.

3.050 SCHEDULE OF PERMITTED USES

Y = Yes, allowed, no Site Plan review required

CD = Cluster Development, See Art. 11

CU = Conditional Use approval required, Type III procedure

CUII = Conditional Use approval required, Type II procedure

N = No, not allowed

PD = Planned Unit Devel., See Art. 11

S = Site Plan Review required

3.080 SPECIAL CONDITIONS

- (9) The definitions of "Accessory Building" and "Accessory Use" in Article 22 shall apply. The Director shall have authority to initially interpret application of these terms to any proposed activity. See also Table 2, Section 3.190 for Accessory Structure Standards.

Accessory buildings in residential districts that are **750 square feet or larger and/or with walls taller than 11 feet that** meet the following standards are not subject to Site Plan Review. They will be processed as Type I staff decisions. Information must be submitted that shows the standards are met. The information shall be submitted at the time the applicant applies for building permits. The determination of whether the standards are met will be made by the Community Development Director or his/her designee.

- (a) The proposed building does not exceed the height of the tallest building on adjacent property. For this section, height means the height of the building at its highest point, usually the ridge of the roof.
- (b) The square footage of the footprint of the proposed building does not exceed the square footage of the footprint of the foundation of the largest building on adjacent property.
- (c) The amount of land that will be covered by buildings if the proposed building is constructed does not exceed the applicable lot coverage restrictions of the Development Code.
- (d) The proposed building meets or exceeds the applicable setback requirements for the primary residence as listed in Table 2.
- (e) The materials used on the proposed building (e.g. siding and roofing), and the color of those materials, shall be similar to those used on the primary residential structure (e.g. cement board lap siding is similar to wood lap siding).
- (f) If the proposed building is located in any of the special purpose districts listed in Articles 6 and 7 of the Development Code, the building must also be reviewed for conformance with the requirements of the applicable district.

Accessory buildings not meeting the standards in this section require Site Plan Review.

A garage or other non-residential building on a property without a residence cannot be the primary use of a residentially-zoned property except as described below. The purposes of this limitation are to preserve the opportunity for residential land to be used for housing, and to avoid a non-residential building on residential property for use as commercial storage. Non-residential structures on residentially-zoned land will be allowed when the following conditions are met:

- (a) The structure will not preclude the use of the property for housing;
- (b) The structure must meet the requirements of Section 3.080(9) or be approved through the Site Plan Review process;
- (c) The structure is not used for a commercial purposes; and
- (d) Exception in RR: Buildings used for farm or agricultural product or equipment storage are permitted in the RR zone.

[Ord. 5281, 3/26/97; Ord. 5673, 6/27/07]

- (20) One subdivision sales office and one parking lot to serve the office is allowed through a ~~Type I-L Option C~~ Site Plan Review in a subdivision if the following requirements are met:

ARTICLE 4 COMMERCIAL AND INDUSTRIAL ZONING DISTRICTS

4.050 SCHEDULE OF PERMITTED USES

Commercial, Office and Industrial Zoning Districts									
Use Categories (See Article 22 for use category descriptions.)	Spec. Cond.	OP	NC	CC	RC	TD	IP	LI	HI
Non-Res'l Accessory Buildings, greater than 750 square feet		S-18	Y	Y	Y	Y	Y	Y	Y

Y = Yes, allowed, no Site Plan Review required
 CU = Conditional Use review, Type III procedure
 CUII = Conditional Use review, Type II procedure

N = No, not allowed
 S = Site Plan Review required

4.060 SPECIAL CONDITIONS

- (4) Waste and Recycling Related Uses in the CC, LI, and HI zones.
 - (b) Limited uses in LI. Processing and sorting operations conducted within enclosed structures less than 5,000 sq. ft. in total area are allowed with Site Plan Review. Salvage yards, junkyards, and refuse transfer stations are not permitted. All other material and recycling operations are considered through a conditional use review.
 - (c) Limited uses in HI. Processing and sorting operations conducted within enclosed structures less than 5,000 sq. ft. in total area and all other material and recycling operations, excluding salvage yards and junkyards, are allowed with Site Plan Review. Salvage yards, junkyards, sanitary landfills, and refuse transfer stations require a conditional use review.
- (7) Indoor Entertainment and Recreation in the CC, RC, IP, LI and HI zones.
 - (c) Limited uses in IP. Exercise and health clubs or gyms are permitted through Site Plan Review.
- (8) Offices in the IP zone. Offices intended to serve customers on site are considered through the conditional use review. Offices with limited customer traffic are permitted through Site Plan Review. See Article 22 for Office examples.
- (9) Offices in the LI zone. Offices intended to serve customers on site are not allowed. Offices with limited customer traffic are permitted through Site Plan Review. See Article 22 for Office examples.
- (16) Educational and Religious Institutions.

(a) Vocational or trade schools in IP, LI and HI are allowed through Site Plan Review. All other educational and religious institutions are reviewed as a conditional use.

(18) Non-Residential Accessory Buildings over 750 square feet in the OP zone require Site Plan Review.

(21) Residential Accessory Buildings are permitted outright with residential uses if they meet the following conditions:

(a) Detached accessory buildings, garages and carports are less than 750 square feet and have walls no more equal to or less than eleven 11 feet tall.

~~(b) Attached accessory buildings, garages or carports are less than 1,000 square feet.~~

(b) All other residential district accessory buildings, garages or carports require a Site Plan Review.

**4.250 TABLE 2
PARKING REQUIREMENTS FOR COMMERCIAL AND INDUSTRIAL USES**

USE	SPACES REQUIRED
Air, rail and motor freight terminals	Subject to Site Plan Review
Animal hospitals and clinics	1 per 400 sq ft GFA
Banks and financial institutions	1 per 200 sq ft on first floor plus 1 per 600 sq ft above first floor
Beauty and barber shops and other personal services	1 per 200 sq ft plus 1 per 3 employees
Bowling alleys	4 per lane
Building materials sales	1 per 500 sq ft. GFA
Churches and other places of religious assembly	1 per 6 seats or 12 feet of bench length (1)
Commercial recreation and assembly	Subject to Site Plan Review
Education: Elementary, junior high and other children's day school	1 per classroom plus 1 per 2 employees
Education: High schools, colleges and universities	Subject to Site Plan Review
Funeral houses	1 per 4 seats or 8 feet of bench length
Furniture, machine and office equipment sales	1 per 500 sq ft GFA plus 1 per 3 employees
Golf courses (including clubhouses and accessory uses)	Subject to Site Plan Review
Greenhouses and nurseries	2 per employee
Hospitals	1 per 2 beds plus 1 per staff doctor plus 1 per 2 full-time employees
Laundries and cleaners	1 per 300 sq ft GFA
Libraries, reading rooms, museums and art galleries	1 per 2 employees plus 1 per 500 sq ft GFA
Manufacturing, production or processing	1 per 2 employees plus 1 per company vehicle
Medical and dental clinics	1 per 200 sq ft GFA
Meeting rooms, private clubs and lodges	1 per 100 sq ft GFA plus 1 per 200 sq ft GFA (2)
Motels and hotels	1 per rental unit plus additional as required for accessory uses
Motor vehicle repair and service stations	1 per each 2 employees plus 2 per each service stall
Offices: all business and professional	1 per 300 sq ft GFA
Philanthropic, charitable and nonprofit institutions (excluding churches)	1 per 2 employees plus 1 per 500 sq ft GFA
Radio and television stations and studios	1 per 2 employees plus 1 per 300 sq ft over 2,000 sq ft GFA
Rail and bus passenger terminals	5 plus 1 per 100 sq ft waiting area
Residential uses	See Article 3, Table 3 for parking standards.

USE	SPACES REQUIRED
Restaurants, Drive-in	1 per 50 sq ft GFA

**ARTICLE 5
MIXED USE VILLAGE CENTER ZONING DISTRICTS**

5.060 SCHEDULE OF PERMITTED USES

Use Categories (See Article 22 for use category descriptions.)	Spec. Cond.	MUC	WF	HD	CB	LE	PB	MS	ES	MUR
Residential Accessory Buildings	18	Y/S	Y/ CUH S	Y/ CUH	Y/ CUH	Y/ CUH	N	S Y/ CUH	Y/ CUH	Y/S

Y = Yes, allowed, no Site Plan Review required
 CU = Conditional Use review required, Type III procedure
 CUH = Conditional Use review required, Type II procedure

N = No, not allowed
 S = Site Plan Review required

5.070 SPECIAL CONDITIONS

(14) Residential Care or Treatment Facility. A residential care facility (six or more residents) requires a Site Plan Review. A “residential home” (as defined in ORS Chapter 443) or group home that includes five or fewer residents is permitted outright in any zone that allows single-family residences.

(18) Residential Accessory Buildings. Accessory buildings are permitted outright in MUC, MUR, WF, HD, CB, ES, MS and LE, and with Site Plan Review in MS and MUC, if they meet the following conditions:

(a) Detached accessory buildings, garages and carports are less than 750 square feet and have walls equal to or less than eleven 11 feet in height tall.

All other residential accessory buildings, garages or carports require a Site Plan Review in MUC, MUR, and WF and ES, and are considered through a Conditional Use Type II review in HD, CB, LE, MS and MUC ES. [This is indicated by the use of a “/” in the matrix. For example, “Y/S” means accessory uses that don’t meet the standards in (a) above require a Site Plan Review.] [Ord. 5556, 2/21/03]

Staff Comments: This section currently contradicts Sections 1.070, 2.510 and 5.060.

5.080 Existing Uses Granted Special Status.

2) Industrial and Commercial Uses. The regulations below apply to those properties indicated on Figure 5-2.

Notwithstanding the restrictions or terms of any other section of the Albany Development Code (ADC), all industrial and commercial uses legally in operation before January 11, 2006, shall be deemed to be conforming with the base zoning district. The use may change to another industrial or commercial use provided the new use does not create greater off-site impacts than the current use. A change of use is subject to the applicable Site Plan Review requirements of this Code.

5.260 Parking Standards.

Site Plan Review is not may be required for new parking areas or expansions to existing parking areas unless specified in Section 2.430 containing less than 1,000 square feet and otherwise meeting the provisions of this Code.

TABLE 4: NON-RESIDENTIAL PARKING SPACE REQUIREMENTS

USE	SPACES REQUIRED
Air, rail and motor freight terminals	Subject to Site Plan Review
Animal hospitals and clinics	1 per 400 sq ft GFA
Banks and financial institutions	1 per 200 sq ft on first floor plus 1 per 600 sq ft above first floor
Beauty and barber shops and other personal services	1 per 200 sq ft plus 1 per 3 employees
Bowling alleys	4 per lane
Building materials sales	1 per 500 sq ft GFA
Central Albany Area retail trade (excluding properties within the Downtown Parking Assessment District)	1 per 3 employees plus 1 per 400 sq ft sales area
Churches and other places of religious assembly	1 per 6 seats or 12 feet of bench length (1)
Commercial recreation and assembly	Subject to Site Plan Review
Education: Elementary, junior high and other children's day school	1 per classroom plus 1 per 2 employees
Education: High schools, colleges and universities	Subject to Site Plan Review
Funeral houses	1 per 4 seats or 8 feet of bench length
Furniture, machine and office equipment sales	1 per 500 sq ft GFA plus 1 per 3 employees
Golf courses (including clubhouses and accessory uses)	Subject to Site Plan Review
Greenhouses and nurseries	2 per employee
Hospitals	1 per 2 beds plus 1 per staff doctor plus 1 per 2 full-time employees
Laundries and cleaners	1 per 300 sq ft GFA
Libraries, reading rooms, museums and art galleries	1 per 2 employees plus 1 per 500 sq ft GFA
Manufacturing, production or processing	1 per 2 employees plus 1 per company vehicle
Medical and dental clinics	1 per 200 sq ft GFA
Meeting rooms, private clubs and lodges	1 per 100 sq ft GFA plus 1 per 200 sq ft GFA (2)
Motels and hotels	1 per rental unit plus additional as required for accessory uses
Motor vehicle repair and service stations	1 per each 2 employees plus 2 per each service stall
Offices: all business and professional	1 per 300 sq ft GFA
Philanthropic, charitable and nonprofit institutions (excluding churches)	1 per 2 employees plus 1 per 500 sq ft GFA
Radio and television stations and studios	1 per 2 employees plus 1 per 300 sq ft over 2,000 sq ft GFA
Rail and bus passenger terminals	5 plus 1 per 100 sq ft waiting area
Restaurants: Drive-in	1 per 50 sq ft GFA
Restaurants: Sit-down and carry-out restaurants, taverns, bars and nightclubs	1 per 100 sq ft GFA
Retail: Shopping centers, food, drugs, hardware, variety and department stores	1 per 200 sq ft sales floor area
Retail: Specialty shops and other retail stores under 6,000 sq ft	1 per 300 sq ft GFA plus 1 per 3 employees
Sales and rental of motor vehicles, trailers, mobile homes, boats, modular houses	2 per employee
Skating rinks	1 per 200 sq ft GFA
Stadiums, grandstands, coliseums, auditoriums and theaters	1 per 4 seating capacity (3)
Swimming pools, for pool only	10 plus 1 per 150 sq ft pool surface area
Testing, repairing, cleaning, servicing of materials, goods or products and warehousing and wholesale	1 per 2 employees plus 1 per 300 sq ft of patron serving area, plus 1 per company vehicle

**ARTICLE 6
SPECIAL PURPOSE DISTRICTS**

Staff Comments: No changes are proposed to the standards of the special purpose districts.

6.093 Floodplain Development Permit Required.

- B. The following activities will be processed through a Type I-L procedure as established in ADC 1.330:
- (1) Any development in the floodway, allowed by Sections 6.100-6.101, ~~that does not require a Site Plan Review Option A,~~ will be reviewed through the Site Plan Review ~~Option B~~ process.
 - (4) Additions or expansions of Continuous Storage Operations pursuant to Section 6.112 will be reviewed through the Site Plan Review ~~Option B~~ process.
 - (5) New Continuous Storage Operations pursuant to Section 6.112 will be reviewed through the Site Plan Review ~~Option A~~ process.

6.190 Procedure. Hillside Development is reviewed as part of the land division, Site Plan Review, or conditional use application processes as a Type III procedure.

**ARTICLE 9
ON-SITE DEVELOPMENT AND ENVIRONMENTAL STANDARDS**

- 9.207 Applicability. ~~Site plan review~~ **Tree felling permit** approval is required for the felling of 5 or more trees larger than 25 inches in circumference (approximately 8 inches in diameter) on a lot or property in contiguous single ownership in excess of 20,000 square feet in any zone.
- 9.208 Tree Felling Criteria. The following review criteria ~~replace the Site Plan Review criteria found elsewhere in this code~~ **will be used** for the purposes of reviewing tree felling. A ~~site plan review for A tree felling permit~~ will be processed as a Type I-L land use decision.
- (1) The Community Development Director or his/her designee shall approve a ~~site plan review tree felling permit~~ **tree felling permit** for tree felling **removal** when the applicant demonstrates that the felling of the tree(s) is warranted because of the condition of the tree(s) with respect to disease, hazardous or unsafe conditions, danger of falling, proximity to existing structures or proposed construction, or interference with utility services or pedestrian or vehicular safety. The Director may require the applicant to provide a Certified Arborist's report.
 - (2) For property where a site plan review, conditional use or land division application has been approved or is currently under review, the Community Development Director, City Forester, or his/her designee shall approve a ~~site plan review for tree felling permit~~ **tree felling permit** when the applicant demonstrates that all of the following review criteria are met: (...*not relevant*)
 - (3) For property where tree felling has not been approved as part of a site plan review, conditional use, or land division application, the Community Development Director or his/her designee shall approve a ~~site plan review application for tree felling permit~~ **tree felling permit**, if the review criteria above are met, and the following criteria are met: (...*not relevant*)
 - (4) The Director may attach conditions to the approval of the ~~site plan review for tree felling permit~~ **tree felling permit** to ensure the replacement of trees and landscape or otherwise reduce the effects of the felling, and may require an improvement assurance to ensure all conditions are met.

**ARTICLE 10
MANUFACTURED HOME DEVELOPMENT STANDARDS**

- 10.300 Plot Plans Required. The application for a new or expansion of an existing manufactured home park shall be accompanied by ten copies of the plot plan of the proposed park. The plot plan should show the general layout of the entire manufactured home park and should be drawn to a scale not smaller than 1" = 40'. In addition to the application requirements for **Site Plan Review**, the plan must include the following information:
- 10.490 Other Temporary Uses. A **Site Plan Review** approval may be issued under the Type I-L procedure so as to provide adequate temporary building space for the following uses only:
- (1) Night watchman.
 - (2) Temporary offices accessible to the general public for use during construction or remodeling.
 - (3) Temporary building space for education, non-profit, and government agencies.
- 10.520 Where Permitted. Recreational vehicle (RV) parks are permitted in the CC, RM and RMA districts with a conditional use approval. RV parks are also permitted in the LI and TD district with **Site Plan Review** approval.
- 10.530 Procedure. An application for conditional use approval of a proposed RV park will be processed through the Type II procedure. Applications for **Site Plan Review** approval will be processed through the Type I-L procedure.

**ARTICLE 11
LAND DIVISIONS AND PLANNED DEVELOPMENTS**

- 11.310 Interim Submittal Review Criteria. A planned development request will be granted interim approval by the review body if the development meets the **Site Plan Review** criteria of Section ~~2.650~~ **2.450** and all of the following applicable criteria: (...not relevant)

**ARTICLE 12
PUBLIC IMPROVEMENTS**

- 12.440 Water Plan Approval. Preliminary water plans and systems must be submitted to the City Engineer as part of the tentative plat or **Site Plan Review** application. These plans must provide enough information to enable the City Engineer to determine that the proposed development is feasible, but are not required to be detailed construction level documents. The City's Engineering Standards, while not land use criteria, may be used, in whole or in part, by the City Engineer to determine the feasibility of a proposed plan. [Ord. 5720, 8/12/2009]
- 12.500 Sewer Plan Approval. Preliminary sewer plans and systems must be submitted to the City Engineer as part of the tentative plat or **Site Plan Review** application. These plans must provide enough information to enable the City Engineer to determine that the proposed development is feasible, but are not required to be detailed construction level documents. The City's Engineering Standards, while not land use criteria, may be used, in whole or in part, by the City Engineer to determine the feasibility of a proposed plan. [Ord. 5720, 8/12/2009]
- 12.530 General Provisions. The review body will approve a development request only when adequate provisions for storm and flood water run-off have been made as determined by the City Engineer. The

storm water drainage system must be separate from and independent of any sanitary sewer system. When possible, inlets should be provided so surface water is not carried across any intersection or allowed to flood any street. Surface water drainage patterns and proposed storm drainage must be shown on every development proposal plan. All proposed storm sewer plans and systems must be approved by the City Engineer as part of the tentative plat or site plan review process.

Preliminary storm sewer plans and systems must be submitted to the City Engineer as part of the tentative plat or Site Plan Review application. These plans must provide enough information to enable the City Engineer to determine that the proposed development is feasible, but are not required to be detailed construction level documents. The City’s Engineering Standards, while not land use criteria, may be used, in whole or in part, by the City Engineer to determine the feasibility of a proposed plan. [Ord. 5720, 8/12/2009]

**ARTICLE 13
SIGNS**

13.810 Nonconforming Signs.

13.811 General Provisions. Nonconforming signs are subject to the following provisions:

- (1) When sign copy is not part of a **Site Plan Review process application**:
 - (a) Only the signs being changed are affected and do not affect the status of other signs that may be nonconforming due to sign area, aggregate area, or number of signs.
 - (b) The aggregate area restrictions shall not be used to decrease the new sign beyond its previous existing size.
 - (2) When a **Site Plan Review application** is required, total business signage compliance beyond sign copy changes shall be commensurate with the amount of change occurring on the site.
 - (3) When sign copy change occurs on a joint use, nonconforming sign structure, then the total signage on the sign structure does not have to comply with sign regulations if:
 - (a) The sign is removed from the sign structure;
 - (b) The sign copy is changed but the individual business meets Code requirements for aggregate sign area and for total number of signs;
- OR
- (c) The sign copy is changed but the business receives site plan review approval. Under Site Plan Review, the business may be required to meet Code compliance for aggregate sign area and number of signs as well as other site improvements commensurate with the amount of change occurring on site.

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 LAND USE NOTIFICATION PROCEDURES, IRRIGATION, TEMPORARY BUSINESS DISPLAYS, DEFINITIONS, AND HOUSKEEPING AMENDMENTS; ADOPTING FINDINGS, AND DECLARING AN EMERGENCY (FILE DC-03-11).

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

WHEREAS, the City has been collecting suggestions for revisions to the Code for several years and has developed an on-going, semi-annual process to evaluate changes to the Code; and

WHEREAS, these amendments are proposed as a part of the on-going process of evaluating and updating the Code to ensure the regulations are clear and there are no inconsistencies; and

WHEREAS, on October 24, 2011, the Planning Commission held a work session on the proposed amendments; and

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

WHEREAS, on December 7, 2011, the Albany City Council held a public hearing on the proposed amendments; reviewed the amendments recommended by the Planning Commission and any testimony presented at the public hearing 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 Exhibit B, attached. It includes revisions in the following articles:

Article 1, Administration and Procedures: Expiration of Land Use Approval, Land Use Notification

Article 3, Residential Zoning Districts: Lot Coverage

Article 4, Commercial and Industrial Zoning Districts: Lot Coverage

Article 5, Mixed Use Village Center Zoning Districts: Lot Coverage

Article 9, On-Site Development and Environmental Standards: Noise Standards, Irrigation and Landscaping Professionals

Article 11, Land Divisions and Planned Developments: Expiration of Approvals

Article 13, Signs: Temporary Promotional Business Displays

Article 22, Use Categories and Definitions: Lot Coverage, Triple Frontage Lot, Double Frontage Lot

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: _____

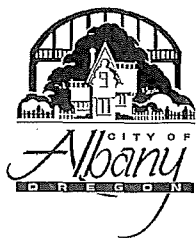
Approved by the Mayor: _____

Effective Date: _____

Mayor

ATTEST:

City Clerk



Community Development Department

333 Broadalbin Street SW, P.O. Box 490
Albany, OR 97321

Phone: 541-917-7550 Facsimile: 541-917-7598
www.cityofalbany.net

STAFF REPORT FINDINGS AND CONCLUSIONS Development Code Amendments – DC-03-11

EXECUTIVE SUMMARY

The Albany Development Code (ADC) allows for the Community Development Director to initiate legislative amendments. The City has implemented a process to periodically evaluate and adopt changes to the Albany Development Code.

The purpose of these amendments is to: 1) clarify the intent of existing standards; 2) amend standards to follow current practices; and 3) streamline the land use notification process. Specifically, the proposed amendments would:

- clarify when a land use decision expires and forms of financial assurances besides bonding;
- amend who receives notification of land use applications;
- amend Type II land use process regarding notice;
- relax and improve standards for temporary promotional business displays;
- fix inconsistencies in definition and use of lot coverage;
- relax irrigation standards of required landscaping;
- add definitions for double frontage lots, and triple frontage lots for setback purposes; and
- fix a few housekeeping amendments.

The ordinance and Exhibit B, the proposed amendments to the Albany Development Code, are attached:

PLANNING COMMISSION RECOMMENDATION

Following their November 7 2011 public hearing on these amendments, the Planning Commission voted unanimously to recommend that the Council approve these amendments.

GENERAL INFORMATION

CITY COUNCIL HEARING	December 7, 2011
DATE OF REPORT:	November 30, 2011
FILE:	DC-03-11
TYPE OF APPLICATION:	Legislative amendments to Albany Development Code (Exhibit B): Article 1, Administration and Procedures: <ul style="list-style-type: none"> • 1.080 - Clarify when a land use approval expires; • 1.330, 1.350, 1.360, 1.370, 1.400 – notification of land use application; and • 1.350 and 1.520 - Type II process amendments

Article 11, Land Divisions and Planned Developments

- 11.060 - Clarify when a land use approval expires

Articles 3 - Residential Zoning Districts, 4 - Commercial and Industrial Zoning Districts, and 5 - Mixed Use Village Center Zoning Districts:

- Lot Coverage notes in Development Standards Tables in 3.190, 4.090, 5.090: Fix inconsistencies between development standards and the definition

Article 9, On-Site Development and Environmental Standards:

- 9.160, Irrigation of Required Landscaping –include landscape professionals; and
- 9.440, Environmental Standards, Noise – note that standards apply to all non-residential uses

Article 13, Temporary Promotional Business Displays :

- 13.680, clarify 60 days within a calendar year permitted under one permit, and A-frame signs in the downtown district

Article 22, Use Categories and Definitions

- 22.400, Add definitions for triple and double-frontage lots; and
- 22.400, Amend lot coverage definition.

REVIEW BODIES: Planning Commission and City Council
 APPLICANT: City of Albany, Planning Division
 APPLICANT REP: Anne Catlin, Planner II
 ADDRESS/LOCATION: Not Applicable

NOTICE INFORMATION

A notice of public hearing was published in the *Albany Democrat Herald* October 28, 2011. The Development Code amendments were posted on the City’s web site. No comments have been received.

The Planning Commission held a public hearing on the proposed amendments on November 7, 2011. No one testified at the hearing.

CITY COUNCIL DECISION OPTIONS

The City Council may do one of the following:

- 1) Approve the proposed legislative amendments as specified in ordinance Exhibit B;
- 2) Approve as modified the proposed legislative amendments; or
- 3) Deny some or all of the proposed legislative amendments.

The City Council may also continue the public hearing to a specified date in order to receive testimony, review modified language, or continue deliberation.

APPEALS

A City Council decision 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.

STAFF ANALYSIS

Development Code Amendment File DC-03-11

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 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 a separate review criterion following the description of the major revisions.

FINDINGS OF FACT

Planning Goal 14, Urbanization, Development Review, Goal: Ensure that all new developments are reviewed expeditiously and thoroughly and result in compliance with Comprehensive Plan goals and policies and ordinance standards.

Planning 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. Ensure the degree of application and review is commensurate with the size and complexity of various development requests.

- 1.1 Most of the proposed amendments clarify the intent of existing standards and inconsistencies within the Code. These clarifying amendments will help make the Code more understandable for the staff and the public.
- (a) Expiration of Land use Approvals, Sections 1.080, 11.060-11.080. The amendments clarify existing language when a land use approval or land division expires. There are no changes to the standards.
 - (b) Notification of Land Use Cases, Sections 1.330, 1.350, 1.370, 1.400. The amendments remove the requirement to mail notice to residents. Notice will be mailed to property owners only. In addition, the Type II process will be amended to mail the notice of decision to persons who participated in the process in writing.
 - (c) Temporary Signs, Section 13.680. A few amendments are proposed to relax the standards to reflect the current practice of where temporary signs are permitted, for how long, and the permit requirements. Staff proposes removing the requirement to set temporary A-frame signs back 10-foot from the right-of-way.
 - (d) Lot Coverage, Articles 3, 4, 5, and definition in Section 22.400. Amendments will fix the inconsistency between the definition of lot coverage and the development standards and lot coverage allowances. When the lot coverage percentages were calculated by zone, the assumption was for building and pavement. Staff recommends amending the Lot Coverage definition to be consistent with the development standards tables to include building and pavement, except for single-family detached development, which would include buildings and structures only.
 - (e) Building Setbacks for Triple Frontage and Double Frontage Lots, add definitions to Section 22.400. Triple frontage lots technically have three front lot lines, and double frontage lots have two front lot lines. Currently buildings must meet the front setbacks for all street frontages. It is challenging to locate accessory buildings or additions on many of Albany's triple frontage lots. Staff is proposing to allow one lot line to be considered an interior lot line for the purposes of determining building setbacks.

- (f) Irrigation of Required Landscaping, Section 9.160. Staff proposes amending the language to no longer require all irrigation systems to be underground, and to add landscape construction professionals to the list of professionals qualified to determine whether or not an irrigation system is needed.
- (g) Miscellaneous Housekeeping Amendments. Several amendments are proposed to clarify the intent of existing Code language.

Planning Goal 6; Air, Water, and Land Resources Quality; Sound Quality, Goal: Reduce the adverse effects of noise on the Albany area.

Planning Goal 6; Air, Water, and Land Resources Quality; Sound Quality, Policy 2: As much as possible, separate noise-sensitive uses and noise-generating uses.

- 1.2 Environmental Standards for Noise, Section 9.440. The purpose of the environmental standards is to protect all uses in all zones from objectionable off-site impacts associated with non-residential uses. The noise standards are adopted from the Oregon Administrative Rules for industry and commerce in 9.440. These standards should apply to all non-residential noise-generating uses.

Planning Goal 14, Urbanization, Development Review, Policy 3: Give special attention to proposals in areas identified as in need of special review (greenway, floodplains, floodways, open space, airport, etc.00, ensuring that developments in these areas are specially designed in recognition of the particular concern for that area.

- 1.3 Temporary Promotional Business Displays Downtown. Amendments will allow A-frame signs in the right-of-way in the downtown area, when they are currently not permitted. This will codify standards drafted by former city manager Bill Barrons and that have been practiced since the 1980s. These amendments recognize that historic downtown Albany is a unique area where many historical buildings are built to the front property line.

CONCLUSIONS

- 1.1 The proposed Development Code amendments are consistent with the Comprehensive Plan goals and policies.
 - 1.2 The proposed amendments will make the Development Code easier to use by clarifying existing language and intent.
 - 1.3 This criterion is satisfied.
- (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

(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.*

- 2.1 The Development Code should facilitate prompt review of development proposals and the application of clear and specific standards. The proposed amendments will make the Code easier to use.

2.2 The proposed amendments better achieve the goals and policies of the Comprehensive Plan as identified in findings under criterion 1.

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

2.3 Most of the proposed amendments will make the existing standards clearer and more specific.

(4) Provide for public information, review, and comment on development proposals that may have a significant impact on the community.

(10) Protect constitutional property rights, provide the process of law, and give consideration in all matters to affected property owner interests in making land use decisions.

2.4 The proposed amendments related to who receives notification of a proposed land use application and who receives the notice of decision for Type II limited-land use decisions will ensure that public review and comment on development proposals is provided to all affected property owner interests.

CONCLUSIONS

2.1 The proposed Development Code amendments are consistent with the purposes of the Code.

2.2 This criterion is satisfied.

ALBANY DEVELOPMENT CODE AMENDMENTS

Planning File DC-03-11

Content in blue text are staff comments describing the proposed amendments.

Only the sections proposed to be amended are included in this Exhibit.

New Code language is shown in **bold** and removed language in ~~strikethrough~~.

**ARTICLE 1
ADMINISTRATION AND PROCEDURES**

ISSUE 1: EXPIRATION OF LAND USE APPROVALS

Staff Comments: This language is relocated from within 1.080, where it is hard to find. There are no changes to the wording.

1.075 **Applicable Standards.** The Development Code standards for development within these time periods are those in effect at the time the original approval was granted.

Staff Comments: Currently standards for expiration of land use approvals are in Article 1, Administration and Procedures. Expiration standards for land divisions are in Article 11, Land Divisions. Staff proposes the expiration information be located in one place, in Article 1. Staff is also recommending that projects be allowed to provide financial assurances rather than bonding as a means to ensure completion of all public improvements related to the development. This suggestion is supported by Lowes.

1.080 **Expiration of Land Use Approvals.**

(1) All land use approvals, except as provided in (2 **and** 3) below ~~and land divisions (see Article 11)~~, shall expire three years from the date of approval, unless:

(a) The applicant has installed **all of the required public infrastructure related to the development and the infrastructure has been accepted by the city, or the applicant has ~~and/or bonded~~ provided financial assurance** for all required public infrastructure per Section 12.600 improvements related to the development or the first phase, if the development was approved for phased construction. **This provision may also be applied to developments approved prior to December 7, 2011;** or

Staff Comments: The proposed language clarifies the intent of (b).

(b) **If the development did not require public infrastructure, a** valid building permit exists for **new construction or improvements, and work has commenced.** ~~the approved development or for at least one building approved as part of the development;~~ or

(c) ~~If the final decision became effective between January 1, 2007, and June 30, 2008, any approval that would expire prior to June 30, 2011, will be extended to June 30, 2011. Either (a) or (b) of this section must be completed by the extended approval time period, or the approval expires.~~ *Staff Comments: This content is no longer needed because the extension of land use approvals has passed.*

Staff Comments: Expiration of land divisions and development found in Article 11 is moving here. Any new language is shown in bold.

(2) All approvals of land divisions and development contained in Article 11 shall expire three years from the date of tentative plat approval, unless:

- (a) The applicant has installed all of the required public infrastructure related to the development and the infrastructure has been accepted by the city, or the applicant has provided financial assurance for all required public infrastructure per Section 12.600. This provision may also be applied to developments approved prior to December 7, 2011.

Staff Comments: Content relocated here from Section 11.070.

- (b) Phased Subdivision Development. When an applicant wants to develop and record final subdivision plats covering portions of an approved tentative plat in phases, the City may authorize a time schedule for platting the phases in excess of three years.

In no case shall the total time period for City approval of all phases be greater than five years. Each **phase** stage that is platted shall conform to the applicable requirements of this title. Portions platted after three years may require modifications to avoid conflict with any changes in the Comprehensive Plan or implementing regulations at the local, state or federal level.

(23) Expiration of Historic Review Approvals.

- (a) Historic Review approvals not associated with a building permit shall expire one year from the date of approval; or
- (b) Historic Review approvals associated with an approved building permit shall expire upon the expiration of the building permit.
- (c) Expiration of a Historic Review approval shall require reapplication and payment of all application fees plus an administrative fee equal to the application fee. Applications that are the same as originally approved will be processed administratively.

ARTICLE 11 LAND DIVISIONS AND PLANNED DEVELOPMENTS

Staff Comments: Expiration information is located in Article 1. This information is being moved to Section 1.080 so that the expiration information is located in one place.

11.060 Expiration Dates. See Section 1.080 for expiration of land division approvals. ~~City approval of a tentative subdivision or partition plat will expire after three years if a final plat is not submitted for approval and the applicant has not installed and/or bonded for all public improvements related to the project.~~

~~———— If the final decision became effective between January 1, 2007, and June 30, 2008, any approval that would expire prior to June 30, 2011, will be extended to June 30, 2011.~~

11.065 Recording Final Plats. Once city approval is granted for a final plat, it must be recorded within 45 days with the Linn or Benton County Records Division unless an extension is approved by the City and the County Surveyor's Office. **If the final plat is not recorded within 45 days it expires.**

~~11.070 Phased Subdivision Development. When an applicant desires to develop and record final subdivision plats covering portions of an approved tentative plat in phases, the City may authorize a time schedule for platting and otherwise developing the various phases in periods of time in excess of three years.~~

~~In no case shall the total time period for all phases be greater than five years without resubmission of the tentative plat. Each stage that is platted and developed shall conform to the applicable requirements of this title. Portions platted after three years may be required to have modifications to avoid conflict with any changes in the Comprehensive Plan or implementing regulations. [Ord. 5728, 1/27/2010]~~

ISSUE 2: LAND USE NOTIFICATION

Staff Comments: A couple of years ago, we thought it would be a good idea to notify not only property owners within a notice area, but also the residents. The impact of this change is that it has added a lot more costs for postage, copying, and staff. A large amount of the "resident" mail is returned by the post office for various reasons, so the change in process has not been particularly effective. Staff proposes going back to just notifying property owners. Land use decisions that require public hearings often require the property to be posted. Neighborhood meetings are also required in advance of submitting applications.

Staff proposes to remove the mailing to residents in four locations: Remove "reside on or" – "The Director shall notify all persons who ~~reside on or~~ own property within..."

**ARTICLE 1
ADMINISTRATION AND PROCEDURES**

1.330 Type I-L Procedure.

(3) **Once the application is deemed complete,** ~~w~~Written notice will be provided to persons who ~~reside on or~~ own property within 300 feet of property on which applications are received for development of subdivisions, manufactured home parks, multi-family development, and Site Plan Option A or B development. For all other limited land use decisions, the City will provide written notice to persons who ~~reside on or~~ own property within 100 feet of the entire contiguous site for which the application is made. The Director shall have discretion to increase the notice area up to 1,000 feet due to land use or transportation patterns or an expected level of public interest. For purposes of review, this requirement shall be deemed met when the City can provide an affidavit or other certification that such notice was given. Notice shall also be provided to any neighborhood or community organization recognized by the City Council and whose boundaries include the site and to other neighborhood associations recognized by the City Council located within 300 feet of the site. [Ord. 5728, 1/27/10]

1.350 Type II Procedure. *See proposed changes under Issue 3.*

1.360 Type III Procedure.

(2) Under the Type III procedure, an application is scheduled for public hearing at the Director's discretion before the Hearings Board, the Planning Commission, or the Landmarks Advisory Commission. The Director shall notify all persons who ~~reside on or~~ own property within 300 feet of the subject property and any neighborhood association

recognized by the City and whose boundaries include the site and other neighborhood association recognized by the City within 300 feet of the site. The Director shall have discretion to increase the notice area up to 1,000 feet due to land use or transportation patterns or an expected level of public interest. The Director may require the applicant to post notices as set forth in Section 1.410.

1.370 Type IV Procedure.

- (2) Under the Type IV Procedure, an application is scheduled for public hearing before either the Hearings Board, **Landmarks Advisory Commission**, or the Planning Commission at the Director's discretion. If the application is quasi-judicial, the Director shall notify all persons who ~~reside on or own~~ property within 300 feet of the subject property and any neighborhood or community organization recognized by the City and whose boundaries include the site and to other organization recognized by the City within 400 feet of the site. The Director shall have discretion to increase the notice area up to 1,000 feet due to land use patterns or an expected level of public interest. The Director may require the applicant to post notices as set forth in Section 1.410.

1.400 Mailed Notice.

Addresses for a mailed notice required by this Code shall be provided by the applicants for land use applications. The mailing list must be certified by the applicants as accurate and complete as found on the most recent property tax assessment roll where the subject property is located. ~~When the property owner's address is different on the tax rolls than the site address within the notice area, the site address shall also be provided and notice mailed to the site resident.~~ A person whose name is not in the tax records at the time an application is filed may receive notice if the person provides the Community Development Department with the necessary address(es). Any deficiency in the form of notice prescribed in this section, or failure of a property owner to receive notice, shall not invalidate an action if a good faith attempt was made to comply with the requirements of this Code for notice.

ISSUE 3: TYPE II PROCESS

Staff Comments: The Type II process provides for a staff decision and the process allows for persons in the notice area to appeal the staff decision to a local review body (rather than to LUBA as in the Type I-L process). If there is no appeal (request for a public hearing), the staff decision stands.

In an effort to get neighborhood input prior to making the staff decision we amended the Type II process to include mailing a notice of filing upon receipt of the application as well as mailing the notice of decision, resulting in two notices. After 18 months of this process, we have found that mailing both the notice and the decision is confusing to the surrounding property owners. It also adds time and cost to the review process. Staff recommends modifying the process to mail notice of filing to all persons in the notice area, and only mail notice of decision to persons that provided written comments on the application. This option is similar to the Type I-L process, but with a local appeal rather than an appeal to LUBA.

1.350 Type II Procedure.

- (1) The purpose of the Type II procedure is ~~to provide~~ for the **Director to review of** certain applications **based on standards specified in this Code that may require limited discretion.** ~~by mailing~~ A notice of **filing** ~~a tentative staff decision is mailed~~ to the applicant and property owners within 200 feet of the property being reviewed to allow **the applicant**

or property owners an opportunity to comment on the proposal prior to the Director's Decision. Persons that provided written comment are mailed the notice of tentative decision and given a chance to appeal the decision at the local level. The Director's decision shall be based on standards specified in this Code that are reasonably objective and may require limited discretion.

- (2) Once the application is deemed complete, a notice of filing shall be mailed to the applicant and persons who ~~reside on and/or~~ own property within 200 feet of proposed development site. Notice shall also be provided to any neighborhood association recognized by the City Council and whose boundaries include the site and to other neighborhood association recognized by the City Council within 300 feet of the site. The Director shall have discretion to increase the notice area up to 1,000 feet due to land use or transportation patterns or an expected level of public interest. The notice and procedures used by the City will:
- (a) Provide a 14-day period for submission of written comments before the decision;
 - (b) State that issues shall be raised with sufficient specificity to enable the decision maker to respond to the issue;
 - (c) State the applicable review criteria for the decision;
 - (d) Set forth the street address or other easily understood geographical reference to the subject property;
 - (e) State the place, date and time that comments are due;
 - (f) State that copies of all evidence relied upon by the applicant are available for review, and that copies can be obtained at cost;
 - (g) Include the name and phone number of a local government contact person;
 - (h) Provide notice of the decision to the applicant and persons entitled to notice. The notice of decision must include an explanation of appeal rights;
 - (i) Briefly summarize the local decision making process for the limited land use decision being made, and
 - (j) Include other information the Director deems appropriate.

[Ord. 5728, 1/27/10]

Staff Comments: The Director could determine that the proposal does not meet the review criteria and deny the request. Therefore, the language needs to be more general to address both approvals and denials. The bold language is relocated from the deleted text above.

- (3) ~~If the Director determines that the development proposal appears to meet the required standards,~~ **The Director shall mail notice of the tentative decision to the applicant and any party who provided written comments on the proposal.** ~~all persons within the notice area as defined in 1.1.350(2).~~

The Director's notice shall list the relevant criteria **used to make the decision** and any conditions of approval **or findings for denial. The notice shall** ~~and~~ invite persons to contact the Planning staff in writing within ten ~~working~~ days of notification to request a public hearing. *Staff Comments: The word "working" is inconsistent with the definition of "days" in Article 22, which is calendar days.*

- ~~(4)~~ A public hearing may be requested **in writing ten days from notification**, if a person believes that the conditions of approval do not adequately address the established approval criteria or alleviate adverse impacts on the neighborhood.

If no one requests a public hearing, the tentative decision becomes final ten days after the notice of decision is mailed to affected parties.

- (5) If the applicant, the Director, or any party entitled to notice ~~may~~ initiates a public hearing on a Type II proposal, the Director shall, within 30 days of receiving a written request for a public hearing, set a date for a public hearing before either the Planning Commission, **Landmarks Advisory Commission**, or the Hearings Board. ~~and mail a~~ **The notice of such shall be mailed at least 20 days in advance of the hearing to those same persons specified in (2) above. The public hearing notice shall contain the information outlined in Section 1.400(4). The subject property shall be posted in accordance with Section 1.410.**

- (6) If a hearing is conducted, the Hearings Board, ~~or the Planning Commission, or the Landmarks Advisory Commission~~ shall review the request and any written comments and testimony; adopt findings based on the established criteria; and make a decision by approving, conditionally approving, or denying the application. Conditions and/or restrictions may be applied to the approval of any land use application granted under a Type II procedure in accordance with the relevant provisions of this Code.

Staff Comments: the Code does not specify that the appeal of a Type II limited land use decision made by the PC, LAC, or HB is to LUBA. The changes below clarify the appeal process.

1.520 Appeal Procedures.

- (1) See ADC 1.330(5) for appeals of Type I-L limited land use decisions.
- (2) See ~~ADC 1.350(5)~~ for ~~a~~Appeals of a Type II land use decision **made by the Director is to the Planning Commission (PC), Hearings Board (HB), or the Landmarks Advisory Commission (LAC). See Section 1.350(2) through (5). A Type II decision made by the PC, HB, or LAC may be appealed to the Land Use Board of Appeals (LUBA) when a person who participated in the land use process in writing or testimony files a Notice of Intent to Appeal with LUBA no later than 21 days after the hearing body's notice of decision is mailed.**

ISSUE 4: TEMPORARY SIGNS

Staff Comments: Staff recommends relaxing some of the standards to allow temporary signs to be displayed for periods less than 7 days. The same sign can be displayed up to 60 days in a calendar year on the same permit. Staff proposes removing the requirement for the A-frame sign to be located 10-foot from the right-of-way in order to be more visible. In the downtown area, the proposed language codifies standards written by former city manager Bill Barrons to allow A-frame signs in the right-of-way downtown since buildings are often built to the property line. The standards also allow the open banners to be displayed in the downtown area.

**ARTICLE 13
SIGNS**

13.680 Temporary Promotional Business Displays. Temporary banner signs, A-frame signs, and inflatable signs may be used, but are limited to one sign on each street frontage for each separate business. The maximum total number of days for promotional display shall not exceed 60 days in any one calendar year. Each ~~display period~~ **temporary sign** requires a separate permit **per calendar year that specifies the display dates for the year.** ~~but the display duration can be from 7 days to 60 days.~~

All temporary signs must: be ~~anchored~~**secured**; may not be located ~~within 10 feet of~~ **in** any public right-of-way **except as provided below**; may not be attached to or placed inside a parked vehicle; may not be placed within any vision clearance area **as defined in Section 12.180**; **may not block public entrances**; and shall be maintained in a safe, neat, clean and attractive condition.

- (1) **Banners.** The area of ~~such~~ **temporary** banners shall not exceed 50 square feet in the CB, NC, HD, MUR, WF, MS, LE, ES, TD and OP zones and 75 square feet in all other non-residential zones, or in the case of inflatable signs, 500 cubic feet. Inflatable signs can be no higher than freestanding signs allowed in the particular zone. Open flag banners in the Downtown Parking Assessment District are permitted
- (2) **A-Frame Signs.** Any temporary A-frame, sandwich board or similar sign may be no larger than 16 square feet for one face or 32 square feet for two or more faces. If the sign is not attached to a building, the maximum height of the sign may not exceed 4 feet.

Staff Comments: Staff proposes that a conditional use permit is not necessary for reviewing a sign. It is costly and time consuming for staff and the applicant.

- (3) Pennants, flags, and streamers may be used as part of an opening or promotional event **up to 60 days**, subject to the above time constraints. Pennants and flags which **that have** are designed with no writing and have permanent mounting devices may be displayed for a longer period of time only upon approval of a conditional-use sign permit. (The American and Oregon flags are exempted from Sign Code regulations.)
- (4) **Temporary Displays within the Downtown Parking Assessment District.** One A-frame sign per business is permitted in the right-of-way with an approved sign permit. It may not exceed 3 feet in width or 4 feet in height. Open banner flags up to 4 feet tall and 2 feet wide are permitted in the right of way with an approved permit if the design is approved by the Albany Downtown Association.

For all temporary displays in the Downtown Parking Assessment District, at least five feet of unobstructed sidewalk shall remain available for pedestrian use. Displays may not be located within 10 feet of a street or alley intersection. There is no limit on the number of display days per calendar year. (A map of the Downtown Parking Assessment District is located at the end of Article 5.)

[Ord. 5446, 5/10/00]

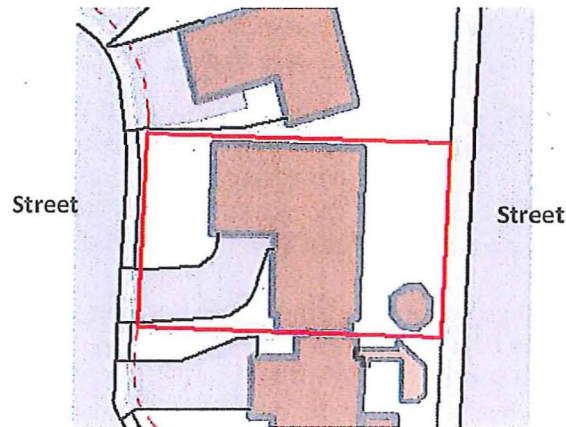
ISSUE 5. TRIPLE FRONTAGE AND DOUBLE FRONTAGE LOTS, SETBACKS

Staff Comments: Triple frontage lots technically have three frontages, and buildings must meet the front setbacks for all three frontages. Double frontage lots, excluding corner lots, have two frontages for determining front setback requirements. It is challenging to locate accessory buildings on many of Albany's triple frontage lots. Staff is proposing to 1) add definitions for triple and double frontage lots, and 2) allow one lot line to be considered an interior lot line for the purposes of determining building setbacks.

ARTICLE 22 USE CATEGORIES AND DEFINITIONS

Lot Line, Corner: A lot abutting two intersecting streets, other than an alley, provided that the streets do not intersect at an angle greater than 135 degrees. *Staff Comments: This definition is not for corner lot lines, just for corner lots.*

Lot, Double Frontage: A lot having frontage on two non-intersecting streets. See Example.



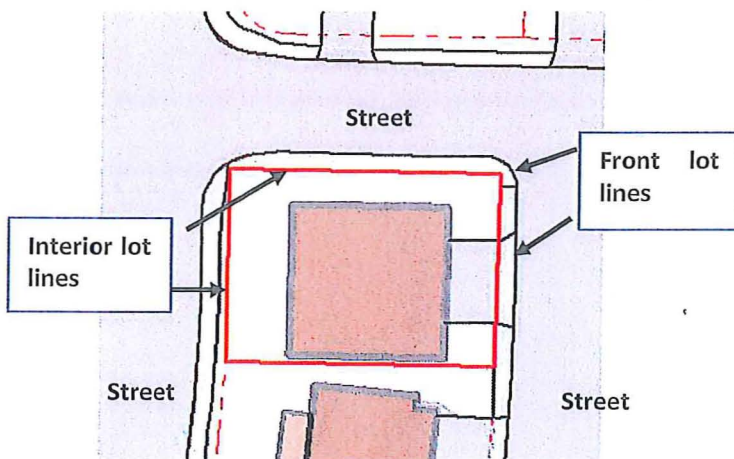
Lot, Frontage: The portion of a lot nearest the street. For the purpose of determining yard requirements, all sides of a lot adjacent to a street shall be considered frontage and yards shall be provided as required. *Staff Comments: This definition is similar to Lot Line, Front. Staff proposes removing this definition.*

Lot, Interior: A lot other than a corner lot or triple frontage lot.

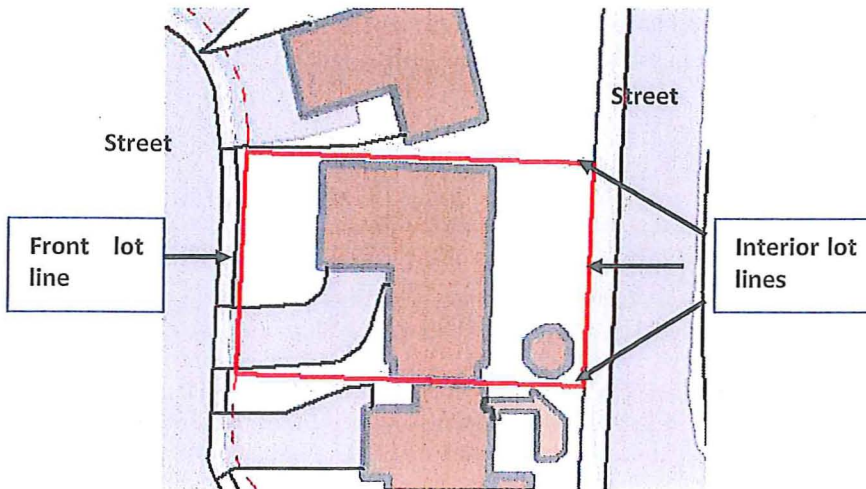
Lot, Triple Frontage: A lot abutting three streets.

Lot Line, Front: A lot line abutting any street line. For the purpose of determining setback yard requirements, all sides of an interior lot or corner lot adjacent to a street shall be considered frontage and yards setbacks shall be provided as required. For triple frontage lots, one frontage may be considered an interior lot line for calculating setbacks, as long as two frontage lines intersect. For double frontage lots, the lot line abutting the street on the back side of the house may be considered an interior lot line for setback purposes. See the following examples.

Example 1: Triple Frontage Lot



Example 2. Double Frontage Lot



Lot Line, Interior: Any lot line other than a front lot line.

ISSUE 6. HOUSEKEEPING – Clarify Lot Coverage

Staff Comments: The definition of lot coverage is inconsistent with the development standards for lot coverage in Sections 3.190(9), 4.090(7), and 5.090 (6). Lot Coverage definition only addresses buildings and not parking or other impervious surfaces. When the lot coverage percentages were calculated by zone, the assumption was for building and pavement. The Code has notes under the development standards tables that state that parking areas in the calculation for commercial, industrial and multi-family uses. Staff recommends:

- *Amend the Lot Coverage definition to be consistent with the development standards tables to include building and pavement, except for single-family detached development, which would include buildings and structures only.*
- *Enhance the Development Standards purpose statements in 3.190, 4.190, and 5.190.*
- *Change development standards table notes to reflect that s-f lot coverage only includes buildings and structures.*

**ARTICLE 22
USE CATEGORIES & DEFINITIONS**

22.400 Lot Coverage. That portion of a lot which, when viewed directly from above, would be covered by a building or structure, **pavement, or any area not vegetated or in a naturally permeable state.** any part thereof, except any area covered by a structure where fifty percent or more of the perimeter of such structure is open from grade. **Lot coverage for single-family detached development shall only include the area of the lot covered by buildings or structures.**

**ARTICLE 3
RESIDENTIAL ZONING DISTRICTS**

3.190 Purpose. Development standards are intended to promote site planning and design ~~which that~~ consider the natural environment, **site intensity, building mass, and open space.** ~~The standards also maintain the required dimensional standards while promoting~~ energy conservation, needed privacy, safe and efficient parking areas for new development, and improve the general living environment and economic life of a development. Table 1, on the following page, summarizes the basic development standards. It should be used in conjunction

with the sections immediately succeeding the table, which address special circumstances and exceptions. See Article 8 for design standards for single-family and multiple-family developments. [Ord. 5445, 4/12/00]

TABLE 1

STANDARD	RR	RS-10	RS-6.5	HM	RS-5	RM	RMA
Maximum Lot Coverage (9)	20%(11)	50%	60%	60%	60%	70% (9)	70% (9)

- (9) For multiple-family developments, lot coverage includes buildings, parking, private streets and driveways. Lot coverage for single-family detached development shall only include the area of the lot covered by buildings or structures.
- (11) Maximum lot coverage for parcels 20,000 square feet or less is 50%. The configuration of any development on a lot 20,000 square feet in size, or less, in an RR zoning district that covers more than 20 percent of the parcel on which it is proposed, should be located such that it does not preclude a later division of the parcel.

ARTICLE 4
COMMERCIAL AND INDUSTRIAL ZONING DISTRICTS

4.090 Purpose. Development standards are intended to promote site planning and design which that consider the natural environment, **site intensity, building mass, and open space.** The standards also maintain the required dimensional standards while promoting energy conservation, needed privacy, safe and efficient parking areas for new development, and improve the general living environment and economic life of a development. Table 1, on the following page, summarizes the basic development standards. It should be used in conjunction with the sections immediately succeeding the table, which address special circumstances and exceptions. See Article 8 for design standards for single-family and multiple-family developments.

TABLE 1

STANDARD	OP	NC	CC	RC	TD	IP	LI	HI
Lot Coverage (7)	70%	80%	90%	90%	None	80%	None	None

(7) Includes building, parking, access, and sidewalk area coverage. Lot coverage for single-family detached development shall only include the area of the lot covered by buildings or structures.

ARTICLE 5
MIXED USE VILLAGE CENTER ZONING DISTRICTS

5.090 Purpose. Development standards are intended to promote site planning and design which that consider the natural environment, **site intensity, building mass, and open space.** The standards also maintain the required dimensional standards while promoting energy conservation, needed privacy, safe and efficient parking areas for new development, and improve the general living environment and economic life of a development. Table 1, on the following page, summarizes the basic development standards. It should be used in conjunction with the sections immediately succeeding the table, which address special circumstances and exceptions. See Article 8 for design standards for single-family and multiple-family developments.

TABLE 1

STANDARD	MUC	WF	HD	CB	LE	PB	MS	ES	MUR
Lot Coverage, maximum (6)	80%	80%	100%	(67)	100%	80%	90%	80%	70%

- (6) ~~Lot coverage includes building and parking area coverage. Lot coverage for single-family detached development shall only include the area of the lot covered by buildings or structures.~~
- (7) See minimum floor area ratio requirements in ADC 5.120.

ISSUE 7. HOUSEKEEPING – Clarify one-year time period for Loss of Nonconforming Status

Staff Comments: Clarify that for non-conforming uses, the continuous one year vacancy “clock” would stop for a prospective new owner when their land use application is deemed complete.

**ARTICLE 2
REVIEW CRITERIA**

2.340 Loss of Non-Conforming Status

- (1) A nonconforming use of a building, structure, or land shall be deemed to have terminated if the building, structure, or land is not occupied by a permitted or legally nonconforming use for one continuous year. **The “vacancy clock” stops when a land use application on the property is deemed complete.**

ISSUE 8. HOUSEKEEPING – Striping On-Street Parking Spaces

Staff Comments: Requiring on-street parking spaces to be striped creates a few issues, primarily the efficient use of street parking. When on-street parking is allowed, it will not automatically be required to be striped.

**ARTICLE 3
RESIDENTIAL ZONING DISTRICTS**

3.080 Special Conditions.

- (7) Bed and Breakfast facilities shall:

- (d) Provide at least one off-street parking space for each rental room, except in the HM zone, where on-street parking along the frontage of the property line(s) may count toward the parking requirements. To count towards this standard, each on-street space must be at least 25 feet long and be striped.

**ARTICLE 5
MIXED USE VILLAGE CENTER ZONING DISTRICTS**

- 5.260 Parking Standards... On street parking spaces abutting the property in the MUR, Mixed Use Residential District; CB, Central Business District; and LE, Lyon Ellsworth District, may be counted towards meeting parking requirements. Parallel parking spaces must be at least 25 feet long and shall be striped.

ISSUE 9. HOUSEKEEPING – Distinguishing Required Setbacks from Yards

Staff Comments: The words yard and setback have different definitions in Article 22. When used together they are confusing. The word yard is being removed to be consistent with the definitions and other use of the terms.

**ARTICLE 3
RESIDENTIAL ZONING DISTRICTS**

3.250 Parking and Other Restrictions in Setback or Yard Areas

- (5) (1) Vehicles in daily use may not park in the front yard, except on the paved driveway leading to a garage, ~~or~~ carport, or a driveway that provides required parking spaces. Trailers, boats, campers, and other vehicles not in daily use may not park in the required front **yard** setback for more than 48 consecutive hours. Recreational vehicle, trailer and miscellaneous storage pads or buildings are not allowed in the required front setbacks. (See Section 22.400 for definition of yard.)

ISSUE 10. HOUSEKEEPING – Clarify when Maximum Setback Standards Apply

Staff Comments: There are no maximum setbacks on the CC zone, which is located in the North Albany Village Center. Clarify the standards apply only when maximum setback.

8.420 Maximum Setback

- (6) (1) **In zoning districts with maximum setbacks, b**Buildings within 50 feet of a public street shall have 40% of the building located within the maximum setback except that:
 - (7) (a) If a previously recorded easement precludes meeting the maximum setback, the applicant shall demonstrate that an alternative layout best addresses the intent of this standard and the character of the village center
 - (8) (b) A building with drive-through service may have one drive-through lane between the building and the street provided that the building is set back no more than 25 feet and the drive-through lane is screened according to the standards for perimeter parking area landscaping in ADC 8.470.

ISSUE 11. HOUSEKEEPING – Article 9: Irrigation, Landscape Professionals, Noise Standards

Staff Comments: Not all irrigation systems need to be underground. Landscape construction professionals are proposed to be added to the list of professionals qualified to determine whether or not an irrigation system is needed because they have to take a test to get their license and are regulated by the state.

ARTICLE 9

ON-SITE DEVELOPMENT AND ENVIRONMENTAL STANDARDS

- 9.160 Irrigation of Required Landscaping. All required landscaped areas must be provided with a ~~pipd underground water supply~~ **an irrigation system** unless a licensed landscape architect, **landscape construction professional** or certified nurseryman submits written verification that the proposed plants do not require irrigation.

Staff Comments: The purpose of the environmental standards is to protect all uses in all zones from objectionable off-site impacts associated with non-residential uses. The noise standards are adopted from the Oregon Administrative Rules for industry and commerce in 9.440. The City has supplemental standards. The DEQ standards do not address other non-residential standards that may create noise impacts. The following amendments are proposed.

- 9.440 Noise. The City noise standards are stated in Albany Municipal Code Title 7, Public Peace, Morals and Safety. Oregon Administrative Rules (OAR) 340-035-0035, Noise Control Regulations for Industry and Commerce, is adopted here in its entirety, and as may be subsequently amended by the State of Oregon. Tables 7, 8, and 9 referenced in OAR are included here for reference only. In addition, the Department of Environmental Quality (DEQ) has regulations that apply to firms adjacent to or near noise-sensitive uses such as dwellings, religious institutions, schools, and hospitals. [Ord.5720, 08/12/2009]

- (1) Additional City Standards. The following restrictions are in addition to the State DEQ standards for purposes of City noise regulation:
- (a) For purposes of measuring permitted sound levels from noise-generating sources under the provisions of DEQ rules, any point where a noise-sensitive building could be constructed under the provisions of this Code shall apply as if such point contained a noise sensitive building.
 - (b) Within the Industrial Park (IP) and Waterfront (WF) zoning districts, each property or building under separate ownership shall be considered a noise-sensitive property under the provision of DEQ rules, with the exception that the allowable noise levels shall be increased by 5 db.
 - (c) **The allowable noise levels cited in Tables 7, 8 and 9 shall apply to all non-residential uses.**

ISSUE 12. HOUSEKEEPING – Inconsistency in Maximum Density for RM Zone

Staff Comments: The maximum density in the RM zone increased to 25 in 2007 in Article 3, but this table was not updated.

**ARTICLE 11
LAND DIVISIONS**

11.490 Cluster Development Standards. In a cluster development, the following development standards supersede the same standards in Section 3.190, Table 1. The number of allowable lots is based on the density range for the zone as specified in the following table.

Standard	RS-10	RS-6.5	RS-5	RM
Max. dwelling units per gross acre	4	6	8	2520

ISSUE 13. HOUSEKEEPING = Article 13. Political Signs, Signs in the Right-of-Way.

**ARTICLE 13
SIGNS**

13.320 Conditional Sign Exemptions. No permit is necessary before placing, altering, constructing or erecting the following signs as long as the applicable standards have been met:

Staff Comments: Political signs are permitted within a specific time period around the election. Clarify that the date the day ballots are mailed will be considered the first election day.

- (9) Political Signs... Signs shall not be erected prior to 45 days from the **date the ballots are mailed to the general public** applicable election, and shall be removed within 7 days after the election.

Staff Comments: Signs in the r-o-w appear as both exempt from regulations in 13.320(16) and prohibited in Section 13.330(18). Section 13.330/(18) references 13.310 that outlines signs allowed in the right of way and also signs permitted with a temporary right-of-way use permit in Albany Municipal Code 13.33. Section 13.320(16) is not needed.

- ~~(16) Signs placed within the public right-of-way are subject only to the limitations and provisions of AMC Chapter 13.33 and the issuance of a temporary Right-of-way Use Permit.~~

13.330 Prohibited Signs. The following signs are prohibited and may not be placed within the City of Albany:

(18) Signs in the public right-of-way except as listed in Section 13.310 and or Albany Municipal Code Chapter 13.33 (Temporary Right-of-Way Use Permits)

ISSUE 14. HOUSEKEEPING - Definition of Days

Staff Comments: Days needs to be amended to codify the practice of extending the final day of a time period to the next business day if it falls on a weekend or holiday.

ARTICLE 22

USE CATEGORIES AND DEFINITIONS

22.400 Day(s): Shall mean calendar days, unless working days are specified, which shall mean Monday through Friday. **If the last day of a time period addressed in the Albany Development Code, such as a 10-day appeal period, falls on a weekend or holiday, the final day of the time period is the first business day thereafter.**

ORDINANCE NO. _____

AN ORDINANCE AMENDING ALBANY MUNICIPAL CODE (AMC) 6.18, "DANGEROUS DOGS," AND DECLARING AN EMERGENCY.

WHEREAS, current ordinances concerning the classification and disposition of dangerous dogs unreasonably limit the discretion of the appointed Hearings Office to fashion remedies appropriate to the circumstances; and

WHEREAS, the Albany City Council has created a citizen and council work group to review the City's ordinances concerning dangerous dogs; and

WHEREAS, the foregoing work group has carefully and comprehensively reviewed the existing and proposed dangerous-dog ordinances and has sought and considered public input concerning these ordinances; and

WHEREAS, the changes proposed herein have received the unanimous support of the work group.

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

Section 1: AMC Chapter 6.18 is amended to read as follows:

Sections:

- 6.18.010 Definitions.
- 6.18.020 Classification of levels of dangerousness.
- 6.18.030 Identification of dangerous and potentially dangerous dogs – Appeals – Restrictions pending appeal.
- 6.18.040 Regulation of potentially dangerous dogs.
- 6.18.050 ~~Euthanasia for dangerous dogs~~ **Consequence of a determination that a dog is dangerous.**
- 6.18.055 Notice of location of "potentially dangerous" or "dangerous" dog in city.**
- 6.18.060 Penalty.
- 6.18.070 **Quarantine or Impoundment pending adjudication of infraction.**

6.18.010 Definitions.

As used in this chapter, unless the context requires otherwise:

- (1) "Dog at large" means any dog:
 - (a) On private property without the permission of the owner or person entitled to possession and not restrained by a physical control device and under the control of a person capable of physically restraining the dog; or
 - (b) On public property and not restrained by a physical control device and under the control of a person capable of physically restraining the dog.
- (2) "Council" means the City Council of the City of Albany.
- (3) "Dangerous dog" means any dog that has been found to have engaged in any of the behaviors specified in AMC 6.18.020(2).
- (4) "Director" means the person appointed by the Council to act under this chapter. **The person appointed will be someone deemed by the Council to be generally experienced in reviewing investigatory reports and generally accepted judicial processes.**
- (5) "Euthanized" means put to death in a humane manner by a licensed veterinarian or animal control officer.
- (6) "Hearings Officer" means the City Council or a person appointed by the City Council to review the correctness of the Director's determination that a dog has engaged in any of the behaviors specified in AMC 6.18.020. Any person appointed as the Hearings Officer will be an individual deemed by the Council to be generally experienced in judicial processes.
- (7) **"Impoundment" means City custody of a dog at a county animal control shelter or other secure facility designated by the Director or designee for such purpose.**

(8) "Owner" means the person having a possessory property right in a dog or who harbors, cares for, exercises control over or knowingly permits a dog to remain on premises occupied by that person.

(9) "Person" means any natural person, association, partnership, firm or corporation.

(10) "Potentially dangerous dog" means any dog that has been found to have engaged in any behaviors specified in AMC 6.18.020(1).

(11) "Physical control device" means a sufficiently strong collar connected to a leash or tether made of chain links, or other material as strong, so as to prevent the escape of a dog.

(12) "Quarantine" means an order directing isolation of the dog or other instructions designed to protect the public pending a determination of a dog's classification. Quarantine may also include impoundment at the county animal control facility or any other secure facility designated by the Director or Hearings Officer for such purpose.

(13) "Serious injury" means any physical injury that results in a broken bone ~~or the need for stitches, or any other medical condition, including emotional or psychological injury determined by the Director, in consultation with a health care worker, the County Health Officer, the County Health Officer's designee, or any medical doctor to be of equal or greater severity.~~ (Ord. 4847 § 1, 1989) **impairment of any organ, limb, or digit reasonably anticipated to have a duration of more than ten (10) days or a wound of more than half an inch, measured in all directions, requiring or justifying medical closure through stitches, staples, or any other similar medical procedure, or any other medical condition determined by the Director, in consultation with any medical doctor, to be of equal or greater severity. The Director may also refrain from classifying an injury as serious which would otherwise meet the definition above based upon information from a medical doctor justifying such decision.**

(14) "Victim" means the owner of the domestic animal(s) injured by the dog in question or the human being bitten or seriously injured, whichever forms the basis for the classification. In the case of a minor child, the victim is the parent or legal guardian of the minor child.

6.18.020 Classification of levels of dangerousness.

(1) A dog shall be classified as potentially dangerous based upon specific behaviors exhibited by the dog as follows:

(a) While at large, on more than two occasions within a single 24-month period, it bites any domestic animal, or

(b) While at large, it bites a human being or seriously injures any domestic animal.

(2) A dog shall be classified as dangerous if it causes the serious injury or death of any person or kills any domestic animal. A dog classified as a potentially dangerous dog shall thereafter be reclassified as a dangerous dog if, after the owner has received notice of the potentially dangerous classification, the dog again engages in conduct which would classify it as a potentially dangerous dog.

(3) The Director shall have the authority to refrain from classifying a dog as dangerous or potentially dangerous, even if the dog has engaged in the behaviors specified in subsections (1) or (2) above, if the Director determines that the behavior was caused by abuse, ~~or~~ torment, ~~of the dog~~ or other provocation ~~of the dog or if the injury was the result of intervention by the injured party in a fight between the dog and another animal.~~

(4) No dog shall be found to be dangerous or potentially dangerous if it is a dog trained for law enforcement purposes and is on duty under the control of a law enforcement officer at the time it exhibits behavior under subsection (1) or (2) above. (Ord. 4847 § 1, 1989).

(5) The Director shall be expected, absent unusual circumstances, to make the classification within thirty (30) days of the quarantine or impoundment of the dog in question.

(6) Any City officer or employee authorized by the Director may quarantine or impound any dog that is proposed for classification as dangerous or potentially dangerous.

6.18.030 Identification of dangerous and potentially dangerous dogs – Appeals – Restrictions pending appeal.

(1) The Director shall have authority to determine whether any dog has engaged in the behaviors specified in AMC 6.18.020. The determination shall be based upon an investigation that includes ~~observation~~ **documentation** of the dog's behavior by animal control officers or by other witnesses who personally

observed the behavior **or are otherwise qualified to provide relevant and probative evidence.** ~~If the determination is based upon observations of witnesses other than animal control officers, the witnesses must first sign affidavits attesting to their observations or evidence behavior and must agree to provide testimony regarding the dog's behavior if called upon to do so.~~

(2) The Director shall give the dog's owner written notice by certified mail or personal service of the dog's specific behavior, of the dog's classification as a dangerous or potentially dangerous dog, and of the additional restrictions applicable to that dog by reason of its classification. **The Director is encouraged to share this information with victims as well.** Other forms of notification which result in actual notice of the information required above, shall be sufficient. If the owner denies that the behavior in question occurred, the owner may appeal the Director's decision to the Hearings Officer by filing, with the Director, a written request for hearing. The request for hearing must be received, by the Director, within ~~10~~ **fifteen (15)** days of the following, whichever occurs first:

- (a) The date of mailing of notice to the owner, by certified mail;
- (b) The date the notice is personally served upon the owner; or
- (c) The date when the owner acquired actual knowledge of the information required to be contained in the notice.

(3) The Hearings Officer shall hold a public hearing on any appeal from the Director's decision to classify a dog as a dangerous or potentially dangerous dog. The owner and any other person having relevant evidence concerning the dog's behavior as specified in AMC 6.18.020 shall be allowed to present testimony. **Information concerning medical condition rendered by a medical doctor may be presented as testimony at the hearing or in writing. Any written medical information offered at the hearing shall be made available to the Director, owner, and victim at least five (5) days prior to the hearing. The hearing shall be audio-recorded by the Hearings Officer. Any party to the hearing may also audio-record the hearing, but the audio recording prepared by the Hearings Officer shall be the official recording which shall be part of the record of the proceeding. The hearing procedure shall not be deemed flawed nor the outcome invalidated due to technical failures or other good-faith errors which impair the audibility or completeness of recording.** The Hearings Officer shall determine whether the behavior specified in AMC 6.18.020 was exhibited by the dog in question. The Hearings Officer shall issue an order containing his/her determination, which shall be final. **The Hearings Officer may recess the hearing to a later date and request that either party provide additional evidence if the Hearings Officer determines that such evidence would be helpful to the decision. Failure by a party to provide the requested evidence may be considered by the Hearings Officer in making a decision, but the Hearings Officer shall have no obligation to request supplemental evidence or continue the hearing simply because a party to the proceeding does not present compelling evidence.**

(4) Once the owner has received notice of the dog's classification pursuant to subsection (2) above, the owner shall comply with the restrictions specified in the notice until such time as the Director's decision is reversed on appeal. Additionally, the Director shall have authority to impound the dog pending completion of all appeals if the Director has reasonable grounds to believe that the owner of the dog has failed to comply with any of the restrictions specified in the notice of classification. If the Director's decision concerning the classification of the dog is upheld on appeal, the dog's owner shall pay to the City all costs incurred in the dog's impoundment.

(5) If the Director finds that a dog is a dangerous dog, the dog shall be impounded pending the completion of all appeals. If the Director's decision is upheld on appeal, the dog's owner shall pay to the City all costs incurred in the dog's impoundment. (Ord. 4847 § 1, 1989).

(6) The Hearings Officer shall be expected, absent unusual circumstances, to make the classification within ninety (90) days of the quarantine or impoundment of the dog in question.

6.18.040 Regulation of potentially dangerous dogs.

In addition to complying with all other requirements of this chapter, the owner of a potentially dangerous dog shall:

(1) Physically restrain the dog to prevent it from having **off-leash** access to any public sidewalk, roadway, adjoining property, or any other portion of the property from which the public is not excluded. **A potentially dangerous dog shall not be allowed off the premises of the owner or keeper except while on a leash not**

to exceed ten (10) feet in length and, if the Director finds warranted, wearing a muzzle of sufficient strength and construction to prevent the dog from biting a human or animal.

(2) Fasten to a collar and keep on the dog at all times such tag as may be issued by the City of Albany, identifying the dog as a potentially dangerous dog.

(3) Pay an annual fee of [] at the time the tag described in subsection (2) above is issued and a like fee each year thereafter so long as the dog remains within the corporate limits of the City of Albany. This fee shall be in addition to any other license fee.

(4) Notify the Director by certified mail where the dog is kept within 10 days of any change.

(5) Post a warning sign, supplied by the Director, at the location the dog is kept, in a conspicuous place visible from the public sidewalk or road adjoining the property or, if no such public sidewalk or road adjoins the property, then at the boundary line of the property where access is provided to the property.

(6) Have a microchip implanted in the dog which includes its classification status and the applicable Albany Police Department case number and provide the microchip identification information number to the Director.

(7) Keep the dog licensed by the applicable licensing authority.

(NOTE: Rabies vaccination will be required in order to maintain license status.)

(8) The requirements of this section shall apply to any person to whom ownership of a potentially dangerous dog is transferred. (Ord. 5026 § 1, 1993; Ord. 4847 § 1, 1989).

(9) The owner of any dog classed as potentially dangerous may apply to the Director, after the expiration of at least two (2) years from the date of original classification or one (1) year following completion of training ~~conducted by a dog trainer certified by the Association of Pet Dog Trainers licensed veterinarian board certified in the specialty of veterinary behavior~~, designed and conducted to address the behavior upon which the original classification was based to have the classification as "potentially dangerous" removed as follows:

(a) If an application follows training ~~by a board-certified veterinary behavioral specialist~~, the application must be accompanied by a written statement from the trainer describing the trainer's qualifications, the course of training, and results thereof.

(b) If the application is based on any circumstance other than the training described in (a) above, the application must be accompanied by a written statement describing the grounds for the requested relief.

(c) The application must be accompanied by an application fee in an amount to be set by the City Council by separate resolution.

(d) The classification of "potentially dangerous" shall only be removed if the Director or Hearings Officer has received clear and convincing evidence that the dog is unlikely to ever again engage in behavior justifying a dangerous or potentially dangerous classification.

(e) The Director shall notify the owner of his/her decision in writing; and if the Director declines to remove the potentially dangerous classification, the owner may appeal the Director's decision to the Hearings Officer by filing, with the Director, a written request for a hearing. The request for a hearing must be received by the Director within fifteen (15) days following whichever first occurs:

(i) The date of mailing of the notice to the owner, by certified mail;

(ii) The date the notice is personally served upon the owner; or

(iii) The date when the owner acquired actual knowledge of the information required to be contained in the notice.

(f) The Hearings Officer shall hold a public hearing on an appeal from the Director's decision not to lift the classification that a dog is potentially dangerous. The owner and any other person having relevant evidence concerning the dog's rehabilitation or other circumstances which make it unlikely that the dog will ever re-offend may present testimony. The hearing shall be audio recorded by the Hearings Officer. Any party to the hearing may also audio record the hearing, but the audio recording prepared by the Hearings Officer shall be the official recording which shall be part of the record of the proceeding. The hearing procedure shall not be deemed flawed nor the outcome invalidated due to technical failures or other good faith errors which impair the audibility or completeness of the recording. The Hearings Officer shall issue an order containing his/her determination which shall be final.

6.18.050 ~~Euthanasia for dangerous dogs~~ Consequence of a determination that a dog is dangerous.

(1) Unless an alternative disposition is adopted pursuant to the provisions of Section 2 below, any dog that has been found to be a dangerous dog shall be euthanized. If a dog is euthanized by a licensed veterinarian, the veterinarian shall certify to the City of Albany that the dog has been euthanized. (Ord. 4847 § 1, 1989).

(2) Following the hearing called for in AMC 6.18.030(3) to review the Director's decision to classify a dog as dangerous, the owner or person in control of the dog may propose an alternative to euthanasia ("alternative" or "alternative order") in the event that the Hearings Officer affirms the Director's classification of the dog as dangerous. Before determining the acceptability of any alternative, the terms of the alternative must be provided to the Director in writing and the Director will thereafter provide written notice of the terms of the proposed alternative to the victim. If the alternative is relocation, the Director shall also provide written notice to the law enforcement agency with jurisdiction in the location where relocation is proposed. The Hearings Officer shall not consider any proposed alternative until and unless such notice has been provided to all listed parties and they have been given a ten- (10) day opportunity to submit written comments to the Hearings Officer concerning the terms of the proposed alternative. In considering a proposed alternative, the Hearings Officer shall take into consideration the extent to which abuse, torment, or provocation, while not excusing the dog's behavior, may have been a factor in the behavior and the extent to which the proposed alternative mitigates against a reoccurrence of these factors. The alternative may only be accepted by the Hearings Officer as an alternative to euthanasia in the event that the Hearings Officer determines, based upon substantial evidence in the record, that all of the following conditions have been met:

(a) All costs associated with the quarantine and impoundment of the dog pending adjudication as provided at 6.18.070 have been paid; and;

(b) The alternative will have no additional costs to the City; and;

(c) A relocation alternative shall include specific conditions concerning the future care, control, and supervision of the dog which satisfies the Hearings Officer that the dog is unlikely to repeat the behavior upon which a classification is based, including disclosure to subsequent owners of the dog's classification and the behavior which resulted in the classification. Removal from the city limits, without more, shall not satisfy these criteria. Examples of appropriate conditions, depending upon the behavior which resulted in the classification, may include prohibitions against ownership transfers to households containing minor children or other vulnerable parties, prohibitions on relocation to urban areas, or any other condition deemed by the Hearings Officer to be reasonably necessary to reduce the likelihood of re-offense.

(3) In the course of presenting an alternative as called for in Section 2 above, the burden of proof shall rest with the owner or person in control of the dog. In deciding upon an appropriate alternative, the Hearings Officer may, but is not required to, solicit the opinion of third parties who, in the exclusive discretion of the Hearings Officer, have special knowledge or expertise that may be helpful in fashioning an appropriate alternative.

(4) If an alternative is adopted for a dangerous dog, all of the terms thereof shall be incorporated into a written order.

(5) A dog which, subsequent to adoption of an alternative order, again engages in behavior from which it could be classified as dangerous or potentially dangerous shall be euthanized.

6.18.055 Notice of location of potentially dangerous or dangerous dog in city.

(1) No person shall keep within the city any dog which has previously been classified as potentially dangerous or dangerous by any jurisdiction other than the City of Albany without providing notice to the City as required herein. This requirement shall also apply to any dog that has received any classification or designation by any jurisdiction other than the City of Albany as a result of the dog having caused injury to any person or animal. If such classification resulted from serious injury to a human being or the death of an animal, the dog may not be relocated to the City of Albany. Thereafter, all provisions of this ordinance shall apply to any dog lawfully relocated to the City of Albany as if the classification had been made by the City. The notice required herein shall be given in writing to the

Albany Police Department within five (5) days of the animal first being kept within the City and shall contain the following information:

- (a) The name, address, and date of birth of the animal's owner or keeper; and
- (b) The address at which the animal will be kept; and
- (c) The jurisdiction which classified the dog; and
- (d) The behavior from which the classification resulted.

(2) This section shall not apply to dogs brought into the City by any unit of government for purposes of impoundment or quarantine or by any person for veterinary care.

6.18.060 Penalty.

The violation of any provision of this chapter shall be punishable subject to the penalties set forth in AMC 1.04.010. In addition to these penalties, the Municipal Court Judge may order the dog in question euthanized if the Judge finds that the owner of the dog has failed to comply with any of the requirements of this chapter after having received notification that the dog in question has been classified as a dangerous or potentially dangerous dog. (Ord. 4927 § 1, 1990; Ord. 4847 § 1, 1989).

6.18.070 Quarantine or impoundment pending adjudication of infraction.

(1) If the owner of any dog is cited for ~~an infraction based upon the~~ a violation of any provision of this chapter, the Director may **quarantine or** impound the dog pending adjudication of the ~~infraction violation~~ **violation** if, in the exercise of reasonable discretion he/she believes that the dog constitutes a threat to public safety and/or private property. If the dog's owner is ~~convicted of the infraction~~ **adjudged to have committed the violation** which caused the impoundment, the dog's owner shall pay to the City all costs incurred in the dog's **quarantine or** impoundment. ~~and unless such costs are paid within 10 days of the sentencing order, date when the owner is convicted of the infraction, the dog shall be euthanized. Euthanasia shall not relieve the owner of his/her responsibility to pay all quarantine or impoundment costs previously incurred.~~ (Ord. 4847 § 1, 1989)

(2) **Any dog considered for classification as potentially dangerous or dangerous may be quarantined or impounded if the Director or designee, in the exercise of reasonable discretion, believes that the dog constitutes a threat to public safety and/or private property. If the dog is ultimately classified as potentially dangerous or dangerous, the dog owner shall pay to the City all costs incurred in the dog's quarantine or impoundment.**

Section 2: 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 effect immediately upon its passage by the Council and approved by the Mayor.

Passed by the Council: _____

Approved by the Mayor: _____

Effective Date: _____

Mayor

ATTEST:

City Clerk



TO: Albany City Council

VIA: Wes Hare, City Manager
Mark W. Shepard, P.E., Public Works Director *MWS*

FROM: Mark A. Yeager, P.E., Utility Services Manager *(2)*

DATE: November 22, 2011, for the December 7, 2011, City Council Meeting

SUBJECT: Ordinance Modifying Water Curtailment Plan Elements

Action Requested:

Staff recommends Council adoption of amendments to Albany Municipal Code Title 11, Water, relating to water curtailment plan elements.

Discussion:

In 2006, the City of Albany submitted a Water Management Plan (WMP) as required by the Oregon Water Resources Department. The requirement to complete a WMP is tied to the approval of an extension of time for perfecting the City's 29-cubic-foot-per-second (cfs) municipal water use permit. Plan requirements detailed in OAR 690-086 include:

- Description of the municipal water supplier
- Water conservation element
- Water supply element
- Water curtailment element

In February 2007, the Water Resources Department issued a final order approving Albany's Water Management Plan. Approval of the WMP by the Water Resources Department authorizes the City of Albany to divert up to 29 cfs under this municipal water use permit. Implementation of the WMP includes continuing or enhancing existing conservation measures, auditing water use, communicating with customers about water use, and detecting and repairing system leaks.

A water curtailment plan establishes a guide for responding to situations that threaten the ability of the City to deliver water to its customers. Albany adopted water curtailment measures in Albany Municipal Code Title 11 in 2001, but the Code needs to be amended to reflect the Curtailment Plan elements previously approved by the Water Resources Department as part of Albany's Water Management Plan. An ordinance to amend AMC Title 11 to revise the water curtailment plan elements is attached. New AMC language is shown in bold and deleted language is shown in strikeout.

Budget Impact:

The proposed changes to the Albany Municipal Code will have no foreseeable budget impact.

MAY:prj
Attachment

AN ORDINANCE AMENDING ALBANY MUNICIPAL CODE 11.01.010, 11.01.235, AND 11.01.285 AND ADDING A NEW SECTION 11.01.287 TO REVISE AND EXPAND LANGUAGE RELATING TO WATER CURTAILMENT AND DECLARING AN EMERGENCY.

WHEREAS, the City of Albany holds a water right permit for 29 cubic feet per second from the South Santiam River; and

WHEREAS, the City of Albany applied for, and received, an extension for perfection of said water right; and

WHEREAS, a condition of approval for the extension requires the City to develop a Water Management Plan; and

WHEREAS, a component of the Water Management Plan is a Water Curtailment Plan; and

WHEREAS, the Water Curtailment Plan will guide the application of curtailment measures identified in the Albany Municipal Code; and

WHEREAS, changes to the existing curtailment language in the Albany Municipal Code are required for consistency with the Water Management Plan.

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

Section 1: Title 11 of the Albany Municipal Code is hereby amended to incorporate the changes noted herein:

11.01.010 Definitions.

For the purposes of this chapter, the words set out in this section shall have the following meanings:

- (1) "Applicant" means a person, corporation, association, or agency applying for water service.
- (2) "Base charge" means a periodic charge for water service charged in addition to the consumption charge.
- (3) "City" means the City of Albany, a municipal corporation of the State of Oregon.
- (4) "Commercial services" means provision of water to mercantile establishments, professional offices, public or governmental buildings, hospitals, retirement homes, churches, motels, manufacturing and processing uses not qualifying as seasonal food processing or industrial service, and to multifamily dwellings and apartment houses except those in which each unit is metered separately. Service to any of the above listed commercial services in combination with any residential use shall also be considered as commercial service.
- (5) "Council" means the City Council of the City of Albany.
- (6) "Customer" means a person, corporation, association, or agency receiving water service.
- (7) "Consumption charge" means a charge placed on every hundred cubic feet (HCF) of water delivered.
- (8) "Cross-connection" means any physical arrangement whereby the public water supply is connected directly or indirectly with any nonpotable or unapproved water supply system, sewer, drain, conduit, pool, storage reservoir, plumbing fixture, or other device which contains, or may contain, contaminated water, liquid, gases, sewage, or other waste of unknown or unsafe quality which may be capable of imparting contamination to the public water supply as a result of backflow.
- (9) "Domestic service" means the provision of a metered service to a single living unit for purposes of normal domestic consumption including such uses as sprinkling lawns, gardens, and shrubbery; the watering of livestock; the washing of vehicles; and other similar or customary uses.
- (10) "Drop-in meter service" means a water service that may be provided by installing a meter in an existing meter box or vault at a service location where all of the service connection piping and appurtenances except the meter have previously been installed.
- (11) "Frontage" means the total length for which a parcel abuts one or more than one public right-of-way plus that length for which a public water line is located on (or is proposed to be located on) a parcel.

- (12) "High elevation service areas" means those areas served by the City's water utility that require secondary pumping to provide adequate service.
- (13) "Industrial service" means the provision of water to a customer through a four-inch or larger meter for use in manufacturing or processing activities located on land designated for industrial use in the Albany or Millersburg Comprehensive Plans.
- (14) "Low- and medium-density residential development" means residential development on land designated as R-1 Low Density Residential District or R-2 Limited Multiple Family Residential District by the Albany Development Code (AMC Title 20).
- (15) "Mains" means transmission or distribution pipelines located in streets, highways, and public and private rights-of-way which supply water for general public usage.
- (16) "Maximum flow" means the flow through each meter size as established by the American Water Works Association as listed in AWWA Standards, Section C700, and shown below.

Meter Size Inches	Maximum Flow in Gallons Per Minute
3/4	30
1	50
1-1/2	100
2	160
3	320
4	500
6	1,000
8	1,600
10	2,300

- (17) "Main extensions" means extension of transmission or distribution pipelines, exclusive of service connections, beyond existing facilities.
- (18) "Minimum charge" means the dollar amount charged for water service when the sum of the base charge and the consumption charge for any period is less than the adopted minimum charge for the applicable class of service and meter size.
- (19) "Multiple-blocks" means where more than one service unit exists per water meter.
- (20) "Municipal or public use" means the provision of water to governmental or public entities.
- (21) "Non-drop-in meter service" means a water service which requires installation of any piping or appurtenances before a meter can be provided and connected.
- (22) "Non-essential water use" means water that is not required to maintain public health or safety.**
- ~~(22)~~ (23) "Premises" means the property and/or unit(s) to which water service is being requested, or provided.
- ~~(23)~~ (24) "Rate schedules" means those rates, charges, rentals, and regulations as they are set forth and amended from time to time by the City Council.
- (24) (25) "Regular working hours" means the hours between 8:00 a.m. and 4:00 p.m., Monday through Friday, except City holidays.
- ~~(25)~~ (26) "Seasonal food processing service" means the provision of water to a customer through a two-inch or larger meter for use in primarily summer and fall dry-season food processing activities located on land designated for industrial use in the Albany or Millersburg Comprehensive Plans.
- ~~(26)~~ (27) "Service connection" means the pipes, valves, meter boxes, and appurtenances necessary to supply water from mains through the meter, but this does not include the piping from the meters to the point of service.
- ~~(27)~~ (28) "Service line" means all piping and appurtenances from the meter to the point of service. The service line is privately owned and maintained.
- ~~(28)~~ (29) "Service unit" means each self-contained living unit or independent business activity that is served from a single meter.
- ~~(29)~~ (30) "Temporary service" means service that will not be of a permanent nature such as circuses, fairs, construction, etc.

(30) (31) "Utility" means the City of Albany, a municipal corporation of the State of Oregon.

(31) (32) "Water system facility plan" means the current version of the master plan for development of the water system as amended or updated.

11.01.235 Water Management and Conservation-Curtailment Plan.

The City shall ~~has developed~~ a Water Management and Conservation Plan. **The Water Management Plan, including includes** a Water Conservation and Curtailment Plan, that meets the requirements of OAR 690-086-0160 0140 ~~(Water Management and Conservation Plans: Plan Elements and Standards)~~ **(Municipal Water Curtailment Element).**

11.01.285 Water curtailment authority.

The Public Works Director ("Director"), or his or her designee, upon declaring a severe or critical water supply shortage, may activate **some or all** of the mandatory restrictions listed below in 11.01.287, in addition to any other curtailment measures the Director deems necessary to respond to a specific event. In general, the Water Curtailment Plan developed under 11.01.235 will be used to guide activation of curtailment measures. ~~For weather-related supply shortages, curtailment measures will generally be implemented only after outreach and education efforts have failed to achieve the required reduction in water demand.~~ **If curtailment measures are activated,** ~~The~~ the Director shall immediately notify the City Manager and the City Council of the situation and submit a report at the next available meeting of the City Council.

(1) ~~No watering or irrigating of lawns, grass, or turf unless it is:~~

(a) ~~New lawn, grass, or turf that has been seeded or sodded after March 1st of the current calendar year;~~

(b) ~~Athletic fields frequently and currently used for organized play;~~

(c) ~~Golf course tees and greens; and~~

(d) ~~Park and recreation areas of a particular significance and value to the community as approved by the City Manager.~~

(2) ~~City-supplied water shall not be used to clean, fill, or maintain levels in decorative fountains in commercial or institutional settings, except for fountains that recycle their water.~~

(3) ~~City-supplied water shall not be used to wash sidewalks, walkways, streets, driveways, parking lots, or other hard-surfaced areas except where necessary for public health or safety.~~

(4) ~~City-supplied water shall not be used to wash vehicles, except for commercial carwash facilities that have water recycling programs.~~

(5) ~~In the event that a citation is issued during the period of activated emergency measures for a violation of this section or AMC 11.01.230, and the Director determines that a second violation has occurred after the date of the citation and during the same emergency curtailment period, the Director may:~~

(a) ~~Install a flow restrictor on the street side of the water meter; or~~

(b) ~~Terminate water service. (Ord. 5479 § 1, 2001; Ord. 4878, 1989; Ord. 4664, 1985).~~

11.01.287 Water curtailment measures.

The list below contains curtailment measures that may be activated by the Public Works Director ("Director"), or his or her designee, per 11.01.285. Depending on the severity of the event the Director may implement some or all of the curtailment measures. In addition, per 11.01.285, the Director may implement additional curtailment measures not listed below as required to respond to a specific event. Depending on the circumstances, curtailment measures may apply to the entire water system or smaller, more localized, portions of the water system.

(1) Implement an odd/even watering schedule.

(2) No watering or irrigating of lawns, grass, or turf unless it is:

(a) New lawn, grass, or turf that has been seeded or planted after March 1st of the current calendar year;

(b) Athletic fields frequently and currently used for organized play;

(c) Golf course tees and greens; and

(d) Park and recreation areas of a particular significance and value to the community as approved by the Director in consultation with the Parks and Recreation Director.

- (3) City-supplied water shall not be used to clean, fill, or maintain levels in decorative fountains in commercial or institutional settings, except for fountains that recycle their water.
- (4) City-supplied water shall not be used to wash sidewalks, walkways, streets, driveways, parking lots, or other hard-surfaced areas except where necessary for public health or safety.
- (5) City-supplied water shall not be used to wash vehicles, except for commercial carwash facilities that are using water-recycling equipment.
- (6) For City parks supplied by City water, the Parks and Recreation Department shall limit non-essential water use and/or irrigate only during off-peak hours as specified by the Director in consultation with the Parks and Recreation Director.
- (7) Hydrant and water main flushing shall be done for emergencies only.
- (8) All outdoor non-essential water use shall be prohibited except where necessary for public health and safety.
- (9) All large industrial and institutional accounts shall restrict water use to only fire protection and other critical functions as approved by the Director.
- (10) During a catastrophic loss of supply or when a drought declared preference for human consumption is implemented in accordance with OAR 690-019-0070, uses other than for human consumption and emergency services will not be allowed.
- (11) In the event that a citation is issued during the period of activated emergency measures for a violation of this section or AMC 11.01.230, and the Director determines that a second violation has occurred after the date of the citation and during the same emergency curtailment period, the Director may:
 - (a) Install a flow restrictor on the street side of the water meter; or
 - (b) Terminate water service.

Section 2: Inasmuch as this ordinance is necessary for the immediate preservation of the public peace, health, and safety of the city of Albany, an emergency is hereby declared to exist; and this ordinance shall take effect immediately upon passage by the Council and approval by the Mayor.

Passed by the Council: _____

Approved by the Mayor: _____

Effective Date: _____

Mayor

ATTEST:

City Clerk



TO: Albany City Council
VIA: Wes Hare, City Manager
FROM: Ed Hodney, Director of Parks and Recreation *EH*
DATE: November 30, 2011, for the December 7, 2011 City Council Meeting
SUBJECT: Adoption of Resolution to Accept East Thornton Lake Natural Area Grant
RELATES TO STRATEGIC PLAN THEME: • Great Neighborhoods
RELATES TO: • Master plans.

Action Requested:

A resolution authorizing the city of Albany Parks & Recreation Department to accept a grant from the Local Government Grant Program through the Oregon Parks and Recreation Department for the purchase of East Thornton Lake Natural Area and delegating authority to the Parks & Recreation Director to sign the grant agreement and related documents.

Discussion:

By Resolution No. 5992, the City Council authorized an application to the Local Government Grant Program, administered by the Oregon Parks and Recreation Department (OPRD), for the proposed acquisition of East Thornton Lake Natural Area. The grant in the amount of \$558,926 has been awarded recently to the City of Albany.

The OPRD has now authorized the City to move forward with the project, subject to the execution of the grant agreement. The proposed Resolution would authorize the Parks and Recreation Director to sign the grant agreement and related documents.

Budget Impact:

This grant is included in FY 2011-2012 budget.

Attachment: Resolution

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE CITY OF ALBANY PARKS AND RECREATION DEPARTMENT TO ACCEPT A RECREATION TRAILS PROGRAM GRANT FROM THE OREGON PARKS AND RECREATION DEPARTMENT FOR THE PROPOSED PURCHASE OF EAST THORNTON LAKE NATURAL AREA AND DELEGATING AUTHORITY TO THE PARKS AND RECREATION DIRECTOR TO SIGN THE GRANT AGREEMENT AND RELATED DOCUMENTS.

WHEREAS, the Albany City Council adopted Resolution No. 5992 which authorized the City to apply for a grant from the Recreation Trails Grant for the proposed purchase of East Thornton Lake Natural Area; and

WHEREAS, the City has been awarded this grant in the requested amount; and

WHEREAS, the required funds for this project are included in the adopted 2011-2012 Annual Budget;

NOW, THEREFORE, BE IT RESOLVED that the City of Albany accepts this Local Government Grant in the amount of \$558,926; and

BE IT FURTHER RESOLVED that the Director of Parks and Recreation is authorized to sign the grant agreement and related documents.

DATED AND EFFECTIVE THIS 7th DAY OF DECEMBER 2011.

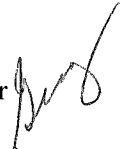
Mayor

ATTEST:

City Clerk



TO: Albany City Council

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

FROM: Planning Staff (Evan Fransted, David Martineau)

DATE: November 30, 2011 for the December 7, 2011 Council Meeting

SUBJECT: Resolution to Adopt Fees Associated with ADC Site Plan Review Amendments

RELATES TO STRATEGIC PLAN THEME: ● Great Neighborhoods

Action Requested:

Adoption of the attached Resolution for the proposed fees that are associated with proposed amendments to the Albany Development Code (ADC), planning file DC-02-11.

Discussion:

The proposed ADC amendments would combine the three different types of Site Plan Review applications (Options A, B and C). The fee schedule (Exhibit A) shows the proposed fees for the different types of development that require a Site Plan Review application. The only new fee is for a change of use in an existing building and/or minor development.

These developments are mainly reviewed under the Site Plan Review Option C application, which does not have a fee. The Site Plan Option C process is classified as a Type I process that does not require surrounding property owner notification. The City Attorney advised staff that surrounding property owners should be notified as required by state law because the application involves discretionary standards.

Attached to this memorandum is a proposed Resolution to adopt the fee schedule. The proposed fees are minimal and will not cover the actual cost. The proposed fee of \$126 would cover the cost of notifying surrounding property owners. Staff time would not be covered.

Budget Impact:

Planning application fee revenues cover about 10-15% of the actual costs; therefore, the shortfall will need to be absorbed by the Planning Division budget that is supported by the General Fund.

EF

Attachments: Resolution
Site Plan Review fee schedule (Exhibit A)

RESOLUTION NO. _____

A RESOLUTION ADOPTING FEES TO COINCIDE WITH AMENDMENTS TO THE ALBANY DEVELOPMENT CODE THAT CHANGES THE PROCEDURES FOR THE SITE PLAN REVIEW APPLICATION PROCESS.

WHEREAS, the Albany Development Code must be in compliance with state and federal laws; and

WHEREAS, these amendments are proposed to ensure that any Site Plan Review process that involves interpretation is a land use decision; and

WHEREAS, the City needs to recover administrative costs associated with processing Site Plan Review applications for change of use and/or minor development; and

WHEREAS, Oregon Revised Statutes (ORS) 227.175 states that the governing body shall establish fees charged for processing permits at the amount no more than the actual or average costs of providing that service; and

WHEREAS, the proposed fee schedule reflects a small portion of the actual or average costs of providing that service; and

NOW, THEREFORE, BE IT RESOLVED by the Albany City Council that the Site Plan Review application fees described in attached Exhibit "A" are hereby adopted, and

BE IT FURTHER RESOLVED that the Site Plan Review fees will become effective for applications received after December 7, 2011; and

BE IT FURTHER RESOLVED that the fees and charges shown on attached Exhibit "A" are not subject to the limits of Section 11b, Article XI, of the Oregon Constitution.

DATED AND EFFECTIVE THIS 7th DAY OF DECEMBER 2011.

Mayor

ATTEST:

City Clerk

SITE PLAN REVIEW SCHEDULE**Type I-L**

New Construction: \$2,433 plus 0.15% (0.0015) of construction value over \$150,000; existing fee for Site Plan Review Option A.

Modifying Existing Development or development with minimal impact: \$1,663; existing fee for Site Plan Review Option B. Applies to building additions that are greater than 1,000 square feet or greater than 20% of existing building area and more than 500 square feet; accessory structures 750 square feet or greater in CB, HD, ES, LE, MS, MUC, MUR, OP and WF zoning districts; and change of occupancy in an existing building to a more intensive use.

Change of use and/or minor development: \$126; new fee that covers the cost of mailing to surrounding property owners within 300 feet. Applies to any change of use as defined in Article 22; any development or change of use to a nonconforming use of a building, structure, or land not occupied by a permitted or legally nonconforming use for one continuous year; building additions that are greater than 20% of existing building area and are between 200 to 500 square feet; temporary subdivision sales office.

New parking areas or existing parking areas expansion: \$941; existing fee on Site Plan Option B application for parking lot modification.



TO: Albany City Council
VIA: Wes Hare, City Manager
Greg Byrne, Community Development Director
FROM: Heather Hansen, Planning Manager HH
DATE: November 29, 2011, for the December 7, 2011, City Council Meeting
SUBJECT: Adoption of Natural Resource Impact Review Fees

- RELATES TO STRATEGIC PLAN THEME:
- Great Neighborhoods
 - A Safe City
 - Effective Government

Action Requested:

Adoption of resolution establishing fees to support the Natural Resource Impact Review process.

Discussion:

On September 28, 2011, the City Council adopted amendments to the Albany Development Code that implement Statewide Planning Goal 5. The amendments went into effect on December 1, 2011. Fees to support implementation of the program need to be adopted. Attached to this memorandum is a proposed resolution to adopt a fee schedule. The proposed fees are minimal and will not cover the actual cost of the review.

The Community Development Department will use current staff to do plan reviews and inspections during the initial implementation of this program. With this approach, staff can evaluate the true needs of the program and return to Council if adjustments are necessary.

Budget Impact:

Planning application fee revenues cover about 10-15% of the actual costs; the difference will need to be absorbed by the portion of the Planning Division budget that is supported by the General Fund.

HH

Attachments: Resolution
Proposed Natural Resource Impact review fee schedule (Exhibit A)

RESOLUTION NO. _____

A RESOLUTION ADOPTING FEES TO SUPPORT THE NATURAL RESOURCE IMPACT REVIEW PROCESS TO IMPLEMENT STATEWIDE PLANNING GOAL 5.

WHEREAS, the City Council adopted Albany Development Code (ADC) amendments to implement Statewide Planning Goal 5 on September 28, 2011 (DC-05-10); and

WHEREAS, these amendments included a new Natural Resource Impact Review; and

WHEREAS, these amendments went into effect on December 1, 2011; and

WHEREAS, the City needs to recover costs associated with conducting Natural Resource Impact Review; and

WHEREAS, Oregon Revised Statutes 227.175 states that the governing body shall establish fees for processing permits at an amount no greater than the actual costs of providing that service; and

WHEREAS, the proposed fee schedule reflects a small portion of the actual costs of providing that service; and

NOW, THEREFORE, BE IT RESOLVED that the application fees associated with Natural Resource Impact Review, as described in attached Exhibit A, are hereby adopted, and

BE IT FURTHER RESOLVED that the Site Plan Review fees will become effective for applications received after December 7, 2011; and

BE IT FURTHER RESOLVED that the fees and charges shown on attached Exhibit A are not subject to the limits of Section 11b, Article XI, of the Oregon Constitution.

DATED AND EFFECTIVE THIS 7th DAY OF DECEMBER 2011.

Mayor

ATTEST:

City Clerk

NATURAL RESOURCE IMPACT REVIEW FEE SCHEDULE

Standalone Application: \$70-residential development, \$140-other development; plus additional \$140 if mitigation is required

The Natural Resource Impact Review application will cover development activities that are not exempt and that would not normally require a land use review, such as paving, single-family homes, and vegetation removal. Mitigation requires extra staff review.

Concurrent Applications: \$140; plus additional \$140 if mitigation is required

These fees would be added to concurrent applications such as Site Plan Review and Conditional Use. Mitigation requires extra staff review.

Revisions to Land Division Applications: \$70 additional review fee

Minimal additional review is required to ensure the lots will be buildable.

Revision to Adjustment Application: No additional fee (use existing \$64 fee)

The existing Adjustment application will be revised to address Adjustments for proposed development activities within the Significant Wetland, Riparian Corridor, and Habitat Assessment overlays.

NOTE: \$70 covers approximately one hour of planning review. The same minimal fee approach is used for Floodplain Development Permits in the current Planning fee schedule.



APPROVED:

TRANSIENT ROOM TAX TASK FORCE
City Hall
Willamette Room
Monday, February 23, 2011

MINUTES

CALL TO ORDER

Mayor Sharon Konopa called the meeting to order at 2:00 p.m.

Task Force Members in Attendance: Mayor Sharon Konopa, Randy Porter, Ralph Reid, Jr., Oscar Hult, Jimmie Lucht, Wes Hare (arrived at 2:10 p.m.)

Task Force Members Absent: Steve Terjeson (excused)

Staff: Stewart Taylor, Finance Director; Jim Delapoer, City Attorney

APPROVAL OF MINUTES

MOTION: Oscar Hult made a motion to approve the February 7, 2011, minutes; Ralph Reid seconded. Approved 5-0.

SCHEDULED BUSINESS

Finalizing Policy Statement

Mayor Sharon Konopa said that the final policy will be presented to the City Council at its March 7 work session. She said that she will provide background to the Council as well as explaining the policy. She said that there were a few changes made to the policy and they are in red lettering in the document.

Konopa said that there were some comments about adding more members to this committee who are receiving funding. She said that we would need to add a CARA member, a Veterans Day Parade member, an Albany-Millersburg Economic Development Corporation member. She said that we will end up with a very large group and suggested we don't do this. Jimmie Lucht said that the public will always be welcome to make comments to the new committee. Reid said that he would like the meetings to take place every six months for the first one or two years and then annually or more often as needed. He said that he is trying to cut down on the number of meetings that everyone needs to go to. Randy Porter said that he is willing to meet once or twice a year. Konopa said that she thinks that the meetings are needed every six months. Lucht said that changes could be made later after seeing how the meetings are going. Hult said that if one of the other agencies wanted to bring something to the table a year is a long time to wait. Konopa said that this group will be meeting to look at the overall funding that will be coming through. She said that it is important that everyone is up-to-date regarding revenue. Stewart Taylor said that he thinks it is appropriate to meet every six months to review the policy and recommend changes.

Jim said that he is in agreement with Taylor's interpretation of the state law. He said that part of the problem is trying to interpret what it means to be a tourism-related activity. He said that it is easier for him to defend the City if the policy is broad.

Taylor said that Ed Hodney wanted the Task Force to look at #5 and #2 and take out the word "or." Lucht thought it would make more sense to take out the "and" instead. The group agreed to take out the word "and."

Reid had questions about Section 5, #6. He asked if the group wants to restore the reserve account first. Konopa said that the thought was to keep the existing programs whole. Lucht suggested taking out the word "increased".

Taylor said that the policy states that the accounts will grow by three percent and then the reserve account will be made whole and then the new entities will have the remaining dollars allocated to them equally. Reid said that in six months this group could raise or lower allocations for new programs. A motion was made by Hult to approve the policy as written. Lucht seconded the motion; approved 6-0.

BUSINESS FROM THE TASK FORCE

Hare said that he has talked to Linn County Commissioner Will Tucker to arrange a meeting with the Linn County Board of Commissioners. He said that he is waiting to hear back from them. Pascone asked if it is typical for fairgrounds to be subsidized by the County. Porter said that it is very common. Lucht said that Albany was the chosen site for the Linn County Fairgrounds because of the location. Lucht asked if there is a lodging tax collected through county parks. Porter said that the state charges a one percent tax. Hare said that it would be good to talk with the commissioners about this.

NEXT MEETING DATE: None; task force disbanded.

ADJOURNMENT

The meeting adjourned at 2:50 p.m.

Respectfully submitted,

Diana Eilers
Administrative Assistant I

Reviewed by,

Stewart Taylor
Finance Director

CITY OF ALBANY
CITY COUNCIL (WORK SESSION)
Municipal Court Room
Monday, October 10, 2011
4:00 p.m.

MINUTES

CALL TO ORDER

Mayor Sharon Konopa called the meeting to order at 4:00 p.m.

ROLL CALL

Councilors present: Councilors Dick Olsen, Jeff Christman, Bill Coburn, Floyd Collins, Bessie Johnson, and Ray Kopczynski.

Councilors absent: None.

BUSINESS FROM PUBLIC

Bill Sheretz, 794 Montair Drive NE, passed out a letter addressed to Central Albany Revitalization Agency (CARA) Advisory Board (see agenda file). Konopa said the next CARA Board meeting is October 19, 2011. She will make sure the Board gets copies of the letter.

BOYS & GIRLS CLUB REQUEST REQUEST FOR LICENSE TO OCCUPY PUBLIC PROPERTY

Parks & Recreation Director Ed Hodney passed out a copy of Chapter 14.04 of the Albany Municipal Code (AMC), Encroachments; a draft of a license to occupy public property; and a map (see agenda file). Hodney explained that the Albany Boys & Girls Club (Club) wants to put in a gravel lot to the north of their building. The City owns a 60 foot wide strip between the Club and the parking lot as a result of the Periwinkle Path project. The Club would like to move forward with construction and if they are approved, they will need to cross City property with sidewalk and underground utilities.

Hodney said the Club's project would pave the two driveways. Staff felt this was a good solution if the project moves forward and would like the Council's approval by motion, prior to the Planning Commission's public hearing in November. This action would not restrict the City's use of the Periwinkle Path.

Councilor Ray Kopczynski asked, does this set a precedent going forward? Have we done it before? Assistant Public Works Director/City Engineer Jeff Blaine said, the City has done this before. This may be the first time we have done it on private property, but they have done several others over the years.

Councilor Floyd Collins declared a conflict of interest, stating that he is a Board member of the Club.

Councilor Jeff Christman declared a conflict of interest, stating that his daughter works at the Club, although she is not employed by the Club.

Councilor Dick Olsen asked, are we preempting the Planning Commission by doing this? Or are we holding up progress if we don't act on this today? Community Development Director Greg Byrne said that it is important for the Council to act on this issue because it will impact the layout of the utilities. If the Club had to bear the expense it wouldn't change the Planning Commission's basic approval or not, but it would impact the cost the Club would pay for design work.

MOTION: Kopczynski moved to authorize a license to occupy public property to the Boys & Girls Club. Olsen seconded it and the motion passed 6-0.

POLICE AND FIRE FUNDING STRATEGIES

City Manager Wes Hare said the *Albany Democrat-Herald* reported that the City has \$10 million left of the PepsiCo Settlement funds. Hare said the article is misleading because it does not explain that that some of the money that has been allocated already, such as to economic development, will be paid back. The \$10 million is not all that is left of the resource. Also, the Council has allocated funding and in some cases it has not been spent yet, such as allocations to the Risk Management fund and to the Water and Sewer funds for line extensions. The notion that the money has already been used is misleading.

Hare said if the Council wants to use settlement resources on police and fire instead of the other allocations, they can do that. There would not be enough for both facilities, but there are other ways to get them both built.

Finance Director Stewart Taylor reiterated that there is \$10 million in cash available in addition to the Local Improvement District (LID) loans, which are installment payments that will be paid back for TimberRidge North and South projects. Taylor anticipates \$466,000 each year in payments and interest. The security for the installment payments is the property itself. If they become delinquent, there was a recent ordinance passed, based on state statute,

that describes a process for delinquent payments. This financing approach will generate interest earnings over \$1 million. The property owners have the option of prepaying.

Councilor Bessie Johnson is concerned about pursuing legal action on delinquent payments.

Olsen asked, who is the debtor? Taylor said it is the Brandis Family Trust, but the property is the security. Taylor said City Attorney Jim Delapoer has been discussing alternative payment arrangements with them. Discussion followed about the status of development on the property based on the economy, and the future value of the property.

Delapoer pointed out that when the LIDs were put in place, the real estate market was at its high and no one had anticipated the crash.

Taylor reviewed his document in the agenda packet. He noted that a portion of the money allocated to economic development could be used towards building a Police Station; then the economic development funds would be replenished by the LID cash flow. There is some question as to the timeliness of payments and the interest received, but at this point he anticipates \$466,000 each year. That leaves little cash for the Fire Station; so the Fire Station construction would be based on the maturity of the existing General Obligation (GO) bond which expires in June 2015. Taylor said the City could approach voters at that time for a GO bond for the Fire Station.

Taylor said the Police and Fire levy timeframe is in place for the May 2012 election; then in May 2013 they could go out for a GO bond for Fire. In the meantime they could explore a number of options for the Fire Station such as renovate the current site, smaller sites, complimentary sites, etc. The GO bond for Fire could be structured with deferred interest in year one and two, and deferred payments until after the June 2015 GO bond maturity date so that property taxes would stay level, or perhaps drop. The current GO bond rate is \$.4333/1,000.

Taylor said there is \$9 million cash available now (which has not been allocated) plus \$1 million anticipated with the sale of the current Police Station. That leaves a gap of \$3.8 million. The reduction in taxes would be .3314 for \$3.8 million, or a \$49 drop on a \$150,000 house and a \$66 drop on \$200,000 house.

Hare said that Taylor's plan builds both stations with a slight reduction in taxes. The "cost" of the plan is that we would no longer have cash for economic development purposes and would instead be relying on the LID payments to replenish that fund. Those LID funds are guaranteed, but timing of when they get paid may be an issue.

Konopa asked, if we build a Police Station now and ask voters in 2015 for \$6 million for a Fire Station, would there be enough of the GO bond to pay for it? Hare said in that case there would be a slight increase to property taxes. Konopa pointed out that if we used \$9 million now there would still be \$1 million left (for economic development).

Hare pointed out that the GO bonds would overlap from 2012 to 2015, but the bond could be structured so that payments are deferred during those three years.

Olsen said that Gary Davenport called him. Olsen said Davenport owns Richards Cleaners, Hasty Freeze, and the nearby shed. He said the two discussed Hasty Freeze and the polluted ground. Davenport told Olsen that he has insurance that would cover the ground if it was contaminated. Olsen wants staff to add bays to the buildings and to contact Davenport to see what he is thinking. Maybe Station 11 could be less expensive if it were done in phases. Olsen thinks they need to address the seismic problem at the Station 11 sooner than later.

Collins asked, how are we approaching municipal finance? The City has CARA funding mechanisms for the downtown area, a Fire and Police levy, and a need for public safety facilities. Collins thinks the most important is the levy. He said, if we have to, we can skimp on facilities but he does not think we can skimp on people. Collins thinks the Council makes decisions in isolation of each issue instead of looking at the whole. He would hate to build the facilities yet lose the levy. He is concerned because he feels that the Council is not talking about an integrated financing package to meet their several needs.

Johnson pointed out that Police Chief Boyd wants to build the Police Station so that it could be expanded on later. It is not just a 20-year station.

Olsen thinks the Council should delay other decisions until they see if the Police and Fire levy passes.

Hare agrees with Collins that the levy is the highest priority. He said, we do however have a unique opportunity to build facilities because of the PepsiCo money and it can be used to buy down the future cost of governance. He said, we are in a building climate right now where we can get a better deal on construction. As to Collin's question about timing, that is based on his judgment for this community. Hare said that when he was hired as City Manager, he was told by the Council about the need for new Fire and Police facilities. This is not a new idea. At that time Hare advised that it was not a good time to build facilities, and suggested they wait five years. He said, now the City has the money to do it. The need for the facilities is not going away.

Konopa said that no matter what, they will question if the timing is right. She described the questions surrounding the other levies that were presented to the voters. She said, we have always known we would need a Police Station, but made the Police and Fire levy a priority with the intent to deal with the Police Station later; and now, here we are.

Konopa said, if we continue to delay, when will we build it? Also if we wait until 2013 to go to the voters, there could be another taxing agency that the City is competing with. Konopa said she likes Taylor's financing plan; it builds the Police Station now and it would cost voters very little in 2013 for a Fire Station.

Johnson said that Fire Station 11 has property to the east. It was suggested to her by someone that the City could leave the station where it is and build new on that property. They could sign a joint parking agreement with Edward Jones and take the trucks out of the Fire Station. She thinks they should keep the integrity of Station 11 intact.

Konopa said that no matter what they choose, to either build the facility now or not spend the PepsiCo money, someone will be angry.

Collins thinks the Council can present a financial plan when they present the levy to the public. They can put it all up front and show the public that they have a plan and it is good for the community.

Christman said that the problem is that they need to pick a priority because that will change the financial plan. He thinks that by increasing the Police and Fire levy to \$1.15/1,000, they may be killing the levy. The voters will say no to any kind of new taxes.

Olsen agrees with Christman that renewing the levy at a higher rate is dangerous.

Coburn thinks it may be difficult to educate the public on some of these complex issues. He said, we were elected to make these decisions; it is good to get feedback but at the end of the day, this is our job. He said, we can second guess ourselves all day long and someone will always be displeased. He thinks they need to move forward with a decision now.

Kopczynski said that they are comparing apples to oranges when they compare facilities versus staff. They may be able to pay for the facilities with the PepsiCo money but that doesn't negate the need for the Police and Fire levy. Coburn agreed and recalled that the Council had already agreed months ago that the PepsiCo money would not be used for salaries since it was not a sustainable resource.

Konopa said she knows that by increasing the levy they may lose some votes but she thinks that the margin would be high enough to absorb them and it would still pass. They will have to do a lot of educating of the public. They can explain the plan and that the facilities would have very little net-cost to voters.

Hare said they could try to get community input and put on a civic engagement project through education, but staff is limited in what they can do. He said, consider that out of 50,000 people in Albany, how many would really get involved? Would it be the same people that always attend meetings or would we be able to draw new opinions?

Christman agrees with Kopczynski that it may be "apples and oranges" but it is all in the "same basket" (financial plan). They can educate the public about the facilities at the same time they educate them about the levy. But until they get an answer from the public about the Police and Fire levy, they may want to take a different approach on how to finance the facilities.

Coburn said, but there is value in spending this money now. It would be very difficult to summarize the hours and hours of meetings the Council has already spent in discussions into something educational for the voters.

Discussion followed about the current Police and Fire levy and the idea behind the increase to cover what was lost to compression.

Konopa will work with staff to come up with a couple of financing statements.

Collins suggested that the Council make a statement that includes:

- the Council's support of the Police and Fire levy; and
- that the Chiefs have presented and consultants have confirmed the need for facilities; and
- that they have existing cash and financing mechanisms necessary to develop a plan to build facilities in 4-5 years.

Konopa suggested it could be done in a resolution format.

Coburn agrees with Collins but thinks that it would be a mistake to have the money in the bank for facilities when the Police and Fire levy is voted on. Collins thinks they can easily include in the statement that they don't intend for the PepsiCo money to be used for operations.

Hare reminded the Council that they will need to put together the statement for the levy instead of staff helping to put it together. The City does not want to be accused of using City resources to advocate for the levy. The Council can advocate, lobby, and participate fully in the electoral process. Using City employees and City resources is a potential conflict, and some jurisdictions have been fined.

COUNCILOR COMMENTS

Johnson passed out a copy of an article titled "Marijuana processing business planned for Albany" from the *Democrat-Herald* (see agenda file). She said she talked to District Attorney Jason Carlile about it and asked Boyd what can be done.

Boyd said he just talked to Carlile about a dispensary, and then learned of this new business. Boyd explained the definition of "delivery" and discussion followed.

Coburn asked staff for an update on the overcharged sewer bills for RV Parks. Staff is working with the City Attorney and will provide an update at a Work Session very soon.

Collins noted that there was not an Airport send-off in memory of the late Councilor Ralph Reid, Jr. It was snowing on the property so the airplane flight will be deferred to the spring.

Konopa reported that the fund raising auction for the East Thornton Lake Natural Area project was fantastic. Parks & Recreation staff did a great job organizing the event; it was very classy and there was a great turnout. Parks & Recreation Director Ed Hodney reported that they raised almost \$18,000.

CITY MANAGER REPORT

There was no report.

ADJOURNMENT

There being no further business, the Work Session adjourned at 5:52 p.m.

Respectfully submitted,

Reviewed by,

Mary A. Dibble, MMC
Deputy City Clerk

Stewart Taylor
Finance Director

CITY OF ALBANY
CITY COUNCIL
Council Chambers
Wednesday, October 12, 2011
Immediately following the Albany Revitalization Agency Meeting

MINUTES

CALL TO ORDER

Mayor Sharon Konopa called the meeting to order at 7:33 p.m.

PLEDGE OF ALLEGIANCE TO THE FLAG

Konopa led the pledge allegiance to the flag.

ROLL CALL

Councilors present: Councilors Jeff Christman, Bill Coburn, Bessie Johnson, Dick Olsen, Ray Kopczynski, and Floyd Collins.

Councilors absent: None.

SPECIAL PRESENTATION

Albany Police Department Commendations

Police Chief Ed Boyd introduced Captain Eric Carter and Captain Jeff Hinrichs. Tonight they will be presenting awards to staff. Boyd is very proud of his staff and the work they do in the community every day. He encouraged the Council to go on a ride-a-long with officers to see firsthand the types of situations they deal with in the community.

Boyd said that tonight they are here to honor four officers who were involved in critical incidents that would have turned out completely different, if not for their immediate actions and decisions, their tenaciousness, and their overall professionalism and outstanding performance. Personnel are nominated for the awards based on specific criteria. Boyd will be awarding three Medals of Valor and one Life Saving Award. Boyd said he is very proud of these officers for the work they do and their commitment and dedication to the Albany Police Department and the community.

Officer Ryan McHuron was awarded the Non-Criminal Lifesaving Merit Award. Boyd read the nomination letter to the Council (see agenda file.) Boyd said, to say that McHuron used extreme tenaciousness to find a suicidal subject is an understatement; he went above and beyond what most would have done and refused to give up until he found her. By the grace of God he did, and she is alive today because of McHuron's actions. Boyd presented the award and a plaque to McHuron.

Lieutenant Curtis Hyde was awarded a Medal of Valor. Boyd read the nomination letter to the Council (see agenda file.) Boyd presented the award and a plaque to Hyde.

Officer Buck Pearce was awarded a Medal of Valor. Boyd read the nomination letter to the Council (see agenda file.) Boyd presented the award and a plaque to Pearce.

Lieutenant Marv Hammersley was awarded a Medal of Valor. Boyd read the nomination letter to the Council (see agenda file.) Boyd presented the award and a plaque to Hammersley.

Boyd said his officers do magnificent work in the community and put their lives on the line every single day. They display great professionalism, dedication, courage, and effort. He is very proud of them.

Konopa said that the Council appreciates Albany Police Officers. Most of them don't know what they will face each day. She said, the Council appreciates the Police Department; it is one of the best in the state. She thanked them for their service.

PROCLAMATION

National Friends of Libraries Week

Konopa read the proclamation for October 16-22, 2011, National Friends of Libraries Week (see agenda file).

Konopa thanked the Friends of the Library. They are a very active group and she thanked them for their commitment and all they do.

SCHEDULED BUSINESS

Communication

Accepting resignation from Erin Johnson from the Landmarks Advisory Commission.

MOTION: Councilor Bessie Johnson moved to accept the resignation of Erin Johnson and send a thank you letter. Councilor Ray Kopczynski seconded the motion and it passed 6-0.

Business from the Public

Bill Root, 2634 NW Valley View, thanked all who came to the fundraising event for East Thornton Lake Natural Area (ETLNA). They had a successful silent auction and dinner to help pay for the purchase of the property. It was a wonderful venue at the Wheelhouse on the fourth floor. The venue was donated and the food was donated at cost. The servers and the auctioneer also donated their time. Auction items were also donated. Root recalled that the late Ralph Reid Jr. had said that he specifically wanted to see community-wide support for this project, not just support from North Albany; Root was pleased to report that it is definitely becoming a project with community-wide involvement.

Adoption of Resolutions

Affirming City of Albany participation in the Oregon Cascades West Regional Consortium and granting the City Manager authority to approve additional financial participation on a case-by-case basis, not to exceed appropriated amounts.

Community Development Director Greg Byrne said this is the next step in a process that has been going on for three years. The task force has reached the point where they feel it is wise to form a nonprofit corporation to deal with wetlands and industrial properties on a regional basis. It is being headed up by Council of Governments (COG).

Byrne said the attachment to the staff report shows four properties in Albany to be included in this regional wetlands permit. They represent several different properties and about 440 acres. To be included, properties need: to be industrial and offer the potential for job development in the community; to be impacted by wetlands; and the owner of the property needed to apply to be included in the permit. The task force has worked to reach consensus with the rest of the jurisdictions in the region to establish these 20 properties, four of which are in Albany. This resolution affirms continued participation in the group under the bylaws of a nonprofit corporation.

MOTION: Councilor Floyd Collins moved to adopt the resolution affirming City of Albany participation in the Oregon Cascades West Regional Consortium and granting the City Manager authority to approve additional financial participation on a case-by-case basis, not to exceed appropriated amounts and Councilor Dick Olsen seconded it.

Councilor Jeff Christman wanted to know what the \$1,000 pays for. He assumes all six agencies contribute that amount so the total would be \$6,000. Byrne said the money will be used to defray administration costs for COG. Most work is done under grants which COG has received, and the properties participating will get onsite wetland delineation work done, if they don't have current active delineation that has been accepted by the Division of State Lands (DSL). They will also participate in regional permitting that will shorten the process should any of the properties have a buyer or developer that wants to create jobs on the property. The wetland permitting process can be lengthy. This will take 20 of the properties up to the 80% mark through the wetland permitting process so that if an employer comes to Albany, these properties will be primed and ready to take the last step in wetland mitigation.

Konopa explained that the support COG gets from the 27 jurisdictions in all three regions is less than 1% of their overall budget. COG has taken the lead role for the grant process but they don't have the staff to oversee the program on a short-term or long-term basis without some funding. Konopa thinks the City's contribution is minimal and the City will get a good resource from it.

Christman said he is concerned because the staff report notes that additional funding may come later. He wants to know, how much more will they want down the road? Right now \$1,000 isn't much but if the City continues to finance the project periodically, eventually they will get to a point where they have put in too much money to be able to reasonably back out. He wants to make sure the City is not started down that path. He is concerned with the open-endedness of the budget.

City Manager Wes Hare said the good news is that the grant received by COG was \$250,000. He said, they have already done an outstanding job of bringing resources that are unique to our area and we are the only ones in the state, that he is aware of, that are engaged in this kind of a project. Albany also has a unique need, because there are several industrial sites that are affected by wetlands. He assured the Council that he would warn them if he perceived this to be a black hole but he thinks COG does a good job finding resources and the City should be able to limit their future liability. The Council also would always have the final say in the level of commitment they want to extend.

Konopa said that is COG's concern too; that the program is able to continue and that they have enough to staff it.

Kopczynski asked, if the program is already in place for the 20 properties to be processed to the 80% mark, then what is the \$1,000 needed for? Byrne said the next step is to find a way economically to deal with the mitigation cost. The grant funds will take the project through the permitting process, delineations on the ground, and acceptances by DSL, but not the mitigation costs. One thing this group will be doing is evaluating mitigation costs for the loss of wetlands on these properties. There are several different options to look at, for example: buying credits from a wetlands bank and holding them; or buying options on credits and exercising the options in the future if properties are developed; or creating a wetland bank by buying property, converting it to wetlands, and holding the credits for the participants. This group will evaluate these alternatives and report back to the project participants.

Johnson asked, if COG is running this regional project, does it take away local control? For example, if Albany finds something that we want to pursue with a property, is it going to be tied up with the group plan? Byrne said, yes, the City could proceed; our participation in this project does not reduce our control at all. He noted that there are some properties in town that do not have wetlands that did participate and others that do have wetlands but the owners didn't want to participate. There is a wide variety of properties. This project advances Albany properties to the head of the line in the region by getting some of the work done ahead of time.

VOTE: The motion was voted on and it passed 6-0 and was designated Resolution No. 6043.

Authorizing the City of Albany to submit a grant application to the Oregon Department of Transportation (ODOT) for the flexible funding program to fund sidewalk improvements on Gibson Hill Road.

Public Works Director Mark Shepard said this project is listed in the Capital Improvement Program (CIP) to construct sidewalks on Gibson Hill Road from the roundabout to the west. On the south side of Gibson Hill the sidewalk would be extended to Penny Lane and on the north side to Broadway Street for the first phase. This is an approved and budgeted project.

Shepard said that ODOT notified the City of a funding opportunity for flexible funds and they thought sidewalk along the entire length of Gibson Hill Road would be a good fit. Staff is asking for Council authorization to submit an application for the grant funds. If they are awarded, the City would use the money they were planning to use anyway on the east end as the match, in order to do improvements all along the entire length of Gibson Hill Road. Staff will hear from ODOT sometime in February. If they are unsuccessful in the grant process, they would still move the CIP project forward.

Hare said that the City has submitted applications for grant funds on other occasions for Transportation Enhancement dollars but they didn't fit the criteria of the grant. This sidewalk project has been a longstanding priority to help kids get to school safely. It is a great project and they have been scouting for opportunities for resources.

Councilor Bill Coburn asked, would this include sidewalks all the way to Scenic Drive? Shepard said yes, and it would be on both sides of the road from the roundabout to Scenic Drive.

MOTION: Christman moved to adopt the resolution to submit a grant application to ODOT for the flexible funding program to fund sidewalk improvements on Gibson Hill Road and Coburn seconded it.

Collins said this is an example of a project that was brought to the City by citizens of the neighborhood years ago and added to the CIP. This is leveraging the money set aside to get a full project for about 10 % of the cost. This would meet the needs that were expressed by the community.

Konopa said that this shows how having a project in the CIP sometimes helps to get grant funding.

VOTE: A vote was taken on the motion and it passed 6-0 and was designated Resolution No. 6044.

AR-10-02, Airport Runway Rehabilitation project.

Accepting Federal Aviation Administration Grant Amendment No. 1 to existing grant No. 3-41-0001-011 for Airport runway improvements.

Konopa said that on the dais was a revised resolution for AR-10-02 (see agenda file).

Shepard explained that the credit and debit were listed in the wrong column in the resolution that was part of the agenda packet. The revised resolution fixes that error.

Shepard said that this is a housekeeping item. He explained that the Airport project was started under a manager who has since retired. The scope and additional funding from the FAA was all negotiated by the previous project manager. Civil Engineer II Jeff Woodward stepped in and finalized the project, but realized there were some steps that were missed. This accepts the funds from the FAA and the change order which is over 10% and so

requires Council approval. Shepard said the work has already been done and the FAA paid for it, so there was no cost to the City.

MOTION: Collins moved to adopt the revised resolution on the dais accepting Federal Aviation Administration Grant Amendment No. 1 to existing grant No. 3-41-0001-011 for Airport runway improvements and Kopczynski seconded it. The motion passed 6-0 and was designated Resolution No. 6045.

Approving a construction contract increase to Wildish Construction Company in the amount of \$167,508.34.

MOTION: Collins moved to approve the construction contract increase in the amount of \$167,508.34 as presented in the staff report and Kopczynski seconded it. The motion passed 6-0.

Adoption of Consent Calendar

- 1) Approval of Minutes
 - a) August 15, 2011, City Council Work Session. [Pages 21-22]
 - b) September 14, 2011, City Council Regular Session. [Pages 23-27]
- 2) Approving a liquor license for Jose Vazquez, D/B/A Hunter's Market, 1025 Pacific Boulevard SE. [Page 28]
- 3) Authorizing the Fire Department to accept \$3,972 from the 2009 State Homeland Security Grant Program for a Basic Public Information Officer class. [Pages 29-30] RES. NO. 6046
- 4) Authorizing the Fire Department to accept \$1,800 from the Target Corporation Public Safety Grant Program to purchase weather radios. [Pages 31-32] RES. NO. 6047
- 5) Accepting following right-of-way dedication deeds from:
 - a) Thomas C. Meagher. [Pages 33-38] RES. NO. 6048
 - b) TLK Properties, LLC. [Pages 39-44] RES. NO. 6049
- 6) Accepting a sanitary sewer easement from TLK Properties, LLC. [Pages 45-50] RES. NO. 6050
- 7) Accepting a correction deed from William and Della Burcham Revocable Living Trust. [Pages 51-59] RES. NO. 6051

Johnson asked that the item 1b), the September 14, 2011, Regular Session minutes, be pulled for discussion.

MOTION: Coburn moved to adopt the Consent Calendar with Item 1b) removed for discussion. Johnson seconded it and the motion passed 6-0.

Johnson said she was gone during this meeting. She read in the minutes that the Council discussed collections for past due assessments. She said it seems this may be an ongoing issue with several delinquencies and that they should not wait ten years to collect. Delapoer said that actually there are very few delinquencies. Taylor said that only 34 out of 300 accounts are late. Delapoer said that most are paying their accounts on time, but this particular delinquency was the oldest and the worst one so it was brought to the Council to seek direction on how to proceed with not only this one, but the few others that are behind. Johnson said she thinks that waiting ten years is too long. It is not fair to those customers that pay on time.

Johnson made no changes to the minutes.

MOTION: Johnson moved to adopt Item 1b) of the Consent Calendar. Coburn seconded it and it passed 6-0.

BUSINESS FROM THE COUNCIL

Christman is the representative for the Council at the League of Oregon Cities (LOC). He reported that the LOC meeting he attended was very routine and there was no significant action. The LOC Conference had very good sessions.

Collins said he will be gone for the next Work Session and the Regular Session.

Johnson said the LOC Conference was great. She always learns something from it. She asked Hare if he would give the presentation that he led at the LOC Conference for the Council. It was a good session on promoting civility and integrating angry people.

Johnson said that for future Work Sessions from now until November 15, she may be up to an hour late due to the tax season and her job at the Linn County Tax Assessors Office.

Coburn asked Shepard if he looked into the improper Manufactured Home Park sewer rates. Shepard said staff talked to the largest Manufactured Home Park and have not got a response back from them. He met with Taylor and Delapoer about how to move forward. Staff would like to make an offer to the customers but want Council guidance before they proceed. They are considering offering them a settlement at 50% of what is owed by a date certain, and if they don't accept that offer then the City would move towards litigation. Shepard said that according to the Albany Municipal Code (AMC) staff cannot make an offer without Council direction.

Hare will bring back information about the amounts owed at the October 24, 2011, Work Session.

Olsen said that he enjoyed the ETLNA event and is glad it was successful. He thanked Bill Root for his efforts and the Parks & Recreation Department. They put on a very nice event. Konopa agreed it was a nice event.

Hare said that the LOC gives an annual Award for Excellence in the Large City category. It was presented to Albany and Millersburg for the Talking Water Gardens project. The City also got three other awards for the project. This particular LOC award is one that Albany applied for and beat out several other cities. Talking Waters captures folks' attention because it solved an engineering problem of waste disposal, and also created an attractive new amenity in the community. There is also a significant and important economic development component by helping one of the leading industries solve one of it's' problems. Finally, it is a multijurisdictional project that involved both public and private agencies. It is a tribute to many people in different organizations and to the leadership in both City Councils. This new award follows the Good Governance Award that the City of Albany won last year from LOC for the Dashboard project.

Hare said that the City has won awards for a number of things this year. It is a tribute to our organization and the community. He is not sure folks in the community are aware of the awards or the projects that were awarded. Staff thought of having an open house at the start of the holiday season to present to the public some of the award winning projects, programs, and people. They are considering December 7, prior to the Council meeting, as the date. Hare described the set up.

Konopa noted that Talking Water Gardens is something the community can use for many years. Word is getting around about it. She got a letter from Mayor Julie Manning from Corvallis offering congratulations for the award.

NEXT MEETING DATE: Work Session October 24, 2011
 Regular Session October 26, 2011

ADJOURNMENT

There being no other business, the meeting was adjourned at 8:28 p.m.

Respectfully submitted,

Reviewed by,

Mary A. Dibble, MMC
Deputy City Clerk

Stewart Taylor
Finance Director

CITY OF ALBANY
CITY COUNCIL (WORK SESSION)
Municipal Court Room
Monday, October 24, 2011
4:00 p.m.

MINUTES

CALL TO ORDER

Mayor Sharon Konopa called the meeting to order at 4:02 p.m.

ROLL CALL

Councilors present: Councilors Dick Olsen, Jeff Christman, Bill Coburn, Bessie Johnson, and Ray Kopczynski.

Councilors absent: Councilor Floyd Collins.

BUSINESS FROM THE PUBLIC

There was no business from the public.

INVESTMENT POLICIES REVIEW

Finance Director Stewart Taylor explained that staff brings three policies on an annual basis to the Council for review. The policies establish specific parameters in three areas: investments, financial standards, and risk management.

Taylor said that Davidson Fixed Income doesn't make the City's investments, but does make suggestions. It is beneficial for them to meet with the Council annually to review market conditions and the City's current position in the market, along with the City's objectives. Taylor said that Steve Uerlings from Barker-Uerlings Insurance is also attending the work session today.

Taylor said the Risk Management Policy and the Investment Policy contain no changes. The Financial Policy did include changes so the agenda packet includes a marked-up copy.

Taylor introduced Deanne Woodring from Davidson Fixed Income. Woodring said she looks at investment policies from throughout the country and said that Albany's policy has all the necessary elements. She is on the Government Finance Officers Association (GFOA) Model Policy Review Committee and is working on an Oregon State Treasury sample policy. She also participates on the Oregon Short-term Fund Board (OSTFB) implementation and GFOA's Best Practices. Both groups will be publishing their recommendations in January. The revised Financial Policy before the Council today incorporates the changes recommended by the OSTFB and GFOA Best Practices.

Woodring is pleased with how the City's investment portfolio is positioned. The priority is safety; keeping a high-quality portfolio protects the City's investments.

Taylor said it is difficult to predict where the market is going.

Woodring said that there has been a lot of intervention by the federal government to try to stimulate the economy, but it just seems to put pressure on interest rates. Also globally, the market has been chaotic and unpredictable.

RISK MANAGEMENT POLICY

Taylor introduced Senior Accountant Mike Murzynsky, who is the City's Risk Manager.

Murzynsky introduced Steve Uerlings, CIC, ARM, CRM, President of Barker-Uerlings Insurance. Murzynsky described the work Uerlings does for the City. His advice is helpful for risk issues and he keeps the City advised of changes in the legislature.

Uerlings said there is a resolution about recreational immunity coming to the next Regular Session for approval.

Uerlings provided the Council with the *Risk Management Report* (see agenda file). Uerlings reviewed the report.

Uerlings explained that the City buys excess earthquake coverage, as do many other large Oregon cities, because the City/County Insurance Services (CIS) pool has a statewide limit of total exposure. The number of tort claims is going down; 19 is a fairly low number for a city of our size. In 2007 there was a high spike for auto liability, but otherwise it too is low for a city this size.

Uerlings said that CIS's average insurance claim is \$5,800, whereas Albany's is \$4,000. Overall the City's performance is excellent in terms of risk management policies and procedures.

Uerlings explained that the issue of recreational immunity came from a Portland case, where the public right-of-way (ROW) next to recreational sites was being used as shared space. CIS suggests cities adopt a resolution of recreational immunity. Albany has two areas by parks that are shared ROW. The immunity protection may not come

into play, but cities in Oregon are considering adoption of the resolution as another tool for protection. City Attorney Jim Delapoer agreed that this is being done uniformly and he is supportive.

Taylor said the City has an active Executive Safety Committee and departments also have Safety Committees. They do regular walk-throughs to identify hazards in the work place. They have done well to identify potential exposures and are helpful in reducing claims. Uerlings said he also meets with the Safety Committees quarterly to discuss what they found and changes in procedures. They discuss workers' compensation claims as well as auto liability and other types of claims.

FINANCIAL POLICIES

Taylor said that a strike-out version of the Financial Policy is in the agenda packet. The changes were the addition of the Transient Lodging Tax policy and other minor corrections. Taylor pointed out that this is where the City Council establishes parameters in the budget for funding beginning balances and contingencies. The recent struggles to balance the budget emphasize the importance of maintaining minimums. Uncertainties in revenues due to pressures such as compression have caused us to draw on those balances. This uncertainty highlights the need to maintain the 5% minimum balances. There will be a final version of the Policy on the Consent Calendar at the next Regular Session.

Councilor Ray Kopczynski asked, in Section V, item 6, who determines what programs get eliminated, and is there public input? City Manager Wes Hare said the Budget Committee has a lot to do with discussing programs being eliminated but ultimately, it would be the City Council's decision.

Kopczynski noted that Section VII, item 4 says that General Obligation Debt will not be used for self-supporting enterprise activities. He asked staff to explain. Hare said that Ambulance, Water, or Sewer are examples of Enterprise Funds that have other financing tools available.

REDUCTION IN LIBRARY HOURS

Library Director Ed Gallagher said there is a slight reduction in library hours as the result of three employees taking advantage of the Voluntary Separation Incentive Programs (VSIP). They are not fully filling the vacant positions this fiscal year and will continue with .875 full-time equivalent (FTE) less, by redistributing staff duties.

Gallagher noted that without the RFID system they couldn't do as much work as they do. In some ways the RFID system masks the staffing shortage because it handles 70% of the circulation.

Councilor Dick Olsen asked, what is the percent reduction to the Carnegie Library, in terms of hours? Gallagher said it has been open 40 hours a week, so being open 8 fewer hours is 20%. Olsen asked, what is the reduction in payroll at the Main Library? Gallagher said he is not reducing staff that has already been budgeted; rather, he is just redistributing where employees spend their time.

Councilor Bessie Johnson arrived at 4:34 p.m.

Discussion followed about the ratio of hours at each library. Hare noted that this is not about two libraries; it is about one library system and trying to make the best use of the total hours available.

Olsen said he objects to closing the Carnegie Library by 20% and the Main Library by 3%. Hare pointed out that usage rates at the two libraries are different and they are trying to minimize the impact on folks at the Main Library since it is used more heavily. Olsen feels they are headed down the road to where the Carnegie Library will slowly be phased out. He objects to the plan. Hare said that closing the Carnegie Library is not the goal.

Johnson wanted to clarify that the employees from the Carnegie Library would not be working fewer hours overall. Hare said that is correct; they are just redistributing where they spend their time.

Gallagher said that libraries are closing all over the country or losing hours. Albany's libraries have done the best they can.

Konopa asked Gallagher if he thinks the popular new electronic book devices will hurt libraries. Gallagher said that for those who can afford the gadgets there might be a decrease in library use, but many of their patrons are the young, old, homeless, etc. Gallagher says they can run on parallel tracks. For example, the libraries work with technology and have 15,000 electronic books that can be downloaded.

Gallagher said the Carnegie Library is close to celebrating a 100 year anniversary.

Johnson asked if students use the libraries. Gallagher said yes, there are many from Linn Benton Community College (LBCC) and the Greater Albany Public Schools (GAPs).

Konopa asked, is the Library Foundation still considering funding Fridays? Gallagher said yes, they are considering it. If they cannot than the hours at Carnegie will be cut.

BACK SEWER BILLS

Public Works Director Mark Shepard said the Albany Municipal Code (AMC) outlines the parameters for back-billing. The Council asked staff to consider other options to resolve the back-billing. Staff has an idea for the Council to consider but it is outside the AMC so requires Council approval.

Shepard said there are eleven sewer-only properties that have been under-billed for several years. The largest property experienced a drop in their sewer bill by \$800 a month, at a time when sewer rates went up. It is probably something the owner could or should have noticed. Staff is proposing a settlement, where the customer pays 50% of the back-bill by a date certain as full payment. The positive outcome is that this would avoid litigation. The potential negative is that the City has back-billed other properties in the past and those property owners have paid according to the AMC, so the recent back-billings would be being treated differently.

Shepard said that under Utility Services Manager Mark Yeager and Customer Service Supervisor Patty McInnes, great strides have been made in the utility billing processes and finding errors. Overall staff has done a good job managing, billing, and collecting more than 15,000 accounts each month. It is no small task.

Hare said he did online research on utility back-billing. He said it is a national issue and different states deal with it differently. Some agencies back-bill for up to a year and some back-bill for several years. Some give the authority locally. This is not a new or unique issue to Albany. Utility Billing staff is working to tighten controls.

Delapoer said that utility rates are a fixed cost which is divided among customers. If a customer doesn't pay their full bill, the rest pay for it. If they forgive certain sewer bills, the result is increased sewer rates since the cost of providing service is a fixed sum. In past scenarios that involved back-billing, customers have paid the whole amount. In this case staff's inclination is a uniform compromise proposal to all eleven customers. If they don't accept the offer, then Delapoer will pursue collecting the total amount. This is a decision for the Council to weigh, if it is worth the discount to relieve the risk of litigation. Discussion followed about how a decision today might impact the collection of future back-bills by setting a precedent.

Kopczynski pointed out that the money lost over the last several years has already been amortized over the user base; so it won't impact other customers now, but getting the back-bills paid up will delay future rate increases. He suggested various payment options with a combination of percent-discounts based on the number of years it takes to pay.

Konopa asked if a lien could be put on the property. Delapoer said no and explained why. Discussion followed.

Olsen thinks that if the City didn't charge correctly then the customer shouldn't have to pay the bill at all. But since the rest of the Council does not support that theory, he would support offering them a 50% discount.

Councilor Bill Coburn does not agree with Kopczynski's suggestions of paying over several years. He asked, if a landlord sells the property before it is paid off, how do we collect the balance? Delapoer said they could get promissory notes, which would fall to the signer of the note rather than the property. Discussion followed about charging interest for long-term payment agreements.

Shepard asked if staff has Council's direction to negotiate a 50% discount to pay up to a year, or 50% discount with payment up to five years with interest charges. Delapoer stressed that the City needs to treat the customers the same. It is important that staff does not negotiate different terms with different customers. If the customer does not accept the offer, they should collect 100% of the back charges. The Council agreed.

Delapoer said staff prefers a motion for this action since it is outside of the AMC policy. He suggested that the motion be to offer a 50% reduction and if the offer is accepted, for those over \$30,000, payments should not exceed five years, with a reasonable interest rate; and those under \$30,000, offer a 50% reduction over one year, no interest.

MOTION: Coburn moved that sewer back-bills over \$30,000 be offered a 50% reduction with a payment plan not to exceed five years at a reasonable rate of interest; and that sewer back-bills under \$30,000 be offered a 50% reduction with a payment plan not to exceed one year with no interest. Olsen seconded the motion and it passed 5-0.

PROPERTY TAX COMPRESSION DISCUSSION

Hare explained that there has been a drop in property tax revenue that the City receives. The City will get less revenue due to compression and they are not seeing the rate of new construction that the City has experienced in the past. There were 80 Single Family Residence (SFR) permits last year, but they were all in North Albany so they show up in the property taxes from Benton County. Linn County revenues are lower than projected, by about \$1 million in the current fiscal year. Another factor is that natural gas franchise revenues are decreasing since demand for the product is decreasing. Hare is already talking to department directors about how to cut expenses in the current fiscal year. The problem only gets worse next year. Hare said that if the Fire and Police levy passes in May 2012, the revenue would not be realized until 2013-2014.

Hare said he met with Police Chief Ed Boyd. The Police Department is already down four positions, so a reduction in staff is not their first choice. There are other tools available for reducing costs, such as redistributing resources, but they will not be easy.

Taylor said he had three items to bring to the attention of the Council. First, he overstated property tax projections due to an error in reading the reports from Benton County. The amount was about \$300,000. Taylor didn't realize a certain number included debt. The second item is that there has been a change in assessed value. Growth in assessed value has averaged 5% per year. This past year other cities averaged just under 3%. Albany was at about 3.7% and this year it fell dramatically. Taylor did not anticipate that much of a drop. The third item is compression. As the difference between assessed and market values narrows, more and more properties fall into compression. This has the greatest impact on the Fire and Police operating levy. The increase in compression is 96% over last year, which was an increase of 81% over the year before. The dollars lost to compression is \$720,000.

Konopa asked, when will Walmart be on the tax rolls? Johnson said that whatever portion is completed as of January 1, which should be 100%, will come in one year from now. Hare said it will help, but it is not going to make a huge difference.

Taylor said that compression is a major influence on the budget. The impact is much more dramatic in Albany and Linn and Benton Counties, than in other cities in Oregon. Discussion followed about other Oregon cities and the impact of the economy on states that depend on sales tax.

Hare pointed out that Albany has cut 30 positions since 2009 through layoffs and attrition.

Konopa said that legislators need to know how this is affecting cities.

Kopczynski said that Central Albany Revitalization Area (CARA) has grown and he would like to believe that the assessed value has increased due to the improvements that have been made. This means that CARA is doing what it is supposed to do. Konopa added that CARA has brought in a lot of private investment to the downtown area, which might not have come otherwise.

Hare said tonight was an update for Council. Staff will come back with ideas for savings. They have already been under a hiring chill, but now he's imposing a hiring freeze.

Hare said the Budget Committee will convene in January. Staff is also considering how to more fully engage the community in budget discussions. He said, we need to ask them what services they want, given the amount of resources available.

COUNCILOR COMMENTS

Konopa said that the October 2011 edition of *Local Focus* by the League of Oregon Cities had a nice article about the late Councilor Ralph Reid, Jr. on page 26. There was also an article about Albany's award for Talking Water Gardens on page 15 (see agenda file).

Konopa said the Council got a thank you card from the Festival Latino group (see agenda file).

CITY MANAGER REPORT

Delapoer said that staff learned that Lowes is analyzing their stores system wide and closing certain locations. The good news is that Albany is not one of them. The bad news is that they are held up on their permits from the state. Lowes has asked Albany to modify the deadline for two months past October 2014. Delapoer noted that this also extends the time the City has to get the infrastructure done. Delapoer would like to accept the modification with the Council's approval. He pointed out that none of the delays experienced so far are the fault of the City.

MOTION: Johnson moved to authorize the City Manager to modify the Lowe's Infrastructure Funding Agreement to extend the deadlines as reported by staff. Kopczynski seconded the motion and it passed 5-0.

ADJOURNMENT

There being no further business, the Work Session adjourned at 5:44 p.m.

Respectfully submitted,

Mary A. Dibble, MMC
Deputy City Clerk

Reviewed by,

Stewart Taylor
Finance Director



APPROVED:

DANGEROUS DOG ORDINANCE WORK GROUP
City Hall, Municipal Court Room
Tuesday, November 1, 2011

MINUTES

Members present: Mark Azevedo, Floyd Collins, Max Frederick, Larry Holverson, Sharon Konopa, Dick Olsen

Staff present: Jim Delapoer, City Attorney; Casey Dorland, Police Lieutenant; Marilyn Smith, Management Assistant/Public Information Officer

Mayor Konopa called the meeting to order at 5:37 p.m.

APPROVAL OF MINUTES

October 17, 2011

MOTION: Holverson moved to approve the minutes as written; Olsen seconded. Minutes were approved.

SCHEDULED BUSINESS

Review of October 17 Revisions to AMC 6.18, Dangerous Dogs

Smith explained changes made from the last meeting were limited to a trainer's qualifications and relocating a dangerous dog from another community. Delapoer explained that standards that apply to a dog that is judged dangerous in other communities may differ from those in Albany. Holverson asked if we should include the same language that requires retraining. Delapoer said that a dog owner should get their dog's dangerous classification lifted in the original jurisdiction. Frederick said that we won't know if someone has relocated such a dog here unless it runs into the police. Delapoer said that this section of the ordinance is largely unenforceable. It's not really going to protect the public, but we don't have any such protection now.

Holverson asked why 6.18.040(9) doesn't say "potentially dangerous or dangerous?" He thought we were always talking about both, and this is the first time he's seen "dangerous" eliminated. Olsen and others pointed out that .040 deals only with potentially dangerous dogs while .050 deals only with dangerous dogs. Holverson pointed out a suffix missing from a word in (9). Smith will correct it.

Olsen asked about the requirement of paying a fee for having a potentially dangerous dog. Delapoer said that if the dog is no longer potentially dangerous, the owner wouldn't need to pay a fee.

Holverson said that he just wanted to make sure for our own dogs that we still had another course for dangerous and potentially dangerous dogs.

Konopa asked if anyone else had questions to ask or changes to propose. Dorland asked about language regarding having a dog under control to be included where the ordinance addresses taking a potentially dangerous dog off property for walks, the need for a muzzle, etc. Current language says a person has to be in control of the dog but the revisions didn't include that language for dangerous dogs off property. He is concerned that the person doing the walking needs to be able to control the dog. He said that a German shepherd took down one of the Community Service Officers last weekend; the person who had the dog couldn't control it, and it took two people to get it off the officer. He believes the control person should be of the stature to be able to control the dog. He wants to set a reasonable standard. Delapoer asked how a prosecutor could judge in advance whether the 90-pound woman has control of a 100-pound dog, for example. In ord

prove a criminal violation, the prosecutor has to be able to show intent. The City's leash law requires that the person has the dog under control. The group agreed that the language in the leash law is sufficient.

Holverson said that he had one other item: 6.18.030(2) "The Director encouraged to share information with victim." He asked why that was in there. Delapoer said that mandatory language creates a risk of it being the basis of a challenge. Frederick said the victim doesn't have a say. Delapoer said that the victim doesn't have a property right that must be protected under the law. The owner has the property right.

Konopa said that the work group needs to move the ordinance forward for recommendation to the City Council. The Council will review it Monday at the work session with staff going through it and highlighting the main changes. Council will be asked to adopt it on November 9.

MOTION: Frederick moved to send the revised ordinance to the City Council; Azevedo seconded. Holverson said that he wants it on record that he is not overwhelmed by the document. As far as supporting it, he said that in many ways we went backwards from the original ordinance but the main objective was to have some language that gave the Hearings Officer other choices besides death or returning the dog back to the owner. He said that he will vote to support it just for that language alone. Konopa said that any ordinance can be amended if we find it's not working. This one includes a lot of changes that give another alternative, but it can always be improved. Collins said that in addition to adding alternatives for dangerous dogs, the revisions include options for potentially dangerous dogs to get out of that classification. The new ordinance protects the public while giving due process to the animal.

Holverson asked why, if the dog is deemed dangerous, you don't have the option to remove the classification. Frederick and Collins said that for a dangerous dog, the ordinance provides more options than just euthanasia.

The motion passed 6-0.

Konopa said that it would be great if members could be at Monday's meeting. Collins said that he is not sure how the balance of the Council will support it. It still may have a tough time getting to a vote. Holverson said that he thinks this document would be something everyone on the Council can support. He asked if there might be a power play on the Council rather than what's good for the community. Collins said that he doesn't think it's a power play at all. Konopa said that many people still feel the dog should have been put down. Holverson said that Lt. Dorland would feel this greatly enhances the Police Department's position. People's relationship with their pets is unbelievable.

Konopa told a story about how she once dealt with a pet rabbit that bit her.

BUSINESS FROM THE WORK GROUP

None.

NEXT MEETING DATE

None; work group disbanded.

ADJOURNMENT

The meeting adjourned at 6:11 p.m.

Respectfully submitted,

Marilyn Smith
Management Assistant/Public Information Officer

CITY OF ALBANY
 CITY COUNCIL
 Council Chambers
 Wednesday, November 2, 2011
 7:15 p.m.

MINUTES

CALL TO ORDER

Mayor Konopa called the meeting to order at 7:15 p.m.

PLEDGE OF ALLEGIANCE TO THE FLAG

Mayor Konopa led the pledge of allegiance to the flag.

ROLL CALL

Councilors present: Jeff Christman, Ray Kopczynski, Floyd Collins, Dick Olsen, Bill Coburn, and Bessie Johnson

SCHEDULED BUSINESS

Business from the Public

Jim Clausen, 14488 Geary Circle SE, referenced the agenda and the use of ICMA reporting. He was concerned about the use of sustainable development throughout the City. He said foreign governments, through the United Nations, are too influential towards the City. Sustainable development is a concept from Agenda 21 and is part of the United Nations language. He would like foreign governments out of Albany.

Reports

Annual Performance Benchmarking Report/Citizen Survey.

Management Systems Director Bob Woods reported on benchmarking. He provided an example of fleet activities and how they are tracked. The tracking program is progressing, but is not complete. He walked through the information available and how Directors access the information.

Budget options.

City Manager Wes Hare described how the City got to where it is regarding the budget. He discussed projections, revenues, and compression. He said the unexpected decrease in property tax revenues recently reported by the Linn County Assessor leaves the City with approximately \$1 million less than projected in the General, Public Safety levy, and Parks funds. He described the three options provided in the agenda memo:

- Option 1: Lay off approximately 15 employees as soon as possible, and eliminate some services.
- Option 2: Dedicate the \$750,000 for Water and Sewer in-lieu-of franchise fee, currently being transferred into the Street Fund, to the General Fund, to partially offset the reduced property taxes. It would still require some layoffs.
- Option 3: The City has the ability to use PepsiCo settlement resources to pay off General and Parks Funds debt amounting to about \$2.3 million in principal and interest. If that were the choice, the City could reduce expenses in the General Fund by approximately \$240,000 annually and the Parks Fund costs by \$179,000. Settlement fund resources could also be used to reimburse the Public Works funds for the approximately \$1.5 million that was spent to design the 53rd Avenue overpass associated with the PepsiCo project. This money would offset the transfer of utility franchise fees for two years. Option 3 would preclude moving forward with either the Police or Fire facilities. It would also require additional personnel cuts, although it would reduce the number from the previous options.

Hare is hoping the Council will provide direction regarding which option to use as the basis to build the next budget on. He mentioned that there has been a reduction of around 30 people in the last three years. He explained designated funds and the restrictions put on them. They usually come from or through the state and can only be changed by a vote of the people or by the State Legislature. The money available for discretionary decisions by the Council is the local property tax money. Albany is fortunate to also have discretionary use of the settlement funds.

City Attorney Jim Delapoer said that regarding the final settlement, unencumbered funding was one of several settlement offers. The one the City chose was because it gave the Council the most flexibility. He mentioned that if the Pepsi Corporation had built, the City would be worse off. Avoiding laying off public safety employees is now a high priority. Delapoer asked the Council to consider paying off debt, as recommended in Option 3, thus freeing up funding to maintain the current service levels. He assured the Council they would be able to replenish the settlement fund.

Councilor Collins asked about reserves and if the short fall is reflected in the beginning balance. Finance Director Stewart Taylor said the shortfall does reflect an actual loss to the General Fund. Taylor explained the adjustments to the beginning balance. It has been going down around one-percent a year.

Collins said any fix will need to be for the long term.

There followed discussion regarding compression and the percentage of loss to the budget. Projected losses are currently being calculated with the assumption of a one-percent increase in taxes with an 11% decline in the public safety levy.

Councilor Coburn said he would like to get the Budget Committee involved. He said if the City were a business, it would slowly be going broke. He is not in favor of laying off people at this time. He would like to consider using the contingency fund and reserves. He said the Council needs to prioritize what the City can do.

Councilor Kopczynski asked, can any reduction in employees be accomplished through retirements, not filling vacant positions, or combining jobs? Hare said yes and the City has been doing that. The concern is that some critical positions are being vacated. There followed a discussion of positions that are already vacant.

Councilor Johnson commented about employee reductions leaving others to take up the slack and would encourage keeping the Police and Fire employees. She agrees with Coburn and would want to "save" the employees.

Councilor Christman agreed that they needed to make a decision for the short term. For him to support any of the Options, the condition would be to have a detailed plan to replenish the funds and reserves. He believes that services will change and departments will have to determine what "slack" gets dropped.

Hare said Option 3 does give staff some time to come back with a detailed plan. He asked Taylor to explain what using the contingency does.

Regarding using the contingency, Taylor said he would be very uncomfortable going under the five-percent policy adopted by the Council. If the City is in violation of its Financial Policies, it could be a disclosable event for City bonds. As for a plan, he said he foresaw meeting with the Budget Committee in January, providing a forecast for one year, and suggesting to the Budget Committee assumptions that are compatible with what the Council wants.

Kopczynski asked, how would the conversation be going, if the City did not have the settlement funds? Hare said the options would only be 1 or 2.

Coburn said it doesn't make sense to lay off people and reduce services significantly, and keep the settlement money.

Collins supports a combination of Options 1 and 3. He opposes Option 2 as he doesn't want to take from Streets Fund. He feels the streets are the City's biggest capital asset and they need to be maintained. He suggested holding tight to vacant positions.

Konopa said if the Council decides on borrowing, it should be borrowing from the settlement. She encouraged the Council to support tax reform. She said the compression that hit the City's Police and Fire levy is unfair, as later levy's aren't being touched. She suggested the Council figure out how to replace the franchise fee if Streets ends up losing it.

Johnson had questions about restricted and unrestricted funds, and what they are used for. She asked staff to provide a report on those funds. There was further discussion regarding budgets.

Collins suggested staff use Option 1, Coburn's suggestion, and Option 3. He explained for the staff to use the reserves to the policy level, back fill with some sort of loan from the Pepsi money, and hold the line on operational expenses. Collins doesn't want to use the franchise fee from the Street Fund.

DIRECTION: Hare repeated that the direction to staff was to fill positions that are absolutely critical, continue to reduce materials and services expenses, budget contingency and reserves to the lowest levels, and use elements of Option 3.

Christman said he would support a plan with those elements, but reminded the Council that this is a band-aid. He would like staff to bring back a schedule to prioritize services and would like the January meeting to be expanded to more than one day, however that looks, to thoroughly review and make decisions that can be incorporated into a long-term plan.

BUSINESS FROM THE COUNCIL

Coburn said he had been told that the Lehigh neighborhood is being considered for a historical area. He was concerned how that would affect the Oregon Department of Transportation (ODOT) planning for the area. Hare said as far as he knows there is no effort to make that a historical area.

Management Assistant/Public Information Officer Marilyn Smith reported on the Homeless Enhancement and Rehabilitation Team (HEART) Summit. She said participation by the West Albany High School Leadership students was very successful. She mentioned that Mayor Konopa received the 2011 HEART Award for her many years of service to the homeless.

Planning Director Greg Byrne reported that he and Transportation Systems Analyst Ron Irish were working with others in the region to evaluate changes to the Oregon Highway Plan brought about by two bills in the last legislature. It's likely that there will be changes to certain ODOT tables that will give more capacity to intersections, and more frequent spacing of access points. These changes may make development along state facilities easier and cheaper.

NEXT MEETING DATE

The next scheduled meeting of the City Council is a Work Session, on Monday, November 7, 2011, at 4:00 p.m., in the Municipal Court Room of City Hall.

The next scheduled Regular Session of the City Council is on Wednesday, November 9, 2011, at 7:15 p.m., in the Council Chambers of City Hall.

ADJOURNMENT

There being no other business, the meeting was adjourned at 9:15 p.m.

Respectfully submitted by,

Betty Langwell, MMC
City Clerk

Reviewed by,

Stewart Taylor
Finance Director

CITY OF ALBANY
 CITY COUNCIL
 Council Chambers
 Wednesday, November 9, 2011
 7:15 p.m.

MINUTES

CALL TO ORDER

Mayor Konopa called the meeting to order at 7:15 p.m.

PLEDGE OF ALLEGIANCE TO THE FLAG

Konopa led the pledge of allegiance to the flag.

ROLL CALL

Councilors present: Jeff Christman, Ray Kopczynski, Floyd Collins, Dick Olsen, Bill Coburn, and Bessie Johnson

PROCLAMATION

Association of Motorcyclists of Oregon Day.

Konopa read a proclamation declaring December 4, 2011, as Association of Motorcyclists of Oregon Day. She commented on the successful participation in the organization for the toy run.

SCHEDULED BUSINESS

First Reading of Ordinances

Levying the assessment of a Transportation System Development Charge for property described as Tax Lot 1300, Parcel 10S-03W-33DC, and site address 1203 Century Drive NE; and declaring an emergency.

City Attorney Jim Delapoer read for the first time in title only "AN ORDINANCE LEVYING THE ASSESSMENT OF A TRANSPORTATION SYSTEM DEVELOPMENT CHARGE FOR PROPERTY DESCRIBED AS TAX LOT 1300, PARCEL 10S-03W-33DC, AND SITE ADDRESS 1203 CENTURY DRIVE NE; AND DECLARING AN EMERGENCY."

MOTION: Councilor Coburn moved to have the ordinance read for a second time in title only. Councilor Kopczynski seconded the motion and it passed 6-0.

Delapoer read the ordinance for a second time in title only.

MOTION: Coburn moved to adopt the ordinance. Kopczynski seconded the motion.

City Manager Wes Hare explained that this ordinance refers to the expansion of a mini-mart in the Century Drive area and he commended how the process was worked through by staff. There were issues, including the concern of the owner about the costs. Staff worked with the owner and was able to come up with an outcome that was acceptable. Staff did a great job.

Councilor Christman suggested the Council take a look at the Albany Development Code so as to reconsider the language for fees for the expansion of a business; in this case the expansion was for storage that would not have a significant trip count. To this store owner, because the store footprint would not be changed, the store would not have more driving customers because of the additional footage. Yet, fees were assessed with trip count criteria.

VOTE: A vote was taken on the motion and it passed 6-0, and was designated Ordinance No. 5766.

Amending AMC 6.18, Dangerous Dogs.

City Attorney Jim Delapoer read for the first time in title only "AN ORDINANCE AMENDING ALBANY MUNICIPAL CODE (AMC) 6.18, "DANGEROUS DOGS," AND DECLARING AN EMERGENCY."

MOTION: Councilor Collins moved to have the ordinance read a second time in title only. Councilor Olsen seconded the motion and it failed 4-2, with Johnson and Kopczynski voting no. It takes a unanimous vote of the Council to have an ordinance read two times at the same meeting. This item will come back to the next regularly scheduled City Council meeting on December 7, 2011.

Business from the Public

Doug Cooley, representing Comcast, provided information on their "Internet Essentials" program. Also known as the "Comcast Broadband Opportunity Program," it provides low income households that have a

child in the free lunch program with access to the internet for \$9.95 a month, plus tax. He was before the Council as part of their outreach efforts.

Kopczynski asked if Cooley had a sense of how many households are participating in the program. Cooley said they estimate around 60-100,000 households in Oregon within their service footprint (from Portland to Eugene).

Adoption of Resolution

Establishing parking restriction on Cascade Heights Drive.

Transportation Systems Analyst Ron Irish explained that the City had received a request from the Cascade Heights Homeowner's Association for a parking restriction on the east side of Cascade Heights Drive that would extend from Quarry Road north 80 feet. Information was provided in the memo (in agenda file). He said staff does not believe that extending the yellow curb on the east side of the road would offer appreciable operational or safety benefits for vehicles or pedestrians, but neither would it result in creation of a problem. Approval of the parking restriction would result in the loss of two on street parking spaces. Street width varies along the Drive.

There followed discussion regarding the impact of parking in the surrounding area during events at the North Albany Middle School.

MOTION: Kopczynski moved to adopt the resolution establishing parking restrictions on Cascade Heights Drive. Coburn seconded the motion and it passed 6-0, and was designated Resolution No. 6057.

Adoption of Consent Calendar

- 1) Approval of Minutes
 - a) September 26, 2011, City Council Work Session.
 - b) October 26, 2011, City Council Regular Session.
- 2) Accepting an overtime reimbursement from the California Department of Justice, Bureau of Narcotic Enforcement. RES. NO. 6058
- 3) Authorizing the city of Albany to submit a grant application for Oregon Department of Transportation Connect Oregon IV grant funds and a commitment to provide the required local match for the North Albany Park and Ride. RES. NO: 6059
- 4) Approving an extended property tax abatement agreement with W.R. Grace for extended enterprise zone benefits. RES. NO. 6060

Konopa asked for item 1a) to be removed for discussion.

MOTION: Coburn moved to adopt the Consent Calendar with item 1a) pulled for discussion. Kopczynski seconded the motion and it passed 6-0.

Konopa said the minutes of the September 26, 2011, City Council Work Session, on page 14 of the agenda, last sentence under Councilor Comments, should read "Konopa has been appointed by Governor Kitzhaber to be on the Rapid Rail Council to look at ~~high speed rapid~~ rail instead of ~~rapid high speed~~ rail."

MOTION: Coburn moved to adopt item 1a) of the Consent Calendar with corrections. Johnson seconded the motion and it passed 6-0.

BUSINESS FROM THE COUNCIL

Christman voiced concern that the criteria for the Human Relations Committee Award did not say that it needed to be a citizen of Albany. Hare said the criteria will be re-evaluated next year.

Collins complimented Public Works and Planning staff on how they presented the floodplain study to the North Albany neighborhood at a meeting on Tuesday, November 8.

Hare invited the Council to a City Hall open house before the Council meeting on December 7 that will showcase awards the City has received in the last year.

Johnson reported that tax collection at Linn County has been normal for this time of year.

Hare reported that the Department Directors met and are reconsidering the budget for Fiscal Year 2011-2012, looking for savings. Staff should be able to meet the direction from the Council at last week's meeting.

NEXT MEETING DATE

The next scheduled meeting of the Council is a Work Session, on Monday, December 5, 2011, at 4:00 p.m., in the Municipal Court Room, at City Hall.

The next scheduled Regular Session of the Council is on Wednesday, December 7, 2011, at 7:15 p.m., in the Council Chambers, at City Hall.

ADJOURNMENT

There being no other business, the meeting was adjourned at 7:55 p.m.

Respectfully submitted by,

Reviewed by,

Betty Langwell, MMC
City Clerk

Stewart Taylor
Finance Director



TO: Albany City Council
VIA: Wes Hare, City Manager
FROM: John R. Bradner, Fire Chief *JRB*
DATE: November 8, 2011, for the December 7, 2011, City Council Meeting
SUBJECT: Appropriation of the 2011-12 State Hazardous Materials Emergency Preparedness Grants on Behalf of the Mid-Valley Local Emergency Planning Committee

RELATES TO STRATEGIC PLAN THEME: • A Safe City

Action Requested:

City Council approval by resolution to appropriate funds for the 2011-12 State Hazardous Materials Emergency Preparedness (HMEP) Grants on behalf of the Mid-Valley Local Emergency Planning Committee (LEPC) for a hazardous materials full-scale exercise and training.

Discussion:

The City of Albany participates on the Mid-Valley LEPC. The State Fire Marshal's Office provides grant opportunities to Oregon LEPCs for hazardous materials emergency preparedness and requires a city or fire service agency to receive and distribute grant funds on behalf of the LEPC.

The Mid-Valley LEPC has been notified by the State Fire Marshal's Office that they have been approved for the following 2011-12 HMEP grants. The grant period terminates on September 30, 2012.

1. Chlorine Full Scale Exercise -\$18,000
2. Hazardous Material Awareness and Operations Training - \$5,000
3. Hazardous Materials Team Training - \$12,000

Budget Impact:

\$35,000 - 2011-12 HMEP Grant for the Mid-Valley LEPC (203-25-5089)

The grant requires an in-kind match of \$8,750, which will be satisfied through on-duty personnel's participation in the grant-supported activities.

JB:ljh

Attachment

RESOLUTION NO. _____

A RESOLUTION APPROPRIATING FUNDS FOR THE 2011-12 STATE HAZARDOUS MATERIALS EMERGENCY PREPAREDNESS GRANT ON BEHALF OF THE MID-VALLEY LOCAL EMERGENCY PLANNING COMMITTEE FOR A HAZARDOUS MATERIALS FULL-SCALE EXERCISE AND TRAINING.

WHEREAS, the City of Albany participates on the Mid-Valley Local Emergency Planning Committee; and

WHEREAS, the Mid-Valley Local Emergency Planning Committee applied for funding through the 2011-12 State Hazardous Materials Emergency Preparedness Grant; and

WHEREAS the State has notified the Mid-Valley Local Emergency Planning Committee that they will be awarded funding through the 2011-12 State Hazardous Materials Emergency Preparedness Grant for a full-scale hazardous materials exercise and hazardous materials training; and

WHEREAS, the State requires that a city or fire service agency be the pass-through for receipt and distribution of grant funds on behalf of the local emergency planning committees.

NOW, THEREFORE, BE IT RESOLVED, the Albany City Council authorizes the Fire Department to receive funds in the amount of \$35,000 from the 2011-12 State Hazardous Materials Emergency Preparedness Grant on behalf of the Mid-Valley Local Emergency Planning Committee for a hazardous materials full-scale exercise and training.

BE IT FURTHER RESOLVED, the 2011-12 State Hazardous Materials Emergency Preparedness Grant funds are hereby appropriated as follows:

	<u>Debit</u>	<u>Credit</u>
Resources		
2011-12 State HMEP Grant 203-25-5089-42017		\$35,000
Requirements		
Contractual Services 203-25-5089-60101	\$35,000	

DATED AND EFFECTIVE THIS 7TH DAY OF DECEMBER 2011.

Mayor

ATTEST:

City Clerk



TO: Albany City Council

VIA: Wes Hare, City Manager

FROM: Jorge Salinas, Information Technology Director

DATE: November 21, 2011, for the December 7, 2011, City Council Meeting

SUBJECT: Reclassification of Staff Positions in the Information Technology (IT) Department

RELATES TO STRATEGIC PLAN THEME: • An Effective Government

Action Requested:

Staff requests Council approval to reclassify two positions in the IT Department as recommended by the Human Resources Department. The specific actions are:

1. Reclassify IT Help Desk Specialist position to Application Support Specialist (Rusty Southwick)
2. Reclassify Database Administrator position to Database and Virtual Infrastructure Administrator (Russ Pearson)

Discussion:

A review by Human Resources Department, based on specific requests from employees, was recently completed on the two positions listed above. The Human Resources Department determined those reclassifications were required in order to provide equitable compensation commensurate with the position's level of responsibility and scope of work. The following is additional information on each of the reclassifications:

1. Reclassify IT Help Desk Specialist position to Application Support Specialist (Rusty Southwick)

Rusty is currently classified as an IT Help Desk Specialist. A review of the expectations for this position and the additional responsibility required to perform the job demonstrates that his work is more closely aligned with that of an Application Support Specialist. The additional responsibilities include supporting and managing the Permits Plus application after an employee retired on September 6, 2011.

2. Reclassify Database Administrator to Database and Virtual Infrastructure Administrator (Russ Pearson)

Russ currently is classified as a Database Administrator (DBA). A review of the expectations for this position, level of responsibilities, and technical skills required to perform this dual role demonstrates that his work is closely aligned and more appropriately defined as that of a Database and Virtual Infrastructure Administrator. Additionally, this reclassification will include a change in FLSA status to exempt. Russ has been instrumental in the design and implementation of the City's new virtual infrastructure environment and this solution has achieved significant cost savings through reduction in hardware replacement.

Reclassification of Staff Positions in the Information Technology (IT) Department

Page 2

November 21, 2011

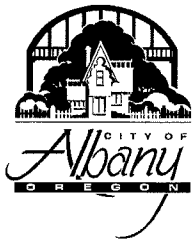
The Information Technology Department is fortunate to have highly qualified individuals who are capable and willing to take on challenges as needs and opportunities arise. Based on their current level of responsibilities, Human Resources Department recommendations, and the need to compensate them fairly and appropriately, we are requesting that these two employees be reclassified effective October 1, 2011, upon approval by Council.

Budget Impact:

Approximately \$4,404 in wages and benefits for FY11-12; in FY12-13 the cost would be approximately \$7,000 annually.

Note: This amount may be offset by an average of \$4,770 in annual savings from overtime and comp payouts (based on FY10 and FY11 overtime data for the DBA position). Additionally, by not filling the vacancy of a .5 Permit Plus FTE, we are expecting to save approximately \$26,000 annually in the IT services funds.

JS:de



TO: Albany City Council
VIA: Wes Hare, City Manager
FROM: Mark W. Shepard, P.E., Public Works Director *MWS*
DATE: November 30, 2011, for the December 7, 2011, City Council Meeting
SUBJECT: Accept Drinking Water Source Protection Grant

Action Requested:

Staff requests Council adopt the resolution to accept Oregon Department of Human Services Drinking Water Program grant funds for drinking water source protection.

Discussion:

The Oregon Department of Human Services Drinking Water Program provides grants for drinking water source protection. At the request of the Calapooia, North Santiam, and South Santiam Watershed Councils, the City initiated a grant application for this program. Notice was received in April 2011 that the application was successful. The \$50,000 grant requires no local match.

The purpose of this grant is to provide funding for the protection of drinking water source areas that lie above (upstream) source water intakes. These funds will allow implementation of on-the-ground riparian restoration activities adjacent to these upstream tributaries.

The Watershed Councils have partnered together and implemented education and outreach activities to invite landowners to participate in restoration actions. While recruitment has already been successful, the additional financial resources provided by this grant will also encourage additional landowners within the sensitive riparian area to join them.

The Watershed Council's project manager will help landowners develop plans that follow best management practices, assist them with the on-the-ground actions, and follow-up with effectiveness monitoring at each project site. The City's involvement is limited to serving as fiscal manager for the grant.

Budget Impact:

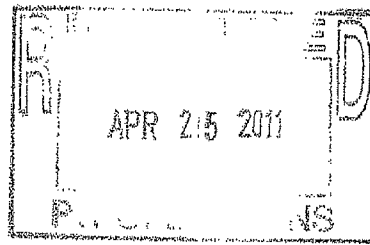
No City funds are required for this grant.

JR:MY:kw
Attachment

PUBLIC HEALTH DIVISION
Drinking Water Program
John A. Kitzhaber, MD, Governor

Oregon
Health
Authority

444 A Street
Springfield, OR 97477
Ph. (541) 726-2587
Fax (541) 726-2587
<http://healthoregon.org/dwp>



April 15, 2011
City of Albany
Attn: Jeff Kinney
525 Aviation Way, SE
Albany, OR 97322

Drinking Water Source Protection Fund Letter of Interest Results

Dear Jeff,

On behalf of the OHA Drinking Water Program and the Department of Environmental Quality, I would like to thank you for submitting a Drinking Water Source Protection Letter of Interest (LOI) for your project. The OHA DWP and DEQ are pleased to announce that your project has been recommended for Grant funding.

The OHA DWP will now transmit the project funding list to the Oregon Business Development Department for administration of the Grant funds. If you have further questions regarding the administration process, you may contact the OHA DWP Unit Manager Tony Fields at (917) 673-0422 or OBDD Safe Drinking Water Revolving Loan Funds Specialist Del Little at (503) 986-0261.

Sincerely,

Tom Pattee, R. G.
Groundwater Coordinator
OHA Drinking Water Program

"Assisting People to Become Independent, Healthy, and Safe"
An Equal Opportunity Employer

RESOLUTION NO. _____

A RESOLUTION ACCEPTING A GRANT FROM OREGON DEPARTMENT OF HUMAN SERVICES FOR DRINKING WATER SOURCE PROTECTION

WHEREAS, the Oregon Department of Human Services Drinking Water Program provides grants for drinking water source protection; and

WHEREAS, the City initiated a grant application on behalf of the Calapooia, North Santiam, and South Santiam Watershed Councils and received notification in April 2011 that the application was successful; and

WHEREAS, no local match is required and the grant is in the amount of \$50,000; and

WHEREAS, receipt of these funds will allow the Watershed Councils to implement on-the-ground riparian restoration activities in the streams above (upstream) the surface water intakes; and

WHEREAS, Oregon Local Budget Law provides that expenditures in the year of receipt of grants, gifts, bequests or devices transferred to the local government in trust for a specific purpose may be made after enactment of a resolution or ordinance authorizing the expenditure (ORS 294.326(3)).

NOW, THEREFORE, BE IT RESOLVED that the City of Albany accepts this Drinking Water Source Protection Grant in the amount of \$50,000 for riparian restoration activities upstream of the surface water intakes, and authorizes the Public Works Director to execute the agreements and conditions for their acceptance; and

BE IT FURTHER RESOLVED that the Drinking Water Source Protection grant in the amount of \$50,000 is hereby appropriated as follows:

	<u>Debit</u>	<u>Credit</u>
Resources		
Drinking Water Source Protection		\$50,000
203-50-5090-42035 Federal Grants & Assistance		
Requirements		
203-50-5090-60101 Contractual Services	\$50,000	

DATED AND EFFECTIVE THIS 7TH DAY OF DECEMBER 2011.

Mayor

ATTEST:

City Clerk

RESOLUTION NO. _____

A RESOLUTION ACCEPTING THE FOLLOWING FRANCHISED UTILITY EASEMENT:

Grantor

Purpose

Benton Woods Homeowners Association, an Oregon Nonprofit Corporation	Franchised Utility Easement adjacent to existing right-of-way for the Benton Woods subdivision development.
--	---

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

DATED AND EFFECTIVE THIS 7TH DAY OF DECEMBER 2011.

Mayor

ATTEST:

City Clerk

EASEMENT FOR FRANCHISED PUBLIC UTILITIES

THIS AGREEMENT, made and entered into this _____ day of _____, 2011, by and between Benton Woods Homeowners Association, an Oregon non-profit corporation, 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 and Utility Companies with Franchise Agreements with the City, 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 franchised utilities 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: See legal description on attached Exhibit A and map on attached Exhibit B and Exhibit C.
2. The permanent easement described herein grants to the City and its franchised utility companies, and to their 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.
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 Utility Company performing the maintenance shall return the site to original or better condition.
6. No permanent structure shall be constructed on this easement.

IN WITNESS WHEREOF, the undersigned, being the Board President of the Benton Woods Homeowners Association, has executed this instrument this 26th day of Oct., 2011.

GRANTOR: Benton Woods Homeowners Association, an Oregon non-profit corporation

By: [Signature]

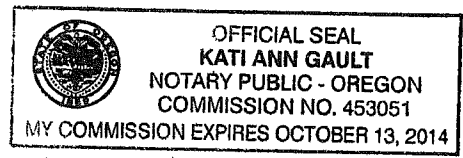
Name: M. Scott Clark

Title: Board President

STATE OF Oregon)
County of Multnomah) ss.
City of Portland)

The foregoing instrument was acknowledged before me this 26th day of October, 2011, by M. Scott Clark, on behalf of the Benton Woods Homeowners Association, as his/her voluntary act and deed.

[Signature]
Notary Public for Oregon
My Commission Expires: 10/13/14



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"

7-FOOT WIDE FRANCHISE UTILITY EASEMENTS

"Benton Woods Phase II" Subdivision

Three (3) seven foot (7.00') wide strips of land located in BENTON WOODS, a subdivision of record in Benton County, Oregon that are more particularly described as follows:

Franchise Utility Easement Strip No. 1:

A portion of Tract "D" in said BENTON WOODS subdivision, said portion being more particularly described as follows:

Commencing at an iron rod at the southeast corner of said Tract "D"; thence South 89°45'56" West on the south boundary line of said Tract, a distance of 260.57 feet to an iron rod; thence North 00°14'04" West 100.00 feet to an iron rod; thence South 89°45'56" West 100.00 feet to an iron rod marking the **True Point of Beginning**; thence North 00°14'04" West 131.70 feet to an iron rod; thence North 89°45'56" East, on the westerly boundary of said Tract "D", a distance of 7.00 feet; thence South 00°14'04" East, parallel with said westerly boundary, a distance of 131.70 feet to a point on the southerly boundary of said Tract "D", thence South 89°45'56" West 7.00 feet to the **Point of Beginning**.

Franchise Utility Easement Strip No. 2:

A portion of Tract "B" in said BENTON WOODS subdivision, said portion being more particularly described as follows:

Commencing at an iron rod at the northeast corner of said Tract "B"; thence South 89°45'56" West on the north boundary line of said Tract, a distance of 366.41 feet to an iron rod; thence North 00°14'04" West 100.00 feet to an iron rod marking the **True Point of Beginning**; thence South 89°45'56" West, on the most northerly boundary line of said Tract "B", a distance of 46.00 feet to an iron rod; thence South 00°14'04" East, on a westerly boundary line thereof, a distance of 7.00 feet, thence North 89°45'56" East, parallel with the most northerly boundary

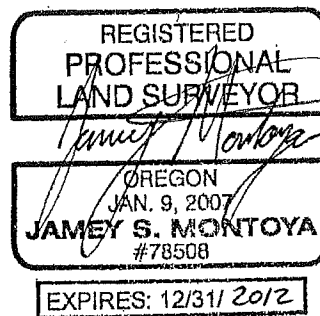
line of said Tract "B", a distance of 46.00 feet to a point on the easterly boundary line of said Tract, thence North 00°14'04" West 7.00 feet to the **Point of Beginning**.

Franchise Utility Easement Strip No. 3:

A portion of Tract "B" in said BENTON WOODS subdivision, said portion being more particularly described as follows:

Commencing at an iron rod at the southeast corner of said Tract "B"; thence South 89°50'10" West, on the south boundary line of said Tract, a distance of 249.99 feet to an iron rod; thence South 00°09'50" East 90.00 feet to an iron rod marking the **True Point of Beginning**; thence South 89°50'10" West, on the most southerly boundary line of said Tract "B", a distance of 37.61 feet to an iron rod; thence North 00°09'50" West, on a westerly interior boundary line of Tract "A" in said BENTON WOODS subdivision, a distance of 7.00 feet; thence North 89°50'10" East, parallel with said southerly boundary line, a distance of 37.61 feet to a point on an easterly interior boundary line of said Tract "A"; thence South 00°09'50" East 7.00 feet to the **Point of Beginning**.

END OF DESCRIPTION

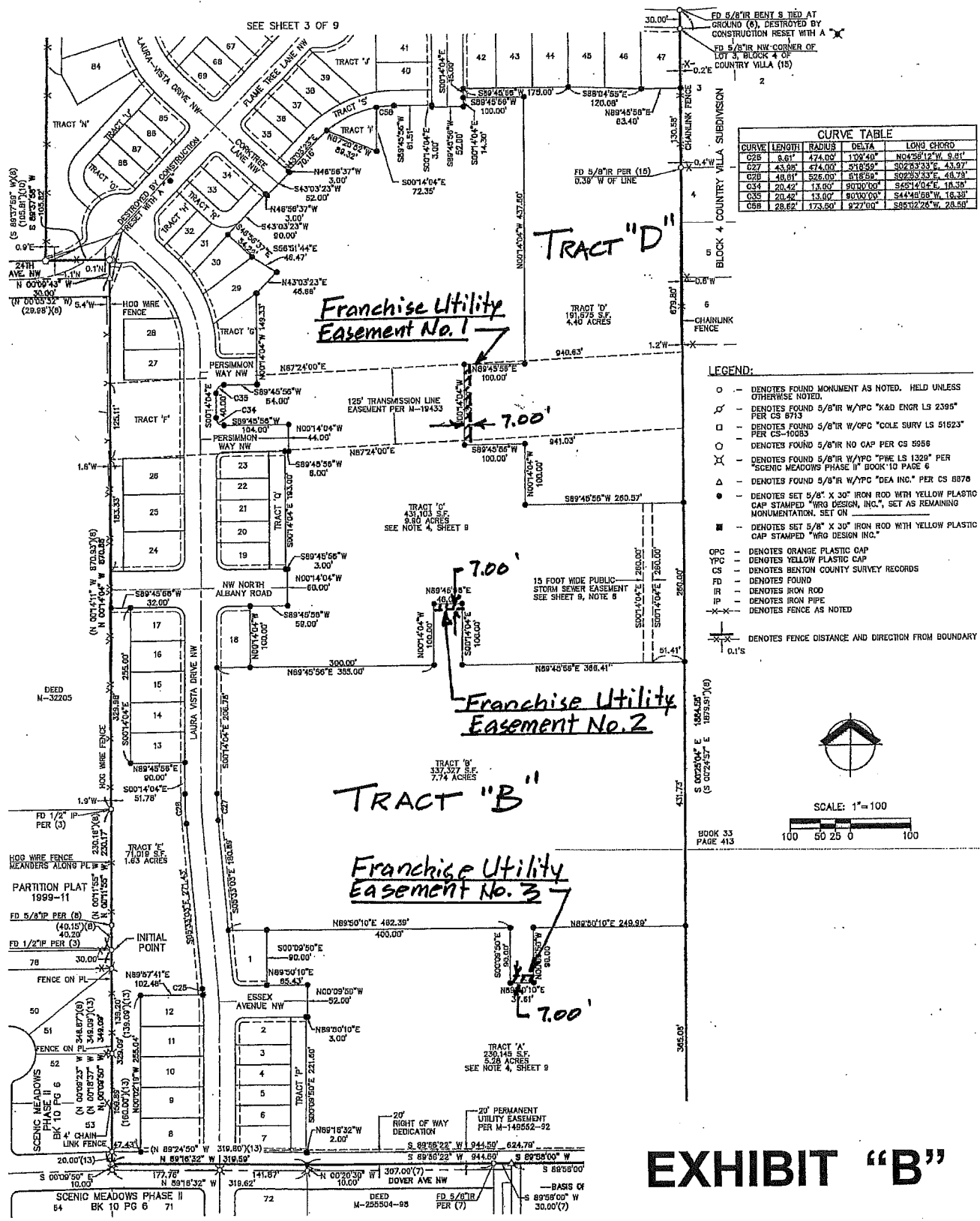


September 21, 2011
7 FOOT WIDE FRANCHISE
UTILITY EASEMENT'S DESCRIPTION
(10-12-B) JSM:ls

File Ref: share/projects/2010/10-12-B/surveying/documents/Franchise Utility Easement Descriptions.doc

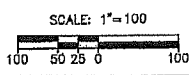
BENTON WOODS

LOCATED IN THE S.E. 1/4 OF SEC. 26, AND THE N.E. 1/4 OF SEC. 35
TOWNSHIP 10 SOUTH, RANGE 4 WEST, W.M.
CITY OF ALBANY, BENTON COUNTY, OREGON
JUNE 20, 2007



CURVE LENGTH	RADIUS	DELTA	LONG CHORD
C28 8.61'	174.00'	19°40'	N04°58'12"W 9.81'
C27 43.85'	474.00'	5°18'59"	S02°23'33"E 43.97'
C28 46.81'	526.00'	5°18'59"	S02°23'33"E 46.78'
C34 20.42'	13.00'	90°00'00"	S66°14'04"E 18.36'
C35 20.42'	13.00'	90°00'00"	S44°45'56"W 18.36'
C58 28.62'	173.50'	9°27'00"	S85°12'24"W 28.59'

- LEGEND:**
- DENOTES FOUND MONUMENT AS NOTED. HELD UNLESS OTHERWISE NOTED.
 - ⊙ DENOTES FOUND 5/8" IR W/YPC "K&D ENGR LG 2395" PER CS 8713
 - ⊙ DENOTES FOUND 5/8" IR W/YPC "COLE SURV LS 51623" PER CS-10083
 - DENOTES FOUND 5/8" IR NO CAP PER CS 5956
 - ⊙ DENOTES FOUND 5/8" IR W/YPC "PHE LS 1329" PER "SCENIC MEADOWS PHASE II" BOOK 10 PAGE 6
 - ⊙ DENOTES FOUND 5/8" IR W/YPC "DEA INC." PER CS 8870
 - DENOTES SET 5/8" X 30" IRON ROD WITH YELLOW PLASTIC CAP STAMPED "WRG DESIGN, INC.", SET AS REMAINING MONUMENTATION. SET ON
 - DENOTES SET 5/8" X 30" IRON ROD WITH YELLOW PLASTIC CAP STAMPED "WRG DESIGN INC."
 - OPC DENOTES ORANGE PLASTIC CAP
 - YPC DENOTES YELLOW PLASTIC CAP
 - CS DENOTES BENTON COUNTY SURVEY RECORDS
 - FD DENOTES FOUND
 - IR DENOTES IRON ROD
 - IP DENOTES IRON PIPE
 - ⊗ DENOTES FENCE AS NOTED
 - ⊗ DENOTES FENCE DISTANCE AND DIRECTION FROM BOUNDARY

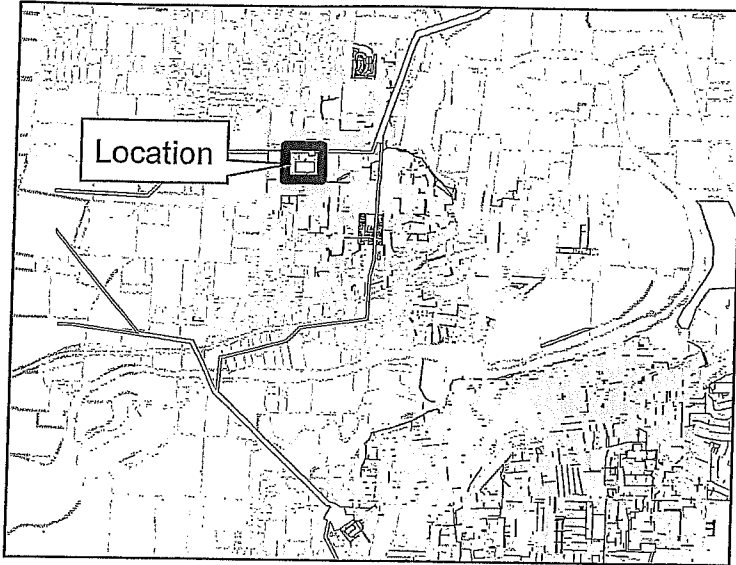


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EXHIBIT C

10S04W35 01100 and 01300

Franchise Utility Easements
for Benton Woods Phase II



Geographic Information Services

