



## PUBLIC HEARING

**CITY OF ALBANY  
PLANNING COMMISSION  
City Council Chambers, 333 Broadalbin Street SW  
Monday, November 30, 2009  
5:15 p.m.**

### AGENDA

1. CALL TO ORDER

(Chair Faller)

2. PLEDGE OF ALLEGIANCE TO THE FLAG

3. ROLL CALL

4. LEGISLATIVE PUBLIC HEARING

DC-02-09:

Legislative amendments to the following  
Development Code Articles: 1, 4 5 & 11.

5. ACTIVITY UPDATE

6. NEXT PLANNING COMMISSION MEETING DATE: TBD.

7. ADJOURN

#### Rules of Conduct for Public Hearing

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

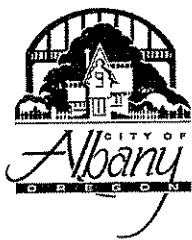
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*The location of the meeting/hearing is accessible to the disabled. If you need special accommodations to attend or participate, please notify the Human Resources Department in advance by calling 917-7500.*

*City of Albany Web site: [www.cityofalbany.net](http://www.cityofalbany.net)*

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# 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 Amendments

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<b><u>HEARING BODY</u></b>	PLANNING COMMISSION	CITY COUNCIL
<b><u>HEARING DATE</u></b>	Monday, November 30, 2009	Wednesday, January 13, 2010
<b><u>HEARING TIME</u></b>	5:15 p.m.	7:15 p.m.
<b><u>HEARING LOCATION</u></b>	Council Chambers, Albany City Hall, 333 Broadalbin Street SW	

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### **GENERAL INFORMATION**

DATE OF REPORT: November 20, 2009

FILE: DC-03-09

TYPE OF APPLICATION: Legislative amendments to the following Development Code Articles:

#### Article 1, Administration and Procedures (Exhibit A):

- Section 1.080. Extend approvals for applications approved between January 1, 2007, and December 31, 2008, for one year; and
- Section 1.203. Notice area and meeting standards are proposed for neighborhood meetings; and
- Sections 1.330(3) and 1.350(2). Increase in notice areas is proposed; and
- Sections 1.203, 1.330(3), 1.350(2), 1.360(2) and 1.370(2). Allow Director to increase the notice area up to 1,000 feet when land use or transportation patterns or level of public interest warrant a larger notice area.
- The entire article will be edited for clarity and grammar.

#### Article 4, Commercial and Industrial Zoning Districts (Exhibit B)

- Sections 4.050 and 4.060. In the IP and NC zones, all new *restaurants* would be allowed as before through site plan review (staff level review). New *taverns, bars, breweries or nightclubs* would change from site plan review to a conditional use review Type II (a hearing can be requested).

#### Article 5, Mixed Use Village Center Zoning Districts (Exhibit C)

- Sections 5.060 and 5.070. In the MS, MUC, MUR, and WF zones, all new *restaurants* would be allowed as before through site plan review (staff level review). New *taverns, bars, breweries or nightclubs* would change from site plan review to a conditional use review Type II (a hearing can be requested); and
- In the ES zone, new *restaurants* are proposed to be allowed through a conditional use review Type II (a hearing can be requested). New *taverns, bars, breweries or nightclubs* are proposed to not be allowed.

#### Article 11, Land Divisions (Exhibit D)

- Section 11.060. Extend approvals for land use applications approved between January 1, 2007, and December 31, 2008, for one year.

Article 22, Use Categories and Definitions (Exhibit E)

- Section 22.130 and new 22.155. Separate the “restaurant” use category into two use categories: *restaurants* and *taverns, bars, breweries, and nightclubs*.

REVIEW BODIES: Planning Commission and City Council  
APPLICANT: City of Albany Community Development Department

**INTRODUCTION**

The Albany Development Code (ADC) allows for the public to request legislative amendments and for the Community Development Director to initiate legislative amendments.

Periodically, the ADC needs updating to meet current standards and changing needs, to clarify the intent, or to correct unintended consequences. The City has implemented a process to periodically evaluate and adopt changes to the ADC. Staff will take requests to evaluate changes to the Code throughout the year from the public and internally, and will prepare amendments to the Code semi-annually.

This “round” of semi-annual amendments includes several requests from residents and a developer that were received since the last round of Code amendments.

**ATTACHMENTS & EXHIBITS**

The following documents are provided as attachments to the staff report:

- Attachment 1: City of Albany Building Permits 2005-2009; and
- Attachment 2: City of Albany Land Use Approvals 2005-2008; and
- Attachment 3: October 22, 2009, letter from John O’Neil.

All amendments to the Code are shown as Exhibits A through E to the staff report.

- Article 1, Administration and Procedures (Exhibit A):
- Article 4, Commercial and Industrial Zoning Districts (Exhibit B)
- Article 5, Mixed Use Village Center Zoning Districts (Exhibit C)
- Article 11, Land Divisions (Exhibit D)
- Article 22, Use Categories and Definitions (Exhibit E)
- Article 12, Public Improvements (Exhibit F) – NO CHANGES ARE PROPOSED

**NOTICE INFORMATION**

In this round of Development Code amendments, staff packaged as many related public and staff suggestions received earlier this year together as staff thought could be processed.

A memo summarizing the proposed ADC amendments was mailed September 22, 2009, to persons believed to have a particular interest in the sections of the Code that were proposed to be amended and a press release was published in the Albany Democrat Herald September 23, 2009. We posted the Code sections on the City’s web site and invited input on these sections prior to developing the draft amendments. We received two emails from residents on the bar issue and a letter from North Albany Citizens in Action and one from John O’Neil (Henshaw Farms developer).

Ballot Measure 56 (Senate Bill 516) passed in 1998, requires notice be mailed to all property owners in zoning districts where the permissible uses may or zoning may be affected by the proposed amendments. This notice was

mailed November 9, 2009, to owners of property in zones where a change is being proposed regarding restaurants and taverns, bars, breweries and nightclubs (the ES, IP, MS, MUC, MUR, NC, and WF zones). The proposed amendments relating to taverns, bars, breweries, and nightclubs were posted to the website on November 9, 2009. Staff received one phone call regarding the proposed amendments.

A notice of public hearing was mailed November 18, 2009, to everyone that provided public input on the proposed amendments. A Notice of Public Hearing was published in the Albany Democrat-Herald on November 23, 2009.

The staff report and Articles 1 and 11 were posted on the City's website on November 23, 2009. At the time this staff report was completed, no written testimony had been received.

### **STAFF RECOMMENDATION**

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

### **PLANNING COMMISSION DECISION**

#### **MOTION TO RECOMMEND APPROVAL**

*If no new evidence is presented at the public hearing, the Planning Commission may recommend City Council approval of the application based on the findings and conclusions of the staff report.*

I MOVE that the Planning Commission recommend that the City Council APPROVE the proposed Development Code amendments as summarized in the staff report (File DC-03-09). This motion is based on the findings and conclusions of the staff report and testimony presented at the public hearing.

OR

#### **MOTION TO APPROVE AS MODIFIED**

*If there is information not included in the staff report or new information is presented at the public hearing, the Planning Commission may propose new findings and conditions or modify the proposed conditions.*

I MOVE that the Planning Commission recommend that the City Council APPROVE AS MODIFIED (*Insert modification(s) here*) the proposed Development Code amendments as summarized in the staff report (File DC-03-09). This motion is based on the findings and conclusions of the staff report and testimony presented at the public hearing.

### **APPEALS**

If the Planning Commission decision is to recommend that the City Council approve the proposed Development Code amendments, the City Council will hold a public hearing on the amendments. 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-03-09**

The review criteria for Development Code amendments require that the proposed amendments better achieve the goals and policies of the Comprehensive Plan and that they be consistent with the policies and purposes of the Code. The long-range interests of the general public are considered by reviewing the proposed amendments in the

context of Comprehensive Plan goals and policies. The proposed policy amendments are evaluated against the review criteria.

## REVIEW CRITERIA

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 Findings and Conclusions.

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

The Comprehensive Plan goals and policies that are relevant to review of the proposed Development Code amendments are written in *italic type* and considered as a separate review criterion.

## FINDINGS OF FACT

- 1.1 Proposed amendments related to Taverns, Bars, Breweries and Night Clubs in the MS, MUC, MUR, and WF zones (Article 5) and the NC and IP zones in Article 4: (Exhibits B, C, and E)

The City proposes the following changes to help balance the desire for great neighborhoods and a strong business environment in the affected zones:

- Sections 22130. Separate the “restaurant” use category into two use categories: *restaurants*, and new Section 22.155 - *taverns, bars, breweries, and nightclubs*. Before 2003, these uses were in separate categories in the Development Code (Exhibit E).
- In the IP and NC zones in Article 4 (Exhibit B) and the MS, MUC, MUR, and WF zones in Article 5 (Exhibit C), all *new restaurants* would be allowed as before through site plan review (staff level review). For *new taverns, bars, breweries and nightclubs*, the process is proposed to change from site plan review (staff-level review) to a conditional use review Type II (a hearing can be requested); and
- In the ES zone in Article 5 (Exhibit C), the process for *new restaurants* is proposed to change from being allowed through site plan review (staff-level review) to a conditional use review Type II (a hearing can be requested). *New taverns, bars, breweries and nightclubs* are proposed to not be allowed. This would return to the same process and uses allowed in this zone before 2003.

- 1.2 Purpose of Proposed Changes related to Restaurants, and Taverns, Bars, Breweries and Nightclubs (Bars): The City has received noise complaints from residents that live near a couple of existing bars. While noise is particularly a concern with new outdoor seating areas, there is periodic noise until closing when people go outside to smoke and converse, and then leave and go to their cars, often parked in front of residences.

In 2003 the different use categories listed under “eating and drinking establishments” were lumped together into one category: restaurants. Taverns, bars, nightclubs and breweries (*bars*) were a separate use categories. *Bars* were not allowed in a few zones, including ES, NC and OP. Given the typically late hours and the consumption of alcohol at these establishments, staff has concluded that in zones that allow for residential development and/or are adjacent to residences, *bars* may not always be able to be compatible with the neighborhood.

Staff reviewed the zoning district purpose statements to determine where *restaurants* and *taverns, bars, breweries, and night clubs (bars)* should be allowed outright (through staff-level site plan review), where more public input may be warranted through a public hearing (conditional use Type II review, persons in the notice area can request a public hearing), and where they should not be allowed.

Generally, where office and residential uses are the primary use types encouraged by the zoning district, and light commercial is intended to serve the adjacent neighborhoods or may be located close to residences, staff proposes that *bars* be allowed conditionally (through the conditional use Type II process). Only in the ES zone new *bars* are proposed to not be allowed. This is because the zone includes residential uses and is on the edge of the Monteith National Register Historic District.

The zoning district purpose statements for the zones in which a change in the review process or in an allowed use is proposed are copied below.

#### Article 4 Zones

NC – NEIGHBORHOOD COMMERCIAL DISTRICT. The NC district is intended primarily for small areas of retail establishments serving nearby residents' frequent needs in convenient locations. The NC District is typically appropriate for small clusters or service centers located at intersections within residential neighborhoods. Businesses should fit into the residential pattern of development and not create land use, architectural or traffic conflicts. Generally, uses located within NC Districts should have as their primary market area the population within a one-half mile radius.

IP – INDUSTRIAL PARK DISTRICT. The IP district is intended primarily for light manufacturing, high-tech, research and development, institutions and offices in a quality environment. Uses are characterized by attractive building architecture and landscaped yards and streetscapes, and the absence of objectionable external effects. The district is designed for industrial and business parks containing offices together with clean, non-polluting industries. IP is located along or near highly visible corridors to provide a positive image and a transition to residential or natural areas from heavier industrial uses.

#### Article 5 Zones

ES – ELM STREET DISTRICT. The ES district is intended primarily to provide enough land for Albany General Hospital and associated medical uses while maintaining compatibility with adjacent residences in scale and design. Light commercial and personal services are encouraged to serve the nearby residents. Removal of existing residences and landscapes is discouraged. New parking facilities should be underground or completely screened. Only the amount of parking that is necessary should be allowed for uses in this district, to minimize the amount of land consumed by parking.

MS – MAIN STREET DISTRICT. The MS district is intended primarily as an employment center with supporting commercial and retail services for residents and employees in the area. Retail, restaurant or night uses that impact surrounding residences are discouraged.

MUC – MIXED USE COMMERCIAL DISTRICT. The MUC zoning district is intended primarily to provide a mix of convenience commercial, personal services, offices and medium density residential uses. The district would typically be anchored by a grocery store, and may include a mix of smaller retailers, offices, live-work units and residences. The MUC district is easily accessible to nearby residences, and commercial uses are compatible in scale and design with adjacent neighborhoods. Uses in the MUC zone will serve area residents and should not draw from the region.

MUR – MIXED USE RESIDENTIAL DISTRICT. The MUR district is intended primarily to create a residential district that allows a mixture of neighborhood commercial uses that meet the daily needs of area residents. [Ord. 5673, 6/27/2007]

WF – WATERFRONT DISTRICT. The WF district is intended transition to Albany's Willamette River waterfront into a vibrant center characterized by a variety of housing choices and a mixture of housing, office, and retail uses. Development and design standards will result in great neighborhoods, a pedestrian friendly environment and an enhanced community image. [Ord. 5635, 1/11/2006]

#### Result of Amendments:

- In mixed use zones that allow residential and commercial development and/or zones that are close to residential neighborhoods, the proposed amendments will allow for more neighborhood input when new *taverns, bars, breweries or night clubs* are proposed near residences.

- The ES (Elm Street) zone was created to allow the hospital and medical offices to continue and grow, while be compatible to the adjacent single-family neighborhoods and the Monteith National Register Historic District. The changes in the ES zone will allow restaurants that can be compatible with the neighborhood. While Baileys Sportsbar serves the neighborhood and employees in the ES zone, it attracts patrons from the region and is open until 12:00 a.m. Sunday through Thursday and 2:00 a.m. on Friday and Saturday. The existing sportsbar would be allowed to continue to operate, but would become a non-conforming use in the ES zone.
- The Monteith District is recognized in the Comprehensive Plan as a special neighborhood of well-restored and maintained historic homes that are mostly single-family owner-occupied residences. It is also a popular destination for visitors. The City wants to encourage and support the medical uses in the ES zone as well as the health of the Monteith Historic District and its importance as a piece of Albany's history and desirable residential neighborhood.

1.3 The proposed amendments described in 1.1 better achieve the following Comprehensive Plan goals and policies:

- *Protect Albany's historic resources and utilize and enhance those resources for Albany residents and visitors (Chapter 2, Special Areas).*
- *Create a city of diverse neighborhoods where residents can find and afford the values they seek (Chapter 4, Housing).*
- *Create Village Centers that offer housing and employment choices (Chapter 3, Economy).*
- *Provide opportunities for small neighborhood commercial facilities to be located in neighborhoods and Village Centers to be located close to the areas they serve. Neighborhood convenience and Village Center commercial uses must:*
  - a) Be located, designed, and operated so as to be compatible with surrounding residential uses (Chapter 3, Economy).*
- *Encourage residential professional uses as buffers between intensive commercial uses and less intensive residential uses where compatibility can be demonstrated with the surrounding neighborhood (Chapter 8, Urbanization).*

1.4 Expiration of land use approvals and tentative plat approvals: (Exhibits A and D)

2001 Amendments: Until 2001, land use approvals and tentative plat approvals were valid for one year. Up to two one-year extensions were permitted for a total approval time period of three years. In 2001, the City extended approvals to three years and removed the extension request language. No changes were made to staged/phased subdivisions, which expire 5 years from the tentative plat approval.

Proposed Amendments: Due to the poor economy, two developers have requested the City consider allowing an extension to subdivision approvals. We are evaluating extensions to all land use approvals.

- Section 1.080: If the final decision became effective between January 1, 2007, and December 31, 2008, and there have been no changes in zoning to the development since the original approval, will receive a one-year extension to the land use approval (**Exhibit A**).
- Section 11.060: A one-year extension to the original expiration date is made for a tentative plat approved between January 1, 2007, and December 31, 2008, if there have been no changes in zoning since the original approval (**Exhibit D**).

1.5 Economic Findings:

Oregon's recession started in January 2008. In Oregon, the recession was still impacting housing and manufacturing in the third quarter of 2009.<sup>1</sup> Housing and financial markets continue to exert downward pressure on the national and state economies.<sup>2</sup>

1 Oregon Office of Economic Analysis, Oregon Economic and Revenue Forecast, September, 2009, p.33.

2 Ibid., p.42.

According to the March 2009 Oregon Economic and Revenue Forecast, prepared by the Oregon Office of Economic Analysis, housing starts in the State of Oregon declined 48% between 2008 and the peak in 2006-2007, with housing starts estimated to drop another 47% between 2008 and 2009. Housing starts in Oregon were raised for 2009 and 2010 because residential permits have been higher than expected in the first half of 2009. That said, the quarterly report notes that "housing starts will remain below their historical average until 2013 as the industry continues to work off its excess oversupply and consumer demand returns."<sup>3</sup>

Albany's construction permits and land use applications reflect the state's decline. In 2008, the number of new residential building permits was only 46% of permits (136 units) issued in 2006-2007 (336 units average). To date in 2009, new residential building permits totaled 103 through October, which is only 31% of those issued in 2006-2007. *See Attachment 1, City of Albany Building Permits 2005-2009.*

Extensions to land use approvals in other Oregon communities range from 0 to 7 years. Portland approved an extension for developments approved between May, 2006 and December, 2008 to be valid until June, 2012. This created extensions that range from 6 months to 3 years depending on when the application was submitted.

After hearing from two developers, a few residents, and staff research, the City Council discussed extensions to land use approvals at their August 12 and August 26, 2009, meetings. The Council's direction was that if the zoning has not changed, that the City should consider a one-time, one-year extension to land use approvals issued between a specific time periods.

Staff evaluated all land use approvals issued between 2005 and 2009 and progress toward completion on these developments. Staff has concluded that developments approved between January 1, 2007, and December 31, 2008, captures most of the land divisions and new construction projects that may expire before the economy recovers. *See Attachment 2, Land Use Approvals, 2005-2008.*

After evaluating Oregon's economy related to housing and construction and the City's permit and land use application data and approval dates, staff proposes the one-year extension be considered for projects approved between in January 1, 2007 and December 31, 2008.

- 1.6 Phased Subdivisions Approvals. Section 11.070. Discussion at the August 12 and August 26, 2009, City Council meetings regarding the economy concluded that it was NOT necessary to grant extensions to phased subdivisions, which currently have a five-year approval period. There was concern that subdivision approvals beyond five years may not meet local, state or federal standards on a variety of issues, such as water quality and wetlands.

Between 2005 and 2009, three phased subdivisions were approved. Two of the three have final plated the first phase of these developments (one in 2006 and one just recently). *See Attachment 2, Land Use Approvals, 2005 to 2008.*

During the initial public input period, we received an October 22, 2009 letter from John O'Neil of Metropolitan Land Group. He represents the owners of Henshaw Farms, which their approval will expire 1/30/2011. (*See Attachment 3.*) While he says they have not reached agreement with the Division of State Lands regarding wetlands on the site, it is the "dire state of the home building industry" that warrants a mechanism to allow for extensions to existing subdivision approvals. He has asked that the City consider granting a temporary, one-time, 5-year approval to the Henshaw Farms phased subdivision, out to 2016. This time frame would allow for the market to return to a healthy and viable state.

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<sup>3</sup> Ibid., p.49.

While the housing industry has been greatly affected by the economy, the last sentence of 11.070 would likely require modifications to approved plats to avoid conflicts with changes in the Comprehensive Plan. The City is close to adopting an updated Transportation System Plan and in 2010 will update the Comprehensive Plan policies regarding natural resources, including wetlands.

Proposal. No changes to the five-year approval period at this time. Staff propose changing the word “staged” to “phased,” which is more commonly used. Secondly, when the original one-year approval was extended to three years in 11.060 in 2001, the reference to one-year in the second paragraph in 11.070 should have been changed to three years in 2001 but it was missed. We propose making this change.

- 1.7 Land use extensions in other Oregon cities: Research on extensions to land use approvals in numerous other localities range from 0 to 7 years. Portland approved an extension for decisions that became effective between May 27, 2006, and December 2008 to be valid until June 2012. This created extensions of 6 months to 3 years, depending on when the approval was issued.
- 1.8 The proposal to grant a one-time one-year extension to the existing three-year approvals for most land uses will save staff and the applicant time in processing new applications. In addition it should result in projects being completed rather than abandoned. It better achieves the following Comprehensive Plan policy:

*Ensure that all new developments are reviewed expeditiously and thoroughly and result in compliance with Comprehensive Plan goals and policies and ordinance standards. (Chapter 8, Urbanization)*

- 1.9 Proposed amendment: Neighborhood Meeting Standards in Section 1.203 and new 1.204. (**Exhibit A**).
- Section 1.203: Set a defined notice of 300 feet, to correspond to the notice area when the application is submitted and give the Director the discretion to increase the notice area if the project due to land use or transportation patterns or that may generate public interest.
  - Section 1.204, neighborhood meeting notice standards and meeting presentation standards are proposed.

Reason: A few residents have asked that we require a neighborhood meeting to be held with each new application, or new version of an application. The existing Code does not provide specific guidelines to applicants for neighborhood meetings.

Result of Amendments: The amendments will provide more guidance to the applicants and should result in more effective neighborhood meetings.

- 1.10 Proposed amendments related to notice areas for certain types of land use applications. The following table outlines the review process in Article 1 (**Exhibit A**), notice area, and decision makers for the different types of applications received.

**CITY OF ALBANY LAND USE PROCESS SUMMARY (Current)**

	<b>Type I</b>	<b>Type I-L</b>	<b>Type II</b>	<b>Type III</b>	<b>Type IV Q-J</b>	<b>Type IV Legislative</b>
	No discretion, not land use	quasi-judicial	quasi-judicial	quasi-judicial	quasi-judicial	legislative
<b>Notice Area</b>	No notice	100 feet/300 ft	100 feet	100 feet/300 feet	300 feet	affected properties
<b>Decision Maker</b>	Staff	Staff - unless Director feels policy issue, then PC/HB	Staff mails tentative decision to neighbors who can request hearing PC/HB	PC, HB or LAC	2 hearings: PC/LAC & CC	2 hearings: PC/LAC & CC
<b>Appeals to:</b>	no appeals	PC or LUBA*	CC	CC	LUBA	LUBA
<b>Example Applications</b>	change of use, final plats, historic review not visible from street and no substitute materials	site plans (new commercial, industrial, multi-family), partitions, subdivisions < 20 lots	variances, modifications to non-conforming uses, some conditional uses	land divisions 20 or more lots, cluster development, land in floodplain, interim planned devel, some conditional uses, historic review visible from street	public request for change to zoning, comp plan, or ADC	City initiated changes to comp plan, zoning or ADC

\*If neighborhood meeting required, then appeal is to PC.

Staff researched notice areas in Corvallis, Bend and Portland for the different types of land use applications. Staff feels that in some cases, Albany's notice areas are very minimal. The following changes are proposed to be added to sections that include notice areas:

- Oregon Revised Statutes (ORS) requires that notice be given to all recognized neighborhood organizations. To be in compliance with ORS and to be more inclusive, we propose that all neighborhood organizations recognized by the City Council that include the subject site in its boundaries or that are within 300 feet of the subject site will get notice for all land use applications.
- Staff proposes that the (Community Development) Director have discretion to increase the notice area up to 1,000 feet when land use or transportation patterns or level of public interest warrant a larger notice area. For example, where large undeveloped sites exist, the notice area may only include a handful of properties, and/or the proposed development may have impacts beyond the properties in the notice area.

The other amendments are proposed to increase notice areas in the following sections of Article 1 (Exhibit A):

- Section 1.330(3), Type I-L Procedure. These are limited land use decisions made at the staff-level. We propose increasing the notice area for developments that are processed through site plan review (Option A or B), from 100 feet to 300 feet. The notice of filing is sent to property owners in the notice area. Any comments received will be considered when staff evaluates the development proposal.
- Section 1.350(1) and (2), Type II Procedure. Increase the notice area from 100 feet to 200 feet. In the Type II process, the staff decision is mailed to persons in the notice area and gives them an opportunity to request a public hearing.

- Section 1.360(2), the Type III Procedure. The Type III procedure requires a public hearing. Currently the notice area is either 100 feet or 300 feet, depending on the type of application. 100 feet is not very far, often only including a handful of properties. The proposal is for all applications that require a public hearing have a notice area of 300 feet. This will be more consistent with notice areas in other cities.

Result of Amendments: The proposed amendments will allow more property owners to participate in the land use process if they choose to. The proposal to give Director discretion to increase the notice area will allow for properties that may be impacted by a development to participate in the land use process.

- 1.11 The proposed amendments to increase notice areas will better achieve the following Comprehensive Plan policies:

*Ensure that local citizens and other affected groups, neighborhoods, agencies, and jurisdictions are involved in every phase of the planning process (Chapter 9, Land Use Planning: Citizen Involvement).*

- 1.12 In general, Goal 1-Citizen Participation has the following goal: Ensure that local citizens and other affected groups, neighborhoods, agencies, and jurisdictions are involved in every phase of the planning process. The following Comprehensive Plan policies are applicable to Development Code amendments in general:

*Citizen Involvement: When making land use and other planning decisions:*

- 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.*
- Utilize all criteria relevant to the issue.*
- Ensure the long-range interests of the general public are considered.*

*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.*

Public involvement and notice was summarized earlier in the staff report.

- 1.13 Street Alignment and Traffic safety concerns at intersections (Article 12, Exhibit F). Staff evaluated 12.150, Street Alignment and originally intended to add a new section in Article 12 called, Site Distance at Intersections. The new section would ensure clear vision at intersections to avoid accidents due to poor visibility. Since a new Transportation System Plan will be adopted by the end of 2009, and it will generate some additional amendments and evaluation of the Development Code, staff recommends taking a comprehensive approach to evaluating street designs, intersection locations and safety, and other guidelines and standards comprehensively in one amendment package in 2010. ***No changes are proposed at this time. More discussion from staff on this issue is found in Exhibit F.***

## CONCLUSIONS

- 1.1 The proposed Development Code amendments better achieve the goals and policies of the Comprehensive Plan.
- 1.2 The 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.***

## FINDINGS OF FACT

- 2.1 Staff reviewed all of the zoning district purpose statements and special purpose district (Monteith Historic District) to determine in which zones taverns, bars, breweries and nightclubs might be compatible, and what the review process should be. The proposed amendments will still allow for these uses in most areas throughout the City, but should result in more neighborhood participation and compatibility. Separating restaurants into two categories will change the review process for taverns, bars, breweries and nightclubs in the ES, IP, MS, MUC, MUR, NC and WF zones.

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

*(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.*

- 2.2 The proposed policy 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 The proposed amendments to separate taverns, bars, breweries and nightclubs from the restaurant use category will change the review process for some zones from site plan review to conditional use Type II review. The Type II review process will allow for a resident to request a public hearing on the development. Currently, the Director has the authority to require site plan review applications that are expected to generate interest from the community to go to public hearing. Therefore, there is little change in the processing time. The benefit of the proposed amendments will result in identifying proposed impacts on the surrounding property owners and neighborhood and result in developments that are compatible with the base zone and with the neighborhood.

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

- 2.4 The proposal to set a minimum notice area and standards for neighborhood meetings and to increase the notice area for several land use application types will allow for more public involvement in the development review process.

*(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.*

- 2.5 Increasing the notice area for several types of land use applications will allow for residents who may be impacted by a proposed development a chance to raise issues and concerns regarding a proposed development so that these impacts can be mitigated to the extent feasible.

## CONCLUSIONS

- 2.1 The proposed Development Code amendments are consistent with the purposes of the Code.
- 2.2 This criterion is satisfied.

## City of Albany Building Permits 2005 - 2009

MONTH	NSFR	Duplex 3-4 units	Multi-fam	MH-Lot	TOTAL	MH-Park	NCOM	CALTREP	
2005 dec-jul	187	6	0	0	0	193	0	15	68
Jan, 05	37	0	0	0	1	38	2	2	10
Feb, 05	24	2	0	0	2	28	1	3	11
March, 05	59	0	0	0	0	59	0	1	9
April, 05	105	0	0	0	1	106	0	1	11
May, 05	39	0	0	0	0	39	1	4	12
June, 05	55	2	0	0	0	57	1	0	7
<b>2005 all</b>	<b>506</b>	<b>10</b>	<b>0</b>	<b>0</b>	<b>4</b>	<b>520</b>	<b>5</b>	<b>26</b>	<b>128</b>
Jan, 06	42	0	0	0	0	42	0	2	7
Feb, 06	29	0	0	0	0	29	0	3	7
March, 06	40	0	0	0	0	40	0	2	15
April, 06	57	0	0	0	1	58	0	2	14
May, 06	31	0	0	0	1	32	0	2	10
June, 06	31	0	0	0	1	32	0	2	19
July, 06	19	0	0	0	0	19	1	7	26
Aug, 06	24	0	0	0	1	25	3	5	14
Sept, 06	15	0	0	0	0	15	0	0	14
Oct, 06	22	2	0	1	0	25	2	1	8
Nov, 06	15	0	0	0	0	15	2	0	6
Dec, 06	3	2	0	1	0	6	2	3	13
<b>2006 all</b>	<b>328</b>	<b>4</b>	<b>0</b>	<b>2</b>	<b>4</b>	<b>338</b>	<b>10</b>	<b>29</b>	<b>153</b>
Jan, 07	34	0	0	0	0	34	0	2	7
Feb, 07	39	0	0	0	3	42	0	2	2
March, 07	44	0	0	0	2	46	1	2	12
April, 07	37	0	0	0	1	38	5	4	8
May, 07	35	0	0	0	1	36	2	0	7
June, 07	32	0	1	1	0	34	1	1	14
July, 07	19	0	0	0	0	19	1	7	26
Aug, 07	24	0	0	0	1	25	3	5	14
Sept, 07	15	0	0	0	0	15	0	0	14
Oct, 07	22	2	0	1	0	25	2	1	8
Nov, 07	15	0	0	0	0	15	2	0	6
Dec, 07	3	2	0	1	0	6	2	3	13
<b>2007 all</b>	<b>319</b>	<b>4</b>	<b>1</b>	<b>3</b>	<b>8</b>	<b>335</b>	<b>19</b>	<b>27</b>	<b>131</b>
Jan, 08	18	0	0	0	0	18	1	4	6
Feb, 08	10	0	0	0	1	11	1	5	10
March, 08	24	0	0	0	1	25	1	1	3
April, 08	12	0	0	0	2	14	0	1	12
May, 08	12	0	0	0	1	13	2	4	12
June, 08	12	0	0	0	1	13	2	2	18
July, 08	3	4	0	0	0	7	0	0	12
Aug, 08	12	2	0	0	0	14	0	3	8
Sept, 08	18	0	0	0	0	18	0	0	11
Oct, 08	5	2	0	6	0	13	0	10	14
Nov, 08	8	0	0	0	0	8	1	2	7
Dec, 08	2	0	0	0	0	2	0	2	6
<b>2008 all</b>	<b>136</b>	<b>8</b>	<b>0</b>	<b>6</b>	<b>6</b>	<b>156</b>	<b>8</b>	<b>34</b>	<b>119</b>

NSFR = new single-family residential  
 MH-Lot = Manufactured Home on lot  
 NCOM = New commercial  
 CALTREP = Commercial alterations/repairs

## City of Albany Building Permits 2005 - 2009

MONTH	NSFR	Duplex 3-4 units	Multi-fam	MH-Lot	TOTAL	MH-Park	NCOM	CALTREP	
Jan, 09	1	0	0	0	0	1	0	2	9
Feb, 09	4	0	0	0	1	5	0	0	7
March, 09	3	0	0	0	0	3	1	0	10
April, 09	5	2	0	0	0	7	0	1	11
May, 09	9	0	0	0	0	9	2	1	18
June, 09	27	0	0	0	1	28	1	2	22
July, 09	8	2	0	0	0	10	0	1	8
Aug, 09	11	0	0	0	0	11	1	1	4
Sept, 09	8	0	0	0	0	8	1	0	13
Oct, 09	21	0	0	0	0	21	0	1	10
Nov, 09									
Dec, 09									
<b>2009 to da</b>	<b>97</b>	<b>4</b>	<b>0</b>	<b>0</b>	<b>2</b>	<b>103</b>	<b>6</b>	<b>9</b>	<b>112</b>

## SUMMARY TABLE

YEAR	NSFR	Duplex 3-4 units	Multi-fam	MH-Lot	TOTAL		NCOM	CALTREP	
2005	506	10	0	0	4	520	26	128	
2006	328	4	0	2	4	338	29	153	
2007	319	4	1	3	8	335	27	131	
2008	136	8	0	6	6	156	46.6%	34	119
2009	97	4	0	0	2	103	30.7%	9	112

NSFR = new single-family residential  
 MH-Lot = Manufactured Home on lot  
 NCOM= New commercial  
 CALTREP = Commercial alterations/repairs

## City of Albany LAND USE APPROVALS between 2005-2008

Type of Applic & # of Apps	Approval	Expiration	Notes:
Approval Year	Not Constr	Date	Date
<u>Site Plan Review</u>			
2005	0		
2006	0		
2007	0		
2008	4	05/19- 12/27/2008	05/19- Pacific Blvd retail/office, 1401 Pac Blvd retail, SmartCenters, 120,000 sf industrial warehouse
<u>Conditional Uses</u>			
2007	3	02/27- 11/09/2007	02/27- 11/09/2010 YMCA, Waverly Assisted living, 3rd Ave attached
2008	1	09/30/2008	09/30/2011 222 3rd Ave SE, convert building to condos
<u>Planned Developments</u>			
2008	1	11/21/2008	11/21/2011 Brighton Place - attached units in PD on Davidson

## LAND DIVISIONS

File #	# Lots/ Parcels	Approval Date	Expiration Date	Notes:
SD-11-04		07/11/2005	n/a	"Substantial construction" on site, will not expire, no final plat
SD-03-05	168	05/10/2005		final plat subm 5/8/08. not complete. Info not submitted. (North Albany Village)
SD-10-05	202	07/11/2005	07/11/2010	<b>Phased subdivision.</b> Phase 3 approved. Phases 4-6 not submitted (Somerset Meadows)
SD-14-05	429	01/30/2006	01/30/2011	<b>Phased subdivision.</b> Henshaw Farms
PA-12-06	2	09/26/2006	09/26/2009	New owner
SD-09-06	47	12/01/2006	12/01/2009	New application expected
SD-17-06	22	03/14/2007	n/a	"substantial construction" on site, will not expire, (2267 and 2309 Scenic Dr NW)
PA-13-07	2	10/17/2007	10/17/2010	
SD-01-07	183	05/07/2007	05/07/2012	<b>Phased subdivision.</b> Phase 1 platted. 2 more phases (North Creek in N. Albany)
SD-02-07	9	07/18/2007	07/18/2010	2120 Perfect Lane SW
PA-09-07	2	02/29/2008	02/29/2011	
SD-06-07	7	02/20/2008	02/20/2011	2652 Gibson Hill Rd NW (Echo Place)
PA-19-07	2	03/04/2008	03/04/2011	
SD-01-08	6	09/24/2008	09/24/2011	2669 Gibson Hill Rd NW (Lot 5 of Hidden Meadows)
SD-05-07	78	11/26/2008	11/26/2011	East side of North Albany Rd (Thornton Lake Estate)
SD-07-07	11	12/19/2008	12/19/2011	S. side Maier Ln, E. of Skyline Dr NW (Fabian Ests)

October 22, 2009

VIA E-MAIL

Mr. Don Donovan  
 Planning Manager  
 City of Albany  
 333 Broadalbin Street SW  
 Albany, OR 97321

Re: Plat Extension Request for the approved Subdivision Plat for the property at 6150 Columbus Street SE, Albany, OR

Dear Mr. Donovan:

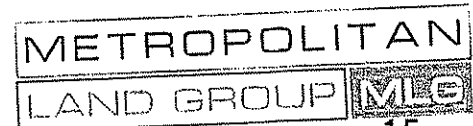
We appreciate the opportunity to comment on the upcoming work by both the Planning Commission and City Council to address the pressing need to provide extensions on approved subdivision plats due to the housing and general economic recession we are continuing to experience. As my letter will explain, the importance of implementing an extension process not only is for the benefit of individual property owners, but also for the City's future housing needs and those working to provide it.

Tri-County Investments owns the property located at 6150 Columbus Street SE in Albany. The property consists of approximately 179 acres, of which approximately 105 acres are located within the Urban Growth Boundary ("UGB"). Albany voters annexed the area within the UGB in 2005 and the City of Albany approved a subdivision plat for 429 residential single-family lots and 22.8 acres of open space in January of 2006 (see attached Notice of Decision). The plat approval expires in January of 2011.

The previous owners of the property shepherded the property through the annexation process and obtained the existing plat approvals but had not yet obtained wetland concurrence from the Department of State Lands ("DSL") – one of the final remaining hurdles before they could start building their approved subdivision. While in the process of pursuing DSL concurrence, the previous owners experienced financial difficulties which forced them to transfer the property under distressed circumstances. Tri-County purchased the property in December of 2007.

As I am sure you are aware, over the past two years the homebuilding industry has experienced economic hardship on an unprecedented scale. While the global financial crisis tightens credit markets and banks curtail lending, the homebuilding industry is also confronted by severe consumer angst over their economic future. This all adds up to very few new sales and even fewer additional housing starts. The ripple effect is a glut of buildable lots, un-built plats, and a consumer supply of housing not seen since the housing recession of the 1980's.

503.597.7100 : 503.597.7149  
 17933 NW Evergreen Parkway, Ste. 300  
 Beaverton, OR 97006  
 cc8 181933



ACCEPTED FOR DEVELOPMENT CONSTRUCTION

October 22, 2009

Furthermore, the State of Oregon has slid into a recession based on a number of national and local factors. The combined effect of these conditions are stark. According to the State of Oregon Employment Department, Oregon lost over 11,000 construction jobs related to development over the past 2 years. This does not include the thousands of other workers in the financial, planning, engineering and support services industries that have also lost their jobs. Many of the larger homebuilding companies (who employed hundreds and contracted for services with thousands) have filed for bankruptcy. This doesn't even recognize the dozens of small-scale homebuilders who have closed their doors but do not show up in unemployment figures or the newspaper. Clearly, the impacts have been felt by all families – in Albany as well across the state and nation.

We are currently working through the concurrence process mentioned above with DSL. To date, we have not been able to reach an agreement with DSL as to the extent of resources that exist on our property, but we are optimistic that we can reach an agreement soon that will remove this remaining regulatory hurdle and allow us to build the approved subdivision.

But even if we were able to proceed with a concurrence from DSL, we would not start the construction of the approved subdivision at this point in time. There is simply not enough market strength on either the funding or consumer sides to justify the significant upfront development costs today or in the foreseeable future. We believe that it would be neither financially feasible nor responsible to move forward without stable financing and demand in place. We believe that it will be 18 to 24 months before the market returns to a state where projects of this size are financially viable and that homebuilding activity returns to even a level close to where it was in 2005-06 when this project was originally approved.

The purpose of this letter is to explain the dire state of the homebuilding industry and request that the City of Albany take action to put in place a mechanism to extend existing subdivision plat approvals. This will not only have the effect of preserving for a finite period of time the ability to develop a project that was approved by the City without incurring additional costs to unnecessarily go through the review process a second time, but will also ensure that the City of Albany will realize the development that it has planned – in our case under the South Albany Area Plan. Otherwise, without this assistance many projects will remain undeveloped or unnecessarily delayed due to the uncertainty and added cost of having to go through the application process again. This will only further exacerbate an already difficult economic environment. Unfortunately, our project is but one of many facing this very situation.

Several approaches can be taken to address this situation. First of all, we understand that any solution will only be a temporary solution. Any plat extension program will only need to be in place to bridge the gap from now until the market recovers over the next few years.

Second, I understand that staff has already formulated a proposed set of criteria and extension periods for the City to consider, but from an industry perspective we would suggest that any extension program include: 1) enough time to realistically allow for the market to return to healthy state in which projects become financially viable again from a financing and demand standpoint; and 2) no additional fees – this would work against the very result this process seeks to achieve, financial viability.

The homebuilding industry has successfully worked with many other jurisdictions throughout the state to adopt plat extensions during these difficult economic times. We are confident that Albany can adopt a system for extensions that not only provides assistance to an industry in

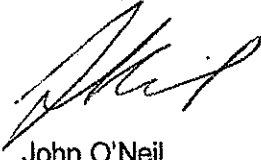
October 22, 2009

need but also meets the City's long-term objectives of providing well-planned housing that meets the standards of its development code.

In the case of our project, due to its size and phasing required, we would request an extension of five years beyond our January 2011 expiration date to allow us to develop our site and work through the approved residential lots in a healthier housing environment than exists today.

We appreciate your consideration of our request and look forward to working with you and the City of Albany to address this issue moving forward. Please include this letter with the appropriate Staff Report to the Planning Commission for their review.

Sincerely,

A handwritten signature in black ink, appearing to read "John O'Neil", written in a cursive style.

John O'Neil

Tri-County Investments  
*an affiliate of Metropolitan Land Group*

Enclosure

## ARTICLE 1 ADMINISTRATION AND PROCEDURES

1.000 Overview. This Article establishes the framework for the review of land use applications. It explains the processes the City follows for different types of reviews and how hearings and appeals are conducted. The list below is a summary of the topics covered in this chapter.

- General Administration
- Clarification of Land Use Decisions
- Administrative Process
- Limited Land Use Process
- Quasi-Judicial Process
- Legislative Process

These headings precede subtopics that can assist ~~help~~ the user in ~~locateing~~ locating information. The table of contents contains a complete listing of the material covered in this Article.

### GENERAL ADMINISTRATION

#### INTRODUCTION

- 1.010 Official Name. The official name of this Title is "Title 20, Development Code and Zoning Map." It may be referred to as "Development Code" or "Code."
- 1.020 Purpose. 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.
  - (2) Satisfy relevant requirements of federal law, state law, statewide goals, and administrative rules.
  - (3) Facilitate prompt review of development proposals and the application of clear and specific standards.
  - (4) Provide for public information, review, and comment on development proposals that may have a significant impact on the community.
  - (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.
  - (6) Establish procedures and standards requiring that the design of site improvements and building improvements ~~are~~ consistent with applicable standards and ~~flexible~~ 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.

- (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 ~~aid in the help~~ prevention of crime.
- (9) Protect and enhance the city's ~~aesthetic~~ 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.
- 1.025 Legislative Intent. In addition to the purposes set forth above, subsequent amendments to this Code may be accompanied by staff reports, ~~commentary sections,~~ and/or additional findings, which may be used to more accurately determine the purpose and legislative intent of specific provisions.
- 1.030 Scope and Compliance. A parcel of land or a structure may be used or developed only as this Code permits. The requirements of this Code apply to the property owner(s), the person(s) undertaking a development, the user(s) of a development, and to their successors in interest.
- 1.035 Severability. The provisions of this Code are severable. If any portion of this Code is declared by a court of law to be invalid or unconstitutional, the decision shall not affect the validity of the remaining portions.
- 1.040 Interpretation.
- (1) Except as otherwise specified, the definitions included in Article 22 shall be used to interpret the provisions of this Code.
- (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.
- (3) The terms of this ordinance shall be 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.
- 1.050 Consistency with Plan and Laws. Actions initiated under this Code shall be consistent with the adopted Comprehensive Plan of the City of Albany and with applicable state and federal laws and regulations as these plans, laws, and regulations may now or hereafter provide. Since the City of Albany has a Comprehensive Plan and implementing regulations that have been acknowledged by the State of Oregon as being in compliance with statewide goals, any action taken in conformance with this Code shall be deemed also in compliance with statewide goals and the Comprehensive Plan. Unless stated otherwise within this Code, specific findings demonstrating compliance with the Comprehensive Plan are not required for land use application approval. However, this provision shall not relieve the proponent of the burden of responding to allegations that the development action requested is inconsistent with one or more Comprehensive Plan policies.

1.060 When Land Use Applications Are Required.

- (1) Except as excluded by 1.070, no person shall engage in or cause to occur a development for which a **required** land use application has not been approved.
- (2) Whenever this Code requires a land use application, no other permit issued by the City shall be approved until the land use application has first been approved by the Director or **reviewing body**.
- (3) **Before another land use application can be filed, all prior land use conditions of approval must be satisfied.**
- (3)(4) Land use applications shall be approved by the Community Development Director, the Hearings Board, the Planning Commission, **the Landmarks Advisory Commission**, or the City Council pursuant to the provisions of this Code. The Director shall not approve a land use application for the division, improvement, or use of land that has been previously divided in violation of state or local codes or otherwise developed in violation of this Code unless the violation is corrected prior to or concurrent with issuance of required permits.
- (4)(5) No action may be taken in reliance upon a decision approving a land use application until all applicable appeal periods have expired or while an appeal to a City review body is pending. However, the action allowed by the decision may be initiated if:
  - (a) ~~There were no objections to the decision or if all objections~~ **Issues raised in opposing testimony** were resolved at a hearing or in writing prior to the hearing; and
  - (b) The applicant has executed a release and indemnity agreement in a form satisfactory to the City Attorney that protects the City from all claims of the applicant resulting from the approval of the land use application or issuance of a building permit.

*Staff Comments: The old 1.070(3) was confusing. The proposed new (3) and (4) clarify requirements for residential and non-residential accessory buildings. We propose that non-residential accessory buildings over 750 square feet in the OP and mixed use Village Center zones require a land use review to ensure compatibility with the surrounding neighborhood.*

1.070 When Land Use Applications Are Not Required. Activities and developments listed below are ~~excluded from the requirement for~~ **do not require** a land use application but are nevertheless subject to the provisions of the Code ~~when applicable~~:

- (1) Agricultural uses permitted outright in Articles 3, 4 and 5.
- (2) Detached single-family dwellings ~~or~~ **and** two-unit dwellings.
- (3) ~~Accessory buildings and building additions of less than 500 square feet that conform to the provisions of this Code and the adopted building code.~~
- (4)(3) **Residential accessory buildings up to 750 square feet and walls not greater than 11 feet tall. [See Section 3.080(9).]**
- (5)(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, NC, OP and WF zoning districts.**

- (6)(5) Landscaping and routine property maintenance.
- ~~(7)~~(6) Improvement of **existing or new** parking areas containing less than 1,000 square feet and ~~otherwise~~**that** meeting the provisions of this Code.
- ~~(8)~~(7) A change internal to a building or other structure or useage of land that does not constitute a change of use as listed in Articles 3, 4 or 5.

*Staff Comments: The following text is being relocated to a new section, 1.073, since these actions require an application and review.*

- ~~(9)~~ Site Plan Review for a change in use within an existing structure when the following criteria are satisfied:

~~(a) No structural expansion in excess of 500 feet or additional exterior storage is proposed. The use will not create additional adverse affects for abutting properties or the neighborhood (e.g. visual, noise, or air pollution; increased parking requirements; or improvements to public facilities.) Any non-conformities with the provisions of this Code have been addressed, including compliance with sign, landscaping, and parking requirements except where restricted by building location or limiting site characteristics.~~

- ~~(10)~~(8) An emergency measure necessary for the safety or protection of property when authorized by the City Manager with written notice to the City Council.
- ~~(11)~~(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, public health, and safety requirements, some of which may further limit such uses in terms of location, scope, and duration.
- ~~(12)~~(10) 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 a six months' duration but does not include major substations, treatment facilities, storage tanks, reservoirs, and towers.
- ~~(13)~~(11) 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 and is not located within a floodplain or slope area. See also Article 6.

**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 not land use decisions when the following criteria are satisfied. These actions require a Site Plan Option C application to be submitted to ensure compliance with the Code.

- (b)(1)** No structural expansions greater than 500 feet, additional exterior storage, or outside seating area of any size is proposed.
- (e)(2)** The use will not create additional adverse affects for abutting properties or the neighborhood (e.g., visual, noise, or air pollution; increased parking requirements; or improvements to public facilities.)

~~(d)~~**(3) Any non-conformity with the provisions of this Code have been addressed 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.**

1.075 Fees. The City Council shall establish application, review fees, and fee policies by separate resolution for the performance of the actions and reviews required by this Code.

*Staff Comments: Until 2001, land use approvals, excluding land divisions, were valid for one year. The ADC allowed requests for up to two one-year extensions for a total of three years. In 2001, the City extended the time period of approvals to three years and removed the extension request language. Phased subdivisions expire after 5 years. Two residential developers have requested the City consider allowing an extension to subdivision approvals due to the poor economy. We are evaluating extensions to all land use approvals.*

*Economic Impact: Oregon's recession started in January 2008. Nationally, several sources indicate the recession ended in the third quarter of 2009, but job growth and construction are lagging behind in recovery. Housing and financial markets are still exerting downward pressure on the national and state economies.<sup>1</sup>*

*According to the September 2009 Oregon Economic and Revenue Forecast, prepared by the Oregon Office of Economic Analysis, the construction and manufacturing jobs are especially hard hit. As of June 2009, the construction industry had experienced job losses of 22 percent in Linn County.<sup>2</sup> The quarterly report notes that "housing starts will remain below their historical average until 2013 as the industry continues to work off its excess oversupply and consumer demand returns."<sup>3</sup>*

*Albany's construction permits reflect the state's decline. In 2008, the number of new residential building permits was only 46% of permits (136 units) issued in 2006-2007 (336 units average). To date in 2009, both new residential and commercial building permits are down from 2008. (See Attachment 1, City of Albany Building Permits 2005-2009.)*

*The extension to land use approvals in other Oregon communities range from 0 to 7 years. Portland approved an extension for developments approved between May 27, 2006 and December 2008 to be valid until June 2012. This created extensions that range from 6 months to 3 years depending on when the application was submitted.*

*Proposal: After hearing from two developers, a few residents, and staff research, the City Council discussed extensions to land use approvals at their August 12 and August 26, 2009 meetings. The Council recognized the impact of the recession on the housing and construction industry and gave direction to consider a one-time, one-year extension to land use approvals issued between specific time periods. After evaluating Oregon's housing and construction forecasts and the City's permit and land use application data and approval dates, staff proposes the one-year extension be considered for projects approved between in January 1, 2007, and December 31, 2008. (See Attachment 2, Land Use Approvals, 2005-2009.)*

*Staff also proposes replacing the "substantial construction" language and definition (seen in "strikethrough" in 1(c)) with concrete actions that will be easier for staff to determine.*

1.080 Expiration of Land Use Approvals.

<sup>1</sup> Oregon Office of Economic Analysis, Oregon Economic and Revenue Forecast, September, 2009, p.42.

<sup>2</sup> Ibid., p. 37.

<sup>3</sup> Ibid., p.49.

- (1) ~~Except as provided in (2) below, a~~All land use approvals, **except as provided in (2) below and land divisions (see Article 11)**, shall expire three years from the date of the 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 December 31, 2008 and there have been no changes in zoning to the development site since the original approval, a one-year extension to the expiration date is granted. Either (a) or (b) of this section must be completed by the extended approval time period, or the approval expires. “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.~~

[Ord. 5475, 4/11/01]

(2) 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.

[Ord.5720, 8/12/09]

1.085 Approval Runs with the Land. Approval of a land use decision runs with the land. The approval transfers to a new owner if the property is sold. [Ord. 5475, 4/11/01]

1.090 Official Action. All officials, departments, and employees of the City vested with authority to issue permits, certificates, or licenses shall adhere to and require conformance with the zoning regulations.

1.100 Certificate of Occupancy. It shall be unlawful to use or occupy any new building or premises until a certificate of occupancy has been issued by the ~~designated~~ Building Official stating that the proposed use of the building or land conforms to the requirements of the adopted building code, this ordinance, and any other City conditions attached to the development or use of the building or land.

## ENFORCEMENT

- 1.110 Inspections. The Director or designee may make periodic and routine inspections of properties and premises within the corporate limits of Albany. The purpose of these inspections shall be to determine whether there is compliance with the laws, rules, and regulations ~~that are designed to~~ **for the protection** of the health, safety, and welfare of the public. The Director is also empowered to make such inspections upon ~~the receiving of~~ **complaints, specific or general information, or observations** indicating the existence of hazardous conditions or non-compliance with such rules, regulations, and laws. ~~In the event that~~ **If** any authorized officer or employee of the City of Albany ~~is~~ **shall be denied** access to any property or premises for the purposes of making an inspection provided for in this ordinance, then ~~these~~ **such** officer or employee shall not inspect ~~these~~ **such** premises unless and until he has obtained from the City's municipal judge ~~of the City of Albany~~ **a search warrant for the inspection of** ~~such~~ **these** premises.
- 1.120 Search Warrants. A search warrant for inspections can only be issued under the terms of this ordinance when an affidavit has been filed with the City's municipal court showing probable cause for the inspection by stating:
- (1) The purpose and extent of the proposed inspection;
  - (2) The ordinance or ordinances that form the basis for the inspection; and,
  - (3) Whether it is a routine or periodic inspection, an inspection initiated by complaint, other specific or general information, or an observation concerning the property or premises or the area in which it is situated.
- It shall be unlawful for any person, firm, or corporation to hinder, delay, or obstruct the inspection of premises based on a search warrant issued under the terms of this ordinance.
- 1.130 Abatement. The location, erection, construction, maintenance, repair, alteration or use of a building or other structure in violation of this ordinance shall be deemed a nuisance and may be abated as such.
- 1.140 Code Enforcement. The Director or designee may enforce the provisions of this ordinance using the remedies provided in Sections 1.110 through 1.190 herein and in Title 18 of the Albany Municipal Code. The enactment of this ordinance shall not invalidate any prior, existing, or future prosecutions for violation of the Development Code regulations committed under a previous ordinance. [Ord. 5720, 8/12/09]
- 1.150 Legal Proceedings by City Attorney. In addition to the remedies prescribed herein, the City Attorney, upon request from the City Council or City Manager, shall cause to be instituted any civil action, suit, or other legal means considered ~~to be~~ **appropriate to remedy** violations of this ordinance.
- 1.160 Suits in Equity to Enjoin Violations. If any existing or proposed structure or use ~~is in violation of~~ **this Code, the City Attorney or any affected person may sue to enjoin the violation.**
- 1.170 Enforcement by Chief of Police. The Chief of Police or his ~~or her~~ **designee(s)** shall have the power to ~~help~~ **assist in the enforcement of** the provisions of this ordinance.
- 1.180 Penalty. In addition to the remedies set forth above, the general penalties and procedures set forth in Chapter 1.04 of the Albany Municipal Code apply to any and all violations of this Development Code.

The City may, ~~at its option,~~ elect to pursue such procedure ~~instead~~ ~~lieu of~~ or in addition to any other remedy set forth above.

- 1.190 Violation of a Land Use Approval. Violation of any condition or requirement of any land use approval constitutes a civil infraction when ~~such that~~ violation does not, in and of itself, constitute a separate violation of the Albany Municipal Code.

## APPLICATION PROCEDURES

### 1.200 Land Use Application Procedures.

- (1) A land use application shall be processed under a Type I, I-L, II, III, or IV procedure, as described in this Article.
- (2) ~~Whenre~~ there is a question as to the appropriate type of procedure, the Director shall determine the type of procedure to be ~~used~~**utilized** based upon the most similar land use application procedure specified by this Code or other established policy.
- (3) ~~Whenre~~ a proposal involves more than one application for the same property, the applicant(s) may submit concurrent applications that shall be processed simultaneously in accordance with the highest numbered procedure specified. When concurrent applications are received and accepted as complete, the 120-day requirement of Section 1.220(2) shall apply as if a single application had been made.

- 1.201 Coordination of Land Use Application Procedure. The Director shall be responsible for coordinating ~~on~~ of the land use application and decision-making procedure. The Director shall issue a land use approval for applications and proposed developments that ~~are in compliance~~**comply** with the provisions of this Code. Before issuing the approval, the Director shall be provided with the information required to determine full compliance with the requirements of this Code.

- 1.202 Preapplication Conference. The Director and the applicant or the applicant's authorized representative shall arrange a preapplication conference, unless the applicant and Director agree that the conference is not needed. The purpose of the conference is to acquaint the applicant with the substantive and procedural requirements of this Code, and to identify any constraints on the proposed development. Depending on the nature and size of the proposed development, a rough sketch conceptual plan may be required for review in the preapplication conference. Upon the ~~applicant's request of the applicant,~~ **applicant's** request, the Director shall provide the applicant with a written summary of the conference including confirmation of the procedures to be used to process the application, a list of materials to be submitted, and the criteria and standards which may apply to the approval of the application.

*Staff Comments: A few residents have asked that we require a neighborhood meeting to be held with each new application, or new version of an application. The existing Code does not provide specific guidelines to applicants for neighborhood meetings. Staff proposes adding a defined notice area of 300 feet, which corresponds to the land use application notice area, and neighborhood meeting standards used by a few other Oregon cities.*

- 1.203 Neighborhood Meeting. The purpose of a neighborhood meeting is to ensure that applicants pursue early and effective citizen participation in conjunction with their applications, giving them the opportunity to understand and try to mitigate any real or perceived impacts their application may have on the neighborhood. The meeting is not intended to produce complete consensus on all applications. It is intended to encourage applicants to be good neighbors. City staff will attend the neighborhood meeting in an advisory capacity to answer questions.

The applicant shall hold a neighborhood meeting ~~prior to submittal of~~**before submitting** the following types of **land use** applications:

- (1) Multiple-family development that abuts a single-family zoning district.
- (2) Commercial ~~and or~~ industrial development that abuts any residential zoning district **and the addition of outside seating areas to restaurants or bars/taverns/breweries/night clubs within 300 feet of a residence.**
- (3) Manufactured home park **adjacent to any residential zoning district.**
- (4) Subdivision with more than ten lots.
- (5) Any subdivision that is an infill development.
- (6) Cluster **and planned** development ~~of any size.~~
- ~~(6)~~(7) For other applications that **the Director determines** may have a neighborhood impact, **such as conditional uses. In these cases, the Director shall determine the minimum notice area for the neighborhood meeting,** ~~the City recommends that the applicant have a neighborhood meeting.~~ [Ord.5445, 4/12/00, Ord. 5562, 10/10/03]

#### 1.204 Neighborhood Meeting Standards.

- (1) The applicant shall send mailed notice of the public meeting to all property owners and residents within 300 feet of the boundaries of the subject property, and, if any part of the subject property is within the boundaries of a neighborhood association recognized by the City of Albany or within 300 feet of any other neighborhood association recognized by the City, notice shall be sent to the designated representative(s) of such neighborhood association(s). The property owner list shall be compiled from county tax assessor's property owner list from the most recent property tax assessment roll. The address for the designated representative(s) of the affected neighborhood association(s) shall be obtained from the City. The notice shall be sent a minimum of 10 days and no more than 30 days before the meeting, and shall include:
  - (a) Date, time and location of the public meeting.
  - (b) A brief written description of the development proposal and proposed use(s) with enough specificity so that the project is easily discernable.
  - (c) The location of the subject property(ies), including address (if applicable), nearest cross streets and any other easily understood geographical reference, and a map (such as a tax assessors map) that depicts the subject property.
- (2) The applicant's presentation at the neighborhood meeting shall include:
  - (a) A map depicting the location of the subject property(ies) proposed for development.
  - (b) A visual description of the project including a site plan, tentative subdivision plan and elevation drawings of any proposed structures, when applicable.
  - (c) A description of the nature of the proposed use(s) including but not limited to, sizes and heights of structures, proposed lot sizes, density, etc.

- (d) **The expected or anticipated impacts from the proposed development (e.g. traffic, storm drainage, tree removal, etc.).**
- (e) **Mitigation proposed by the applicant to alleviate the expected/anticipated impacts.**
- (f) **An opportunity for the public to provide comments.**

Applicants are encouraged to reconcile as many public concerns as possible before submitting land use application(s).

1.207 Application Contents. A land use application shall consist of the following:

- (1) Explanation of intent, nature and proposed use(s) of the development, pertinent background information, and other information that may have a bearing in determining the action to be taken, including ~~submission of detailed findings where such are~~when required by the provisions of this Code.
- (2) Signed statement ~~indicating~~ that the property affected by the application is in the exclusive ownership or control of the applicant, or that the applicant has the consent of all partners in ownership of the affected property.
- (3) Property description and assessor map parcel number(s).
- (4) Additional information required by other sections of this Code because of the type of development proposal or the area involved.
- (5) Duplicates of the above information as required by the Director.
- (6) ~~Submission of a~~Application fees as established by the City Council.
- (7) A report documenting the results of any neighborhood meeting. The report shall contain:
  - (a) The dates and locations of all meetings where citizens were invited to discuss the applicant's proposal;
  - (b) The method(s) by which each meeting was publicized;
  - (c) The number of people who attended the meeting or otherwise contacted the applicant;
  - (d) A summary of the concerns, issues, and problems raised by neighbors;
  - (e) A discussion of how the applicant has addressed or intends to address concerns, issues, and problems; and
  - (f) A discussion of any concerns, issues, and problems the applicant is unable or unwilling to address and why. [Ord. 5445, 4/12/00]

1.210 Submission of Quasi-Judicial Land Use Applications.

- (1) Application materials shall be submitted to the Director who shall have the **submittal** date of ~~submission~~ indicated on each copy of the materials ~~submitted~~.
- (2) Within 30 calendar days, the Director shall determine whether the application is complete. The Director shall notify the applicant ~~when if~~ the application is found to be incomplete and identify what additional information is needed. An application that has been determined to be incomplete may be supplemented, amended, or resubmitted at the Director's discretion. **The application will be deemed complete the date the City receives the missing information; or submits some of the missing information and written notice that no other information will be provided; or**

written notice from the applicant that none of the missing information will be provided. If the application is not deemed complete by the 181st day from the application first being submitted, the application is void. (See Oregon Revised Statutes 227.178.) ~~The application shall be subject to another 30 calendar day completeness check beginning on the date additional information is submitted. If the applicant declines to submit the additional information, the application will be deemed complete on the 31st day after the application was first received.~~ [Ord. 5475, 4/11/01]

- (3) The Director shall set ~~the date of~~ public hearing(s) **dates** for land use applications requiring a public hearing ~~them~~. When setting hearing dates, the Director may take into consideration the complexity of the development proposal, other scheduled agenda items, and adequate review and preparation time for the staff report.
- (4) All documents or evidence relied upon by the applicant shall be submitted to the Planning Division and made available to the public at least 20 days ~~prior to~~ **before** the evidentiary public hearing (or 10 days before the first evidentiary public hearing if two or more evidentiary public hearings are allowed). Any staff report used at the hearing shall be available at least seven days prior to the hearing.

If additional documents or evidence are provided by any party, the local government may allow a continuance or leave the record open to allow the parties a reasonable opportunity to respond.

- (5) Upon request, the application file shall be made available to the public for inspection at no cost, and copies ~~will be provided~~ at reasonable cost. [Ord. 5446, 5/10/00]

1.215 Referral and Review of Quasi-Judicial Land Use Applications. Upon acceptance of an application, the Director shall do the following:

- (1) Send one copy of the project review sheet to each agency and city department ~~identified by the Director~~ **identifies** as having possible interest in reviewing and commenting on the development proposal, including those agencies and departments responsible for determining compliance with state and federal requirements. If the agency or city department does not comment within 10 days from the date the Director mails or routes the project review sheet, the agency or city department is presumed to have no comments or objections. The Director may grant an extension of up to 14 days to a reviewing department or agency if the application involves unusual circumstances.
- (2) Send the project review sheet to other governmental bodies and private utilities as appropriate.
- (3) Provide for notices to be given and hearings to be established as required under Type I-L, II, III, and IV procedures established in this Article. [Ord. 5446, 5/10/00]

1.220 Land Use Decision for Quasi-Judicial Applications.

- (1) Within five days of final action on a land use application, the Director shall provide written notice of the decision to the applicant and any other parties entitled to notice. The notice shall state the effective date of the decision, describe the right of appeal, and summarize the reasons for the decision and any conditions of approval or indicate where such can be reviewed in detail.
- (2) The City shall take final action on all land use requests that are wholly within the authority and control of the City within 120 days from the date the application is deemed complete. However, by agreement with the applicant, this deadline may be extended for any reasonable length of time, **not**

to exceed the maximum allowed by state law. The 120-day period set out in Oregon Revised Statutes (ORS) 227.178, does not apply to an amendment to an acknowledged comprehensive plan or land use regulation or adoption of a new land use regulation that was forwarded to the Director of the Department of Land Conservation and Development under ORS 197.610 (for legislative amendments).

- (3) Development shall be completed as shown on the plans that were reviewed and approved through the land use process, subject to any modifications identified in the conditions of approval. Modifications to site plans and conditional uses may be made as described in ADC 1.226. [Ord. 5446, 5/10/00; Ord. 5475, 4/11/01]

1.225 Action on Resubmission of Denied Quasi-Judicial Application. An applicant may make appropriate alterations to a proposal that has previously been denied and resubmit it with a payment of any required fee. If a previously denied application is resubmitted within one year of the date denied, recommendations of advisory bodies, departments, and agencies need not be requested again unless the Director finds that changed conditions or changes in the proposal warrant such reconsideration. [Ord. 5446, 5/10/00]

*Staff Comments: Some content is being relocated within ADC 1.226 to make this section clearer. We propose adding language to:*

- a) Clarify that only the area proposed to be modified on approved plans will be reviewed, and
- b) Distinguish when a new application is required.

1.226 Modification of Approved Site Plan Reviews and Conditional Uses Applications. When a ~~site plan review or conditional use review results in an approved site plan, with or without conditions, and the~~ 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 or a review of a conditional use.
- (2) The property owner must submit ~~to the Planning Division~~ an application to modify the approved site plan **that identifies the areas of the plan or approval proposed to be modified. The application fee will be determined by the Director and will be based on the scope of the modification(s) and review.**
- (3) The review body shall be the same ~~body~~ **one** that granted the final approval for which modification is sought. **The same procedures shall be used as for the original approval. The Development Code regulations in effect at the time the application for modification is submitted will be used to review the proposed modification(s).**
- (4) **Only the area proposed to be modified will be reviewed.**
- (5) **A modification shall not be filed:**
  - (a) as a substitute for an appeal, or
  - (b) to seek the reduction or elimination of a condition of approval for infrastructure requirements, or
  - (c) to provide a new timeline for appealing a previously-accepted infrastructure obligation, or

- (d) to apply for a substantially new proposal, or
- (e) if it would have significant additional impacts on surrounding properties.

If any of the above conditions exist, a new application must be submitted.

- (6) The modified plan must compensate for any negative effects caused by the requested changes from approved plans such that the intent of the original approval is still met.

- (4)(7) The modification(s) shall be "consistent with" the approved site plan. If the review body determines that the modified site plan **meets the standards in 1.226 (6)** and is consistent with the original approval **as outlined in 1.226 (8)**, a modification to the site plan may be allowed. If the modified site plan is consistent with the approved site plan and meets the review criteria specified in ~~1.226(6) below~~**this section**, the modified plan shall be approved. If the review body determines that the modified site plan is not consistent with the original approval, then approval of the site plan will be denied. If a new application is submitted, it will be subject to the Development Code standards in effect at the time the new application is submitted.

- ~~(5)~~(8) The review body's determination on consistency ~~by the review body~~ shall be based on a comparison of the approved site plan and the modified site plan, taking into account:

- (a) The land use category;
- (b) The size and scale of the proposed building(s);
- (c) ~~The~~ **Traffic and other off-site impacts;**
- (d) Compatibility with surrounding development;
- (e) Capacity of available infrastructure; and
- (f) Unusual obstacles and opportunities associated with the property.

The modified site plan will be found to be consistent with the approved site plan if the review body determines that there are no greater adverse impacts, or, if additional adverse impacts are identified, they have been adequately mitigated.

- ~~(6)~~ The review body shall use the same procedure and review criteria as that used for the original approval. ~~The Development Code regulations in effect at the time the application for the approved site plan was submitted are the regulations that will be used to review the proposed modification(s).~~

- ~~(7)~~ The entire site plan will be reviewed at the time the modified site plan is reviewed.

- (8)(9) Conditions of approval:

- (a) ~~The application to approve a modified site plan will be denied if an applicant seeks to modify a prior land use decision merely to seek the reduction or elimination of a condition of approval, unless the applicant proposes an equivalent reduction in the scope, size, or scale of the part of the development that led to the condition of approval.~~
- (b)(a) When reviewing a modified site plan that has different impacts than the approved site plan, the decision-maker may modify conditions or impose new ones. Only conditions related to the impact of the modified site plan may be imposed on the modified site plan approval. "Impact" means characteristics of the development such as traffic, wastewater discharge, noise, etc.
- (e)(b) ~~The review of the modified site plan shall not be used to allow an application to escape prior infrastructure commitments. A modification cannot be used to provide a new~~

~~timeline for appealing a previously accepted infrastructure obligation.~~ The original conditions of approval imposed for the approved site plan may remain in effect or be increased as necessary to address additional impact. Conditions related to improving existing infrastructure or building new infrastructure (such as streets, sewers, etc.) may be reduced only if the modification substantially reduces the infrastructure burden created by the development.

- (9)(10) The property owner may choose to either accept approval of the modified site plan or to retain the original approval. If the property owner accepts approval of the modified site plan and any conditions that may be imposed, the property owner must give **written** notice to the Planning Division ~~Notice must be received by the Planning Division~~ within 10 days of the date on the notice of decision for approval of the modified site plan. If the property owner accepts approval of the modified site plan, the new approval ~~supersedes~~**supersedes** and voids the original approval.

If the property owner does not provide the required written notice of acceptance, or if the **review body does not approve** of the modified site plan ~~is not granted by the review body~~, the project shall continue to be subject to the original conditions of approval and time-lines.

- (10)(11) When first granted, a site plan or conditional use approval is valid for three years [ADC 1.073]. When a modified site plan is approved and accepted, the approval is valid for one year beyond the date that the original site plan approval would have expired. (For example, if the original approval would have expired on July 1, 2001, the approval of the modified site plan is extended to July 1, 2002.)

~~Only one one-year extension of the original approval will be allowed.~~ Any subsequent modification of the site plan will be subject to the time limit established at the time the first modification was approved. The approval can be valid for only a total of four years, including the first three-year period and the one-year extension **received with an approved modification to an approved site plan or conditional use.**

~~Substantial construction of the development must take place within the four years. If substantial construction is accomplished, construction can continue to completion. If substantial construction is not accomplished, the approval is void. [Ord. 5475, 4/11/01]~~

*Staff Comments: On occasion, an applicant or new owner will request modification to a condition of approval, often many years after the approval. The following process used in Albany and other cities was not in the Code. We propose to codify the review process for this type of request.*

- 1.228 **Request to Modify a Condition of Approval.** A request to modify a condition of approval is processed using the procedure assigned to the land use review and the approval criteria for the original land use review.

## CLARIFICATION OF LAND USE DECISIONS

### ACTIONS INCLUDED AS LAND USE DECISIONS

- 1.230 **Definition.** A "land use decision" includes a final decision or determination made by the City that concerns the adoption, amendment, or application of:

- (1) The statewide planning goals.
- (2) A Comprehensive Plan provision.

(3) An existing land use regulation.

(4) A new land use regulation.

1.240 Procedure. The procedure for applications ~~which~~**that** result in land use decisions ~~are~~**is** given in the subsequent provisions on the quasi-judicial and legislative processes, **later in this Article**.

1.250 Examples. Examples of applications that result in land use decisions include, but are not limited to – Comprehensive Plan amendments, conditional uses, development code amendments, **site plans, subdivisions, Type II** modifications to non-conforming situations, vacations, variances, and zoning map amendments.

### ACTIONS NOT INCLUDED AS LAND USE DECISIONS

1.260 Definition. A “land use decision” does not include a decision of the City:

- (1) That is made under land use standards ~~which~~**that** do not require interpretation or the exercise of policy or legal judgment;
- (2) That approves or denies a building permit issued under clear and objective land use standards;
- (3) That is a limited land use decision; or
- (4) 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 ~~decision is made by the Director~~ **makes the decision** based on the stated review criteria, without need for public hearing or notification.

1.280 Examples. Examples of ~~land use applications~~ that do not result in land use decisions include, but are not limited to, – lot line adjustments, ~~Type I adjustments, Type I modifications to non-conforming situations, Type I historic review,~~ preliminary planned development plans, final subdivision plats, ~~manufactured home park plans,~~ and site plan review **Option C** involving a change in use or minor addition to existing use in a conforming building.

*Staff Comments: The content regarding limited land use decisions not already covered in 1.330 Type I-L Procedure is proposed to move to the Limited Land Use Process sections of this Code starting at 1.325 (new).*

### ACTIONS INCLUDED AS LIMITED LAND USE DECISIONS

1.290 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:~~

- (1) ~~The approval or denial of a subdivision or partition, as described in ORS Chapter 92.~~
- (2) ~~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.~~

~~1.300 Procedure. Applications that result in limited land use decisions are not subject to the requirements of ORS and this Code relative to quasi-judicial public hearings. They are processed under the Type I-L procedure described in Section 1.330.~~

~~1.310 Examples. Examples of applications which result in limited land use decisions include, but are not limited to, Type I-L historic review, partitions, site plan review, and subdivisions with fewer than 20 lots. [Ord. 5562, 10/10/03]~~

### 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, ~~an application shall be processed by 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, ~~Type I adjustments, Type I modifications to non-conforming situations, Type I historic review,~~ preliminary planned development plans, final subdivision plats, ~~manufactured home park plans,~~ and site plan review **Option C** involving a change in use or minor addition to existing use in a conforming building.

### LIMITED LAND USE PROCESS

*Staff Comments: Content from 1.290 through 1.310 that was not repeated under this heading below is in new section 1.325.*

*Residents have asked that we evaluate the notice areas for land use applications and broaden the notice area to include properties that may be impacted by the proposed land use application. Staff proposes that new commercial and industrial construction (Site Plan Option A and B Reviews) require the 300-foot notice area.*

**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.

#### 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.

- (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.

*Staff Comments: Content repeated in 1.400 Mailed Notice, is proposed to be removed here.*

- (3) For limited land use decisions, the City will provide written notice to **persons who reside on or own property** ~~owners of property~~ within 100 feet of the entire contiguous site for which the application is made, ~~except that written notice will be provided to persons who reside on or own property owners of property~~ within 300 feet of property on which applications are received for development of subdivisions, manufactured home parks, **and multi-family development, and Site Plan Option A or B development.** ~~The list will be compiled from the most recent property tax assessment roll. 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 ~~governing body~~ **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.~~
- (4) The notice and procedures used by the City will:
- ~~(e)~~(a) Provide a 14-day period for submission of written comments ~~prior to~~**before** the decision;
  - ~~(f)~~(b) State that issues that may provide the basis for an appeal to the Land Use Board of Appeals shall be raised in writing ~~prior to~~**before** the expiration of the comment period. Issues shall be raised with sufficient specificity to enable the decision maker to respond to the issue;
  - ~~(g)~~(c) List, by commonly used citation, the applicable criteria for the decision;
  - ~~(h)~~(d) ~~Set forth~~**Provide** the street address or other easily understood geographical reference to the subject property;
  - ~~(a)~~(e) State the place, date and time that comments are due;
  - ~~(b)~~(f) State that copies of all evidence relied upon by the applicant are available for review, and that copies can be obtained at cost;
  - ~~(i)~~(g) Include the name and phone number of a local government contact person;
  - ~~(j)~~(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;
  - ~~(k)~~(i) Briefly summarize the local decision making process for the limited land use decision being made, and
  - ~~(l)~~(j) Include such other information as 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 decision ~~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 Land Use Board of Appeals 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]

*Staff Comments: The examples are proposed to be removed to avoid errors and inconsistencies in the Code. The land use type for each application is determined elsewhere in the Code.*

~~1.340 Examples. Examples of applications which result in limited land use decisions include, but are not limited to Type I L historic review, partitions, site plan review, and subdivisions with fewer than 20 lots. [Ord. 5562, 10/10/03]~~

## QUASI-JUDICIAL PROCESS

### PROCEDURES

*Staff Comments: Residents have asked that we evaluate the notice areas for land use applications and broaden the notice area to include properties that may be impacted by the proposed land use application. Currently in the Type II procedure, we mail the notice of the decision to persons in the notice area, but do not mail a notice of filing before doing our staff analysis to get input on the development prior to making a decision. Staff proposes including a notice of filing of the application to persons in the notice area and also an increase in the notice area. The decision remains a staff-level decision with opportunity for appeal by persons entitled notice.*

#### 1.350 Type II Procedure.

- (1) The purpose of the Type II procedure is to provide for the review of certain applications by mailing notice of a tentative staff decision to the applicant and property owners within ~~100-200~~ 200 feet of the property being reviewed. The ~~decision of 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 or own property within 200 feet of the 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 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.**
- (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 all property owners within ~~100 the notice area as defined in 1.350(2). feet of the subject site.~~

The applicant shall supply a list of the names and addresses of the owners of property to receive the notice. The mailing list must be certified by the applicant as accurate and complete as found on the most recent property tax assessment roll where the subject property is located.

- (4) **Notice of Decision.** The Director's notice shall list the relevant criteria and any conditions of approval and invite persons to contact the Planning staff within ten **working** days of notification to request a public hearing. A public hearing may be requested if ~~the~~ 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.

- ~~(2)~~(5) **Standing to Appeal.** The applicant, the Director, ~~or any party entitled to notice or otherwise affected by the proposed action~~ **or any person who submitted written comments during the comment period** may initiate 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, ~~or the Hearings Board, or the Landmarks Advisory Commission~~ and mail notice of such to those same persons specified in (2) above.

- ~~(3)~~(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 examples are proposed to be removed to avoid errors and inconsistencies in the Code. The land use type for each application is determined elsewhere in the Code.*

~~Examples of applications processed through a Type II procedure include, but are not limited to: variances, Type II modifications to non-conforming situations, Greenway district use permits, Type II Code interpretations, and final planned development plans. [Ord. 5446, 5/10/00]~~

1.360 Type III Procedure.

- (1) The purpose of the Type III procedure is to provide for the review of certain applications within the City by the Planning Commission, Hearings Board, or the Landmarks Advisory Commission at

a public hearing. Such actions may be complex in nature, requiring the interpretation of Plan policies and the requirements of this Code.

*Staff Comments: In order to be more inclusive, we propose using the 300-foot notice area for all Type III applications and include notice to recognized neighborhood associations. The notice requirements are outlined in 1.400 and are not needed here.*

- (2) Under the Type III procedure, an application is scheduled for public hearing at the Director's discretion before ~~either the Hearings Board, the Planning Commission, or the Landmarks Advisory Commission. If the request is quasi-judicial in nature,~~ **The Director shall notify all persons who reside on or own property within 100-300 feet of the subject property (or 300 feet if the application is for a subdivision, manufactured home park or multi-family development) 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 applicant shall supply a list of the names and addresses of the owners of property to receive the notice. The mailing list must be certified by the applicant and complete as found on the most recent property tax assessment roll where the subject property is located. The Director may require the applicant to post notices as set forth in Section 1.410.
- (3) The review body 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 III procedure in accordance with the relevant provisions of this Code.

*Staff Comments: The examples are proposed to be removed to avoid errors and inconsistencies in the Code. The land use type for each application is determined elsewhere in the Code.*

- (4) ~~Examples of applications processed through a Type III procedure include, but are not limited to Interim planned unit development plans, future street plans, Type III Planned Industrial developments, some Code interpretations, conditional uses, historic reviews of demolitions/moving, cluster development, and subdivisions with 20 or more lots. [Ord. 5446, 5/10/00, Ord. 5562, 10/10/03]~~

#### 1.370 Type IV Procedure.

*Staff Comments: In order to be more inclusive, we propose including notice to recognized community and neighborhood organizations within 400 feet of the subject property and giving the Director discretion to increase the notice area under specific circumstances. The notice requirements are outlined in 1.400 and are not needed here.*

- (1) The purpose of the Type IV procedure is to provide for the review of certain land use applications by ~~both the~~ **the Planning Commission, Hearings Board or Landmarks Advisory Commission** and the City Council at public hearings. These decisions are usually complex in nature, and require the interpretation of ~~the~~ Comprehensive Plan policies and the criteria of this Code.
- (2) Under the Type IV Procedure, an application is scheduled for public hearing before either the Hearings Board or the Planning Commission at the Director's discretion. If the application is quasi-judicial, the Director shall notify all property owners 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 applicant shall supply a list of the names and addresses of the owners of property to receive the notice. The mailing list must be certified by the applicant as accurate and complete as found on the most recent property tax assessment roll where the subject property is located. The Director may require the applicant to post notices as set forth in Section 1.410.~~

- (3) For a quasi-judicial proposal on which the Hearings Board, **Landmarks Advisory Commission**, or Planning Commission has made a favorable recommendation, the City Council shall hold a public hearing and make a final decision prior to expiration of the 120-day land use processing rule, if applicable. An applicant may request a review delay of up to 6 months and extend the 120-day time frame.
- (4) If the Planning Commission, **Landmarks Advisory Commission**, or Hearings Board recommended against a proposal, the City Council will only consider the proposal on appeal by the applicant(s).
- (5) The review body shall:
  - (a) Review the request and any written comments and testimony;
  - (b) Adopt findings based on the established policies and criteria; and,
  - (c) Make a decision by approving, conditionally approving, or denying the application.

Conditions and/or restrictions may be applied to land use approval granted under a Type IV procedure in accordance with the relevant provisions of this Code.

*Staff Comments: The examples are proposed to be removed to avoid errors and inconsistencies in the Code. The land use type for each application is determined elsewhere in the Code.*

- ~~(6) Examples of applications processed through a Type IV procedure include, but are not limited to street vacations, quasi-judicial and legislative zone changes, development code amendments, and comprehensive plan amendments. [Ord. 5446, 5/10/00]~~

## PUBLIC HEARINGS

1.380 Responsibility for Hearings. The Director, or the City Recorder in case of City Council hearings, shall carry out the following duties pertaining to a hearing, all in accordance with other provisions of this Code **and with the Oregon Public Meetings law**:

- (1) Schedule and assign the matter for review and hearing;
- (2) Conduct the correspondence of the review body;
- (3) Provide notices of public hearings as required by this Code and state law;
- (4) Maintain a record and enter into the record relevant dates such as those of giving notice, hearings, postponement, and continuances and a summary of action taken by the review body;
- (5) Prepare minutes to include the decision on the matter heard and the reasons given for the decision;

- (6) Reduce the decisions of the review body to writing and maintain permanent record of such; and
- (7) Provide advance notice of all hearings and written decisions to persons requesting the same and not entitled to such ~~them~~ by this section, **(applicant excepted)** provided that such persons pay the actual cost for the service provided as established by the City ~~(applicant excepted)~~.

1.390 Hearings Record. When practical, the secretary to the review body will be present at each hearing and shall cause the proceedings to be recorded either stenographically or electronically. ~~Should~~ **If** the secretary ~~not be present~~, proceedings will be recorded electronically and minutes will be taken from the tape.

- (1) Testimony shall be transcribed at the expense of the requesting party if required for judicial review or local appeal proceedings. The transcribing fee may include all actual costs ~~up to \$500 plus one-half the actual costs over \$500 or as authorized by state law.~~
- (2) The review body shall, ~~when~~ practical, retain as part of the hearing record each item of physical or documentary evidence presented and shall have the items marked ~~to show~~ **with** the identity of the person offering them ~~same~~ and whether presented on behalf of a proponent or opponent. Exhibits received into evidence shall be retained in the hearing file until after all appeal periods have expired, ~~at which time the exhibits~~ **when** they may be released. Any physical evidence presented at the public hearing shall be submitted to the review body secretary, distributed to members, returned to the secretary, and shall become part of the record.
- (3) The staff report and recommendation shall be included in the record.
- (4) ~~A person~~ **The public** shall have access to the record of the proceedings at reasonable times, places, and circumstances. ~~A person~~ **The public** shall be entitled to ~~make purchase~~ copies of the record ~~at the person's own expense~~.

1.400 Mailed Notice.

- (1) 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 ~~of an application is filed~~ ~~of an application~~ 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 a 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.
- (2) The Director may provide notice to others ~~that who~~ may be considered affected or otherwise represent an interest that may be affected by the proposed development.
- (3) The cost of notice mailings shall be included in the land use application fee.
- (4) Notice of a public hearing shall be sent by mail at least 20 days before the evidentiary public hearing (or, if more than one hearing is allowed, 10 days before the first evidentiary public hearing) and shall contain the following information:

- (a) The reviewing body, the date, time, and place of the hearing.
- (b) The street address or other easily understood geographic reference to the subject property.
- (c) The nature of the application and the proposed use or uses which could be authorized.
- (d) Where information may be examined and when and how written comments addressing findings required for a decision by the review body may be submitted.
- (e) A list of the applicable criteria from the ordinance and/or the plan that apply to the application.
- (f) A statement that failure to raise an issue in a hearing, in person or by letter, or failure to provide statements or evidence sufficient to afford the ~~decision~~-**decision**-maker an opportunity to respond to the issue precludes appeal to the Land Use Board of Appeals based on that issue.
- (g) The name of a City representative to contact and the telephone number where additional information may be obtained.
- (h) A statement that a copy of the application, all documents and evidence relied upon by the applicant, and applicable criteria are available for inspection at no cost and copies will be provided at reasonable cost.
- (i) A statement that a copy of the staff report will be available for inspection at no cost at least seven days ~~before~~**prior to** the hearing and a copy will be provided at reasonable cost.
- (j) A statement that all interested persons may appear and provide testimony and that only those making an appearance of record, either in person or in writing, shall be entitled to appeal.
- (k) A general explanation of the procedure for ~~the conducting of~~ hearings. [Ord. 5446, 5/10/00]

1.410 Posted Notice. ~~The Development~~ sites that are the subject of quasi-judicial public hearings shall be posted **unless otherwise noted in this Code**. At ~~the discretion of the Director's~~ **discretion**, the applicant may be responsible for providing a sign frame for the notice and also ~~responsible for~~ posting the notice at the correct time and location. The actual notice shall be provided by the City. The posting shall ~~comply with~~**meet** the following requirements:

- (1) The notice shall be ~~a minimum of~~ **at least** 2 feet by 3 feet.
- (2) The notice shall be posted in a location ~~which is~~ visible from a traveled public road or street abutting the property. (If no public street abuts the property, the notice shall be placed ~~in such a manner so as~~ to be generally visible to the public.)
- (3) The notice shall be posted for at least seven consecutive days ~~prior to~~**before** the first scheduled public hearing on the matter.
- (4) If the subject property is a corner lot, then two signs are required in locations defined in (2) above.
- (5) At least five days ~~prior to~~**before** any hearing (or decision made by the Director), an affidavit of posting shall be filed with the Director.
- (6) If the subject property is not properly posted as set forth in Section 2 or this section, **the Director may postpone** the hearing ~~may be postponed by the Director~~ until such provisions are met.
- (7) The posted notice shall display the nature of the application and a telephone number for more information. The posted notice shall also include a photocopy of the original mailed notice sent to affected property owners.

1.420 Compliance and Waiver of Notice.

- (1) Notice by mail shall be deemed given on the day the notice is deposited with the United States Postal Service, first class postage, fully prepaid, for mailing to the addressee at the addressee's last known mailing address. Failure of the addressee to actually receive notice shall not invalidate the proceeding if the City can demonstrate by affidavit that notice was given. The notice provisions of this section shall not restrict the giving of notice by other means, including posting, newspaper publication, radio and television.
- (2) Posted notice is deemed given on the day the sign is first posted.
- (3) The requirement for notice shall be deemed satisfied as to any person who, in any manner, obtains actual knowledge of the time, place, and subject matter of the hearing prior thereto.
- (4) Appearance and testimony or comment on the merits of the proposed action by any person at a hearing, or submission by any person of written comment directed to the merits of the proposed action at or prior to the hearing and after the proceeding was initiated, shall be deemed a waiver of **by** such person of any defect in notice. [Ord. 5446, 5/10/00]

1.430 Challenges to Impartiality. A party to a hearing or a member of a review body may challenge the qualifications of a member of the review body to participate in the hearing and decision regarding the matter. The challenge shall be incorporated into the record at the time of the hearing.

1.440 Disqualification. No member of a review body shall participate in a discussion of the proposal without removing himself or herself from the bench ~~or~~ **and** shall **not** vote on the proposal when any of the following conditions exist:

- (1) ~~Any of the following have a~~ **A** direct or substantial financial interest in the proposal **by any of the following:** the review body member or the member's spouse, brother, sister, child, parent, father-in-law, mother-in-law, any business in which the member is then serving or has served within the previous two years, or ~~in which the member is negotiating for or has an arrangement or understanding concerning prospective partnership or employment or is otherwise in a position of~~ conflict of interest as determined by state law.
- (2) The member has a direct private interest in the proposal.
- (3) Any other valid reason for which the member has determined that participation in the hearing and decision cannot be ~~in an impartial manner~~.

1.450 Participation by Interested Officer or Employees. No officer or employee of the City who has a financial or other private interest in a proposal shall participate in discussion with or give an official opinion or staff report to the review body on the proposal without first declaring for the record the nature and extent of such interest.

*Staff Comments: This section was confusing and did not describe what "ex parte contact" meant. Staff proposes replacing the current language with language from another jurisdiction that more clearly outlines what ex parte contact means and what process must be followed when declaring an ex parte contact.*

1.460 Ex Parte Contacts. A member of a review body should **limit communication, directly or indirectly, with any person interested in the outcome concerning the decision or action pending before the review body. "Person interested in the outcome" means a person who has some concern, interest in, or relationship to the decision or action pending before the review body. Should such**

communication occur, at the beginning of the first hearing after which the communication occurs, the member of the review body shall:

- (1) Publicly announce the content of the communication and provide any person an opportunity to rebut the substance of the communication; and
- (2) If the communication was in written or tangible form, place a copy of the communication into the record. ~~The general public has a right to have review body members free from pre-hearing or ex parte contacts on matters heard by them. It is recognized that a countervailing public right is free access to public officials on any matter. Should ex parte communication occur, at the beginning of the hearing, the review body member shall reveal the source and substance of any significant pre-hearing or ex parte contacts regarding any matter at the commencement of the public hearing on such and the Chair shall allow for rebuttal of any information received through such ex parte contact.~~

If such contacts have not impaired the member's impartiality or ability to vote on the matter, the member shall so state and shall participate or abstain in accordance with the following section.

1.470 Abstention or Disqualification.

- (1) An abstaining or disqualified member of the review body may be counted for purposes of forming a quorum. A member who represents personal interest at a hearing may do so only by making full disclosure of his or her status and position at the time of addressing the review body and physically removing himself or herself from the proceedings.
- (2) If a quorum of a review body abstains or is disqualified, **all at least enough** members present after **to achieve a quorum shall** stating their reasons for abstention or disqualification **and** shall, by so doing, be requalified and proceed to resolve the issues.
- (3) A member absent during the presentation of evidence in a hearing may not participate in the deliberations or final decision ~~regarding~~ **on** the matter of the hearing unless the member has reviewed the evidence received and so states on the record.

1.480 Burden and Nature of Proof. The burden of proof is upon the ~~proponent~~ **applicant** or appellant. The more drastic the change or the greater the impact of the proposal in the area, the greater is the burden ~~upon the proponent~~. The proposal must be supported by proof that it conforms to the applicable provisions of this Code, especially the specific criteria set forth for the particular type of decision under consideration.

1.490 Hearing Procedures. Hearing procedures will depend in part on the nature of the hearing. The following may be supplemented by appropriate rules announced by the presiding officer:

- (1) The presiding officer will state the case and call the public hearing to order, informing those present that testimony and evidence is to be directed towards the applicable criteria for the case and that failure to raise an issue accompanied by statements of evidence sufficient to afford the decision-makers and other parties an opportunity to respond to the issue precludes appeal to the State Land Use Board of Appeals on that issue. The presiding officer may establish the time allowed for the presentation of information.
- (2) Any objections on jurisdictional grounds shall be noted in the record.

- (3) Any abstentions or disqualifications shall be determined. Members shall announce all conflicts of interest and shall disclose the time, place, and nature of any ex-parte contacts they have had. Parties to the case shall have the opportunity to rebut any information contained in the ex-parte contact.
- (4) The review body may view the area under consideration for purposes of evaluating the proposal, but shall state the place, time, manner, and circumstances of such viewing in the record.
- (5) The presiding officer at the hearing may take official notice of known information related to the issue, such as provisions of federal or state law, or of an ordinance, resolution, official policy or charter of the City.
- (6) Matters officially noticed need not be established by evidence and may be considered by the review body in the determination of the matters. Parties requesting official notice shall do so on the record.
- (7) Presentation of staff report, including a list of the criteria applying to the issue(s) being heard. City staff may also present additional information whenever allowed by the presiding officer during the proceedings.
- (8) Presentation of information by the applicant or those representing the applicant.
- (9) Presentation of evidence or inquiries by those persons who support the proposed change.
- (10) Presentation of evidence or inquiries by those persons who oppose the proposed change.
- (11) Presentation of evidence or inquiries by those persons who do not necessarily support or oppose the proposed change.
- (12) If additional documents or evidence are provided in support of an application, any party shall, upon request, be entitled to a continuance of the hearing to allow for adequate preparation of rebuttal. Such a continuance shall not be subject to the limitations of ORS 227.178.
- (13) Only the applicant shall have the right to present rebuttal testimony. If the presiding officer allows rebuttal by an opponent, the proponent or applicant shall have a right to an additional and final rebuttal.
- (14) The presiding officer may approve or deny a request to ask a question from a person attending the hearing. Unless the presiding officer specifies otherwise, the presiding officer will direct the question to the person who has submitted testimony.
- (15) At the close of presentation of information the presiding officer shall declare that the hearing is closed unless, ~~before~~ **prior to** the conclusion of the initial evidentiary hearing, any participant has requested an opportunity to present additional evidence, arguments, or testimony regarding the application. The local hearings authority shall grant such a request by continuing the public hearing pursuant to paragraph (a) of this subsection, or leaving the record open for additional written evidence, arguments or testimony pursuant to paragraph (b) of this subsection.
  - (a) If the hearings authority grants a continuance, the hearing shall be continued to a date, time and place certain at least seven days from the date of the initial evidentiary hearing. An opportunity shall be provided at the continued hearing for persons to present and rebut new

evidence, arguments, or testimony. If new written evidence is submitted at the continued hearing, any person may request, prior to the conclusion of the continued hearing, that the record be left open for at least seven days to submit additional written evidence, arguments or testimony for the purpose of responding to the new written evidence.

- (b) If the hearings authority leaves the record open for additional written evidence, arguments or testimony, the records shall be left open for at least seven days. Any participant may file a written request with the local government for an opportunity to respond to new evidence submitted during the period the record was left open. If such a request is filed, the hearings authority shall reopen the record pursuant to subsection (e) of this section.
  - (c) A continuance or extension granted pursuant to this section shall be subject to the limitation of ORS 227.178, unless the continuance or extension is requested or agreed to by the applicant.
  - (d) Unless waived by the applicant, the hearings authority shall allow the applicant at least seven days after the record is closed to all other parties to submit final written arguments in support of the application(s). The applicant's final submittal shall be considered part of the record, but shall not include any new evidence. This seven-day period shall not be subject to the limitations of ORS 227.178.
  - (e) When the hearings authority reopens a record to admit new evidence, arguments or testimony, any person may raise new issues that relate to the new evidence, arguments, testimony or criteria for decision-making which apply to the matter at issue.
- (16) For the purposes of this section:
- (a) "Argument" means assertions and analysis regarding the satisfaction or violation of legal standards or policies **the proponent** believes relevant ~~by the proponent~~ to a decision. "Argument" does not include facts.
  - (b) "Evidence" means facts, documents, data or other information offered to demonstrate compliance or noncompliance with the standards **the proponent** believes ~~by the proponent~~ to be relevant to the decision.
- (17) When the hearing has ended, the review body may openly discuss the issue and may further question a person submitting information or staff if opportunity for rebuttal is provided.
- (18) If the hearing is closed, it shall be reopened only upon a majority vote of the review body. [Ord. 5446, 5/10/00]

## DECISION

1.500 Findings. The review body shall make a decision and adopt findings based upon the information accompanying the application, staff report, and/or evidence presented at the hearing. The findings shall address:

- (1) Applicable Development Code criteria.

(2) For approval, a statement of the facts establishing compliance with each applicable policy or criteria. For denial, a statement of the facts establishing non-compliance with ~~any-one or more~~ required policy or criteria.

(3) Concluding statement(s) to approve or deny.

1.505 Final Decision. Unless a local ordinance specifies that the decision becomes final at a later time than defined in this section, a decision becomes final **when:** (a) ~~when~~ it is reduced to writing, bears the necessary signatures of the decision maker; and (b) if written notice of the decision is required by law, when written notice of the decision is mailed to persons entitled to notice. [Ord. 5475, 4/11/01]

1.510 Notice of Decision.

(1) Within five days of final action on a land use application, the Director shall provide written notice of the decision to the applicant and any other parties entitled to notice. The notice shall state the effective date of the decision, describe the right of appeal, and summarize the reasons for the decision and any conditions of approval, or indicate where such can be reviewed in detail.

(2) The City shall take final action on all land use requests that are wholly within the authority and control of the City within 120 days from the date the application is deemed complete. However, by agreement with the applicant, this deadline may be extended ~~for any reasonable length of time as set out in ORS 227.178~~. The 120-day period set out in ORS 227.178 does not apply to an amendment to an acknowledged comprehensive plan or land use regulation or adoption of a new land use regulation that was forwarded to the Director of the Department of Land Conservation and Development under ORS 197.610 (for legislative changes). [Ord. 5446, 5/10/00]

## APPEALS

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 appeals of a Type II land use decision.** ~~An affected party may request a public hearing on a tentative land use decision made by staff under the Type II procedure. At the Director's discretion, this hearing will be before the Planning Commission, Hearings Board, or the Landmarks Advisory Commission.~~

(3) **Any person who submitted written comments during a comment period or testified at the public hearing has standing to Appeal a Type III decision of the Planning Commission, Hearings Board, or Landmarks Advisory Commission may be appealed to the City Council by an affected party by filing a Notice of Appeal within ten days from the date the City mails the notice of decision.** [Ord. 5475, 4/11/01]

(4) Within the appeal period, the City Council, acting upon the recommended action of the City Manager or upon its own motion, may order a de novo review of any lower level decision. **Such This** review shall be conducted in accordance with appeal procedures as specified herein.

(5) For any appeal proceeding, the Director shall cause notice to be provided in the same manner as ~~provided for the original decision~~, **to those testifying and to any other parties to the proceedings who request notice in writing.**

- (6) A decision of the City Council may be appealed **by persons with standing** to the Land Use Board of Appeals (**LUBA**) by filing a notice of intent to appeal **to LUBA** not later than 21 days after the decision becomes final. [Ord. 5446, 5/10/00; Ord. 5475, 4/11/01]

1.530 Requirements of Notice of Appeal. A Notice of Appeal shall contain:

- (1) ~~An~~ identification of the decision sought to be reviewed, including the date of the decision.
- (2) A statement of the interest of the person seeking review and that he/she was a party to the initial proceedings.
- (3) The specific policy or criteria relied upon for review.
- (4) If de novo review is requested, a statement summarizing the new evidence that will be offered and the criteria to which it will relate.

1.540 Scope of Review. The reviewing body shall determine the scope of review on appeal to be one of the following:

- (1) Restricted to the record made on the decision being appealed.
- (2) Limited to such issues as the reviewing body determines necessary for a proper resolution of the matter.
- (3) A de novo hearing on the merits.

1.550 Review on the Record.

- (1) The reviewing body may hear the entire matter on the record or it may admit additional testimony and other evidence in a de novo hearing.
- (2) When the reviewing body requests a review on the record, the record shall include:
  - (a) A factual report prepared by the Community Development Director.
  - (b) All exhibits, materials, pleadings, memoranda, stipulations, and motions submitted by any party and received or considered in reaching the decision under review.
  - (c) The minutes of the hearing.
- (3) The reviewing body may make its decision based only upon the record, or may grant the right of oral argument; to all affected parties, but not the introduction of additional evidence.

1.560 De Novo Hearing. "De novo hearing" shall mean a hearing by the review body as if the request had not been previously heard and as if no decision had been rendered, except that all testimony, evidence, and other material from the record of the previous consideration may be included in the record of the review.

1.570 Review Body Decision. Upon review, the reviewing body may affirm, remand, reverse, or modify in whole or **in** part a determination or requirement of the decision that is under review. When the reviewing body modifies or ~~renders a decision that reverses~~ a decision of the reviewing body, the reviewing body shall set forth its findings and state its reasons for taking the action. When the reviewing body elects to remand the matter back to the previous review body for such further

consideration as the reviewing body deems necessary, it may include a statement explaining the error found to have materially affected the outcome of the original decision and the action necessary to rectify such **error**.

## LEGISLATIVE PROCESS

### 1.580 Initiation.

- (1) The City Council may make changes in the Comprehensive Plan or Development Code provisions and designations by legislative act where such changes affect a large number of persons, properties, or situations and are applied over a large area.
- (2) The City Council, Planning Commission, Landmarks Advisory Commission, or ~~the~~ Community Development Director may initiate a review on any legislative matter.
- (3) Any property owner or resident of the City may request **that** the Planning Commission ~~to~~ initiate a review of any legislative matter (such as an amendment to the Development Code text). The Planning Commission shall review the proposal and determine whether the proposal warrants processing as a legislative amendment.

1.590 Procedure. Legislative land use applications are processed as a legislative Type IV procedure.

### 1.600 Hearing Notice.

- (1) The Director may inform persons believed to have a particular interest and provide the general public with reasonable opportunity to be aware of the hearings on the proposal.
- (2) Notice shall be published in the Albany Democrat-Herald at least one week ~~prior to~~ before the hearing and additionally as may be required by state law for a particular proceeding.
- (3) Published notice shall include the following information:
  - (a) The reviewing body, the date, time, and place of the hearing;
  - (b) The nature of the proposed amendment; and
  - (c) The name and telephone number of the staff member to contact for more information.

1.610 Hearing Procedures. Interested persons may submit written recommendations and comments in advance of the hearing and this information shall be available for public inspection. At the hearing, written recommendations and other information will be received and oral statements will be permitted. The presiding officer may establish a time limit for presentation of information.

1.620 Planning Commission Recommendation. In preparing its recommendation to the City Council, the Planning Commission shall do the following:

- (1) Evaluate the proposal based on the relevant Development Code criteria.
- (2) Prepare a recommendation and make findings in support of such recommendation.

### 1.630 City Council Action.

- (1) In reaching a decision on a legislative matter, the Council shall adopt findings applicable to the relevant policies and criteria in support of the decision.
- (2) The City Council may:
  - (a) Enact, amend or defeat all or part of the proposal under consideration, or
  - (b) Refer some or all of the proposal back to the Planning Commission, **Hearings Board**, or Landmarks Advisory Commission for further consideration.

1.640 Notice to the Department of Land Conservation and Development (DLCD) on Legislative Matters.

- (1) The Director shall notify the DLCDC for adoption of or amendment to the Comprehensive Plan, the Development Code, or any other land use regulation. The notice shall be provided at least 45 days before the first evidentiary hearing on adoption and ~~the notice shall~~ contain information sufficient to inform the Department as ~~te~~**about** the effect of the proposal.
- (2) If the City determines that the statewide goals do not apply to a particular proposed amendment or new regulation, notice under subsection (1) of this section is not required. In addition, the City may consider an amendment or new regulation with less than 45 days notice if the City Council determines that there are emergency circumstances requiring expedited review. [Ord. 5446, 5/10/00]

1.650 Decision Notice Requirements.

- (1) Within five working days following adoption of an amendment or new land use regulation, the Director shall forward to the DLCDC a copy of the adopted text and findings and notify the Department of any substantial changes that may have occurred in the proposal since any previous notification to the Department.
- (2) Within five working days, the Director shall also notify any person who participated in the proceedings leading to the decision. ~~Such~~**The** notice shall briefly describe the final action taken, state the date and effective date of the decision, and explain the requirements for appealing the action under ORS 197.830 to 197.845.

*Staff Comments: There is a different appeal process for decisions made while in the state mandated review process called "periodic review."*

- 1.660 Appeal. A legislative land use decision **not related to periodic review** may be appealed to the Land Use Board of Appeals. **Persons who participated in periodic review as outlined by state law, may appeal or object to a legislative land use decision made as part of periodic review to the Department of Land Conservation and Development as outlined in Oregon Administrative Rules 660-125-0140.**

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## ARTICLE 4 COMMERCIAL AND INDUSTRIAL ZONING DISTRICTS

*Staff Comments: The City has received noise complaints from residents that live near a couple of existing bars. While noise is particularly a concern with new outdoor seating areas in several locations, there is periodic noise until closing when people go outside to smoke and converse, and then leave and go to their cars, often parked in front of residences. Staff reviewed the zone purpose statements to determine where it is appropriate to allow "night life" out right. The City proposes the following changes to help balance the desire for great neighborhoods and a strong business environment.*

- *The zoning is not proposed to change. If your property is already developed, your property would likely not be affected.*
- *Due to the different hours and impacts of eating and drinking establishments near residential neighborhoods, the City is proposing to **separate the "restaurant" use category into two use categories: 1 - restaurants, and 2 - taverns, bars, breweries, and nightclubs.** (See the proposed language in Article 22.) Before 2003, these uses were in separate categories in the Development Code.*
- *In the NC and IP zones, all new restaurants would be allowed as before through site plan review (staff level review). For new taverns, bars, breweries or night clubs the process is proposed to change from site plan review (staff level review) to a conditional use Type II review (a neighbor can request a public hearing and the Planning Commission is the decision maker).*

4.020 Establishment of Commercial and Industrial Zoning Districts. In order to regulate and segregate the uses of lands and buildings and to regulate the density of development, the following commercial and industrial zoning districts are created:

- (1) OP – OFFICE PROFESSIONAL DISTRICT. The OP district is intended to provide a vertical or horizontal mix of professional offices, personal services, live-work, residential and limited related commercial uses in close proximity to residential and commercial districts. The limited uses allowed in this district are selected for their compatibility with residential uses and the desired character of the neighborhood. OP is typically appropriate along arterial or collector streets as a transitional or buffer zone between residential and more intense commercial or industrial districts.
- (2) NC – NEIGHBORHOOD COMMERCIAL DISTRICT. The NC district is intended primarily for small areas of retail establishments serving nearby residents' frequent needs in convenient locations. The NC District is typically appropriate for small clusters or service centers located at intersections within residential neighborhoods. Businesses should fit into the residential pattern of development and not create land use, architectural or traffic conflicts. Generally, uses located within NC Districts should have as their primary market area the population within a one-half mile radius.
- (3) CC – COMMUNITY COMMERCIAL DISTRICT. The CC district recognizes the diversity of small to medium-scale businesses, services and sites mostly located on arterial streets and highways. Design guidelines, building location and front-yard landscaping will provide a coordinated and enhanced community image along these major transportation corridors as they develop or redevelop. Sound and visual buffers should be used to mitigate impacts on nearby residential areas.
- (4) RC – REGIONAL COMMERCIAL DISTRICT. The RC district is intended primarily for developments that serve the wider Albany region. RC allows a wide range of retail sales and service uses, and is typically appropriate for developments that require large sites near Interstate

5. Design guidelines, building location and front-yard landscaping will provide an enhanced community image along major transportation corridors. These uses often have significant impacts on the transportation system. Sound and visual buffers may be required to protect nearby residential areas. RC districts may not be appropriate in all locations.

- (5) TD – TRANSIT DISTRICT. The TD district is intended primarily for regional transit facilities and related uses. This district is suitable as a major office employment center because of easy access to mass transit. Mixed-use development including a multi-modal transportation facility, a park-and-ride facility, and office space should be developed within this district.
- (6) IP – INDUSTRIAL PARK DISTRICT. The IP district is intended primarily for light manufacturing, high-tech, research and development, institutions and offices in a quality environment. Uses are characterized by attractive building architecture and landscaped yards and streetscapes, and the absence of objectionable external effects. The district is designed for industrial and business parks containing offices together with clean, non-polluting industries. IP is located along or near highly visible corridors to provide a positive image and a transition to residential or natural areas from heavier industrial uses.

**SCHEDULE OF PERMITTED USES**

4.050 Schedule of Permitted Uses. The specific uses listed in the following schedule are permitted in the zones as indicated, subject to the general provisions, special conditions, additional restrictions, and exceptions set forth in this Code. A description of each use category is in Article 22, Use Categories and Definitions. The abbreviations used in the schedule have the following meanings:

- Y Yes; use allowed without review procedures but may be subject to special conditions.
- S Use permitted that requires a site plan approval prior to the development or occupancy of the site or building.
- CU Use considered conditionally under the provisions of Sections 2.230-2.260, Type III procedure (Planning Commission hearing scheduled).
- CUII Conditional Use approval required, Type II procedure (neighbors can request a hearing)
- PD Use permitted only through Planned Development approval.
- N No; use not allowed in the zoning district indicated.

X/X Some zones have two abbreviations for a use category (ex. Y/CU). Refer to the special condition to determine what review process is required based on the details of the use.

A number opposite a use in the “special conditions” column indicates that special provisions apply to the use in all zones. A number in a cell particular to a use and zone(s) indicates that special provisions apply to the use category for that zone(s). The conditions are found following the schedule, in Section 4.060. [Ord. 5555, 2/7/03]

**SCHEDULE OF PERMITTED USES**

Use Categories (See Article 22 for use category descriptions.)	Spec. Cond.	OP	<del>NC</del>	CC	RC	TD	<del>IP</del>	LI	HI
Restaurants, no drive-thru w/ drive-thru or mostly delivery	25	CUII N	S CU-10	S S	S S	S N	S CU	N N	N N
Taverns, Bars, Breweries, Nightclubs	25	CUII	<del>CUII</del>	S	S	S	<del>CUII</del>	CUII	CUII

**SPECIAL CONDITIONS**

4.060 General. Where numbers appear in the “Special Conditions” column or in a particular cell in the Schedule of Permitted Uses, the corresponding numbered conditions below shall apply to the particular use category as additional clarification or restriction:

- (10) Restaurants in the NC zone. Drive-through restaurants are allowed in NC provided there are no more than two drive-through windows, and there is no speaker service (for ordering).
- (25) Hours of operation. **Hours of operation for establishments or outdoor seating areas within 300 feet of a residence may be restricted through conditions of approval to be compatible with neighbors.**

## ARTICLE 5 MIXED USE VILLAGE CENTER ZONING DISTRICTS

*Staff Comments: The City has received noise complaints from residents that live near a couple of existing bars. While noise is particularly a concern with new outdoor seating areas in several locations, there is periodic noise until closing when people go outside to smoke and converse, and then leave and go to their cars, often parked in front of residences. In addition, the purpose statements of several zoning district encourage compatibility between residential and non-residential uses. The City proposes the following changes to help balance the desire for great neighborhoods and a strong business environment.*

- *The zoning is not proposed to change. If your property is already developed, your property would likely not be affected.*
- *Due to the different hours and impacts of eating and drinking establishments near residential neighborhoods, the City is proposing to separate the “restaurant” use category into two use categories: 1 - restaurants, and 2 - taverns, bars, breweries, and nightclubs. (See the proposed language in Article 22.) Before 2003, these uses were in separate categories in the Development Code.*
- *In the MS, MUC, MUR, and WF zones, all new restaurants would be allowed as before through site plan review (staff level review). For new taverns, bars, breweries or nightclubs the process is proposed to change from site plan review (staff level review) to a conditional use Type II review (a neighbor can request a public hearing and the Planning Commission is the decision maker).*
- *In the ES zone, new restaurants are proposed to be allowed through a conditional use Type II review (a neighbor can request a public hearing and the Planning Commission is the decision maker). New taverns, bars, breweries or nightclubs are proposed to not be allowed.*

5.030 Establishment of Village Center Zoning Districts. In order to implement the mixed-use and livability concepts in the Town Center and Albany Comprehensive Plans, the following zoning districts are created:

- (1) HD – HISTORIC DOWNTOWN DISTRICT. The HD district is intended primarily for a dense mixture of uses with an emphasis on entertainment, theaters, restaurants, night life and specialty shops. High-density residential infill on upper floors is encouraged, as is the continued presence of the government center and supporting uses.
- (2) CB – DOWNTOWN CENTRAL BUSINESS DISTRICT. The CB district is intended primarily for retail and services that support Historic Downtown businesses and residents. Mixed uses are encouraged both horizontally and vertically. High-density residential infill, especially on upper floors, and office employment are both encouraged.
- (3) MUR – MIXED USE RESIDENTIAL DISTRICT. The MUR district is intended primarily to create a residential district that allows a mixture of neighborhood commercial uses that meet the daily needs of area residents. [Ord. 5673, 6/27/2007]
- (4) WF – WATERFRONT DISTRICT. The WF district is intended transition Albany’s Willamette River waterfront into a vibrant center characterized by a variety of housing choices and a mixture of housing, office, and retail uses. Development and design standards will result in great neighborhoods, a pedestrian friendly environment and an enhanced community image. [Ord. 5635, 1/11/2006]
- (5) LE – LYON-ELLSWORTH DISTRICT. The LE district is intended primarily as a location for development that serves the Historic Downtown district and Downtown Central Business

district. This district is the most desirable location in the Central Albany area for parking structures with ground-floor commercial uses.

- (6) MS – MAIN STREET DISTRICT. The MS district is intended primarily as an employment center with supporting commercial and retail services for residents and employees in the area. Retail, restaurant or night uses that impact surrounding residences are discouraged.
- (7) ES – ELM STREET DISTRICT. The ES district is intended primarily to provide enough land for Albany General Hospital and associated medical uses while maintaining compatibility with adjacent residences in scale and design. Light commercial and personal services are encouraged to serve the nearby residents. Removal of existing residences and landscapes is discouraged. New parking facilities should be underground or completely screened. Only the amount of parking that is necessary should be allowed for uses in this district, to minimize the amount of land consumed by parking.
- (8) PB – PACIFIC BOULEVARD DISTRICT. The PB district is intended as an auto-oriented commercial area along Pacific Boulevard in the Central Albany area. Design guidelines and front-yard landscaping will provide a coordinated look and enhance the community image along this major corridor as it develops or redevelops. Sound and visual buffers should be used to protect nearby residential areas.
- (9) MUC – MIXED USE COMMERCIAL DISTRICT. The MUC zoning district is intended primarily to provide a mix of convenience commercial, personal services, offices and medium density residential uses. The district would typically be anchored by a grocery store, and may include a mix of smaller retailers, offices, live-work units and residences. The MUC district is easily accessible to nearby residences, and commercial uses are compatible in scale and design with adjacent neighborhoods. Uses in the MUC zone will serve area residents and should not draw from the region. [Ord. 5556, 2/21/2003; Ord. 5577, 7/28/2004; Ord. 5555, 2/7/2003]

5.060 Schedule of Permitted Uses. The specific uses listed in the following schedule are permitted in the zones as indicated, subject to the general provisions, special conditions, additional restrictions, and exceptions set forth in this Code. A description of each use category is in Article 22, Use Categories and Definitions. The abbreviations used in the schedule have the following meanings:

- Y Yes; use allowed without review procedures but may be subject to special conditions.
- S Use permitted that requires a site plan approval prior to the development or occupancy of the site or building.
- CU Use considered conditionally under the provisions of Sections 2.230-2.260, Type III procedure (Planning Commission hearing scheduled).
- CUII Use considered conditionally, Type II procedure (neighbors can request a hearing).
- PD Use permitted only through Planned Development approval.
- N No; use not allowed in the zoning district indicated.

**SCHEDULE OF PERMITTED USES**

Use Categories (See Article 22 for use category descriptions.)	Spec. Cond.	<del>MUC</del>	<del>WE</del>	HD	CB	LE	PB	<del>MS</del>	<del>ES</del>	<del>MUR</del>
Restaurants, no drive-thru with drive-thru or mostly delivery	23	S CU	S N	S N	S N	S S	S S	S N	<del>SCUII</del> N	S N
Taverns, Bars, Breweries, Nightclubs	23	<del>CUII</del>	<del>CUII</del>	S	S	S	S	<del>CUII</del>	<del>N</del>	<del>CUII</del>

**SPECIAL CONDITIONS**

5.070 General. Where numbers appear in the “Special Conditions” column or in a particular cell in the Schedule of Permitted Uses, the corresponding numbered conditions below shall apply to the particular use category as additional clarification or restriction:

- (23) Hours of operation. **Hours of operation for establishments or outdoor seating areas within 300 feet of a residence may be restricted through conditions of approval to be compatible with neighbors.**

## ARTICLE 11

### LAND DIVISIONS AND PLANNED DEVELOPMENTS

*Staff Comments: Only three sections of this Article are being reviewed at this time: 11.060, 11.080, and 11.180(3).*

*Two residential developers have requested the City consider allowing an extension to subdivision approvals due to the poor economy.*

*Oregon's recession started in January, 2008. In Oregon, the recession was still impacting housing and manufacturing in the third quarter of 2009.<sup>1</sup> Housing and financial markets are still exerting downward pressure on the national and state economies.<sup>2</sup>*

*According to the March 2009 Oregon Economic and Revenue Forecast, prepared by the Oregon Office of Economic Analysis, housing starts in the State of Oregon declined 48% between 2008 and the peak in 2006-2007, with housing starts estimated to drop another 47% between 2008 and 2009. In the September forecast, Oregon's housing starts were raised for 2009 and 2010 because residential permits have been higher than expected in the first half of 2009. That said, the third quarter forecast notes that "housing starts will remain below their historical average until 2013 as the industry continues to work off its excess oversupply and consumer demand returns."<sup>3</sup>*

*Albany's construction permits reflect the state's decline. In 2008, the number of new residential building permits was only 46% of permits (136 units) issued in 2006-2007 (336 units average). In 2009, new residential building permits totaled 103 through October, which is only 31% of those issued in 2006-2007. (See Attachment 1 to the staff report.)*

*Extensions in other cities: The extension to land use approvals in other Oregon communities range from 0 to 7 years. Portland approved an extension for developments approved between May, 2006 and December, 2008 to be valid until June, 2012. This created extensions that range from 6 months to 3 years depending on when the application was submitted.*

*Proposal: After hearing from two developers, a few residents, and staff, the City Council discussed extensions to land use approvals at their August 12 and August 26, 2009 meetings. The Council's direction was that if the zoning has not changed, that the City should consider a one-time, one-year extension to land use approvals issued between a specific time periods. After evaluating Oregon's economy related to housing and construction and the City's permit and land use application data and approval dates, staff proposes the one-year extension be considered for projects approved between in January 1, 2007 and December 31, 2008.*

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

<sup>1</sup> Oregon Office of Economic Analysis, Oregon Economic and Revenue Forecast, September, 2009, p.33.

<sup>2</sup> Ibid., p.42.

<sup>3</sup> Ibid., p.49.

**A one-year extension to the original expiration date is made for a tentative plat approved between January 1, 2007, and December 31, 2008, if there have been no changes in zoning since the original approval. [Ord. 5475, 4/11/2001]**

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.

*Staff Comments: Discussion at the August 12 and August 26 City Council meetings regarding the economy concluded that it was NOT necessary to grant extensions to phased subdivisions, which currently have a five-year approval period. There was concern that subdivision approvals beyond five years may not meet local, state or federal standards on a variety of issues, such as water quality and wetlands.*

*Between 2005 and 2009, three phased subdivisions were approved. (See Attachment 2.)*

- *Somerset Meadows in East Albany, was approved 7/11/2005. The final plat for Phase 3 was submitted. Phases 4 through 6 have not been submitted.*
- *Henshaw Farms, a 109-acre development approved 1/30/2006. According to the developers, due to economic reasons, this project will need five years beyond the expiration date of 1/30/2011 to plat all phases.*
- *North Creek (formerly Albany Heights) on the SW corner of Crocker and Valley View was approved 5/7/2007. The first phase was recently platted. It is unknown whether they will be able to submit the final plat for the final two phases by May, 2012.*

*During the initial public input period, we received an October 22, 2009, letter from John O-Neil of Metropolitan Land Group. He represents the owners of Henshaw Farms. (See Attachment 3 to the staff report) The phased subdivision will expire on 1/30/2011. While he says they have not reached agreement with the Division of State Lands regarding wetlands on the site, it is the "dire state of the home building industry" that warrants a mechanism to allow for extensions to existing subdivision approvals. He specifically has asked that the City consider granting a temporary, one-time, 5-year approval to the Henshaw Farms phased subdivision, out to 2016. This time frame would allow for the market to return to a healthy and viable state.*

*While the housing industry has been greatly affected by the economy, the last sentence of 11.070 would likely require modifications to approved plans to avoid conflicts with changes in the Comprehensive Plan. The City is close to adopting an updated Transportation System Plan and in 2010 will update the Comprehensive Plan policies regarding natural resources, including wetlands. Staff expects that new regulations and policies will warrant modifications to the Henshaw Farms subdivision.*

*Proposal. Staff proposes no changes to the five-year approval period at this time. We propose changing the word "staged" to "phased," which is more commonly used. Secondly, when the original one-year approval was extended to three years in 11.060 in 2001, the reference to one-year in the second paragraph below should have been changed to three years. We propose making this change now.*

- 11.070 ~~Staged-Phased~~ **Subdivision Development**. When an applicant desires to develop and record ~~in stages~~ 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 ~~stages~~ **phases** in periods of time in excess of one year.

In no case shall the total time period for all ~~stages-phases~~ be greater than five years without resubmission of the tentative plat. Each stage **that is so-platted and developed** shall conform to the applicable requirements of this title. ~~Portions platted after the passage of one year three years may be required to have modifications to avoid conflict with any changes in the Comprehensive Plan or implementing regulations.~~

*Staff Comments: A resident has asked that the City require more measurable criteria for land divisions and remove subjective wording like "under the circumstances."*

*Questions regarding this section also arose during review of the Thornton Lake Estates subdivision. In particular, the traffic signal at US20/North Albany Road was projected to meet City performance standards, but it was questionable about whether it met ODOT standards. The findings for the project concluded that Council could approve the project regardless of whether or not the ODOT standard was met if they believed the proposed plan was the best possible "under the circumstances." The basis for the requested change to this section appears to be the belief that inclusion of the phrase "under the circumstances" makes interpretation of the criteria too subjective and allows for approval of projects that do not fully meet one or more ADC standards.*

*There are two basic approaches regarding review criteria, without much room in the middle. One approach is to develop a rigid and comprehensive set of Development Code standards and then adopt application review criteria that require full and complete compliance with those standards. Under those circumstances the review of an application essentially becomes a pass/fail test, and there is little or no room for the use of subjective judgment by decision makers. While this approach can reduce some of the controversy that occurs during the review of applications, it is a two-edged sword: applications with wide support may have to be denied over what will often appear to be minor noncompliance issues, and decision makers can be forced to approve flawed projects that still manage (through an unintended loophole or omission) to meet the specific pass/fail language contained in development code standards and the application review criteria. The second approach is to develop a slightly less rigid set of Development Code standards and adopt application review criteria that provide for the use of some level of subjective judgment by decision makers. This approach provides the local jurisdiction with the most flexibility when reviewing applications. However, as we have so often seen in the recent past, that flexibility will often lead to increased levels of controversy during the review of applications. The City's Development Code and application review criteria currently follow the second approach.*

*Staff has considered this request and determined that land use is subjective. Staff concludes it would be a mistake to make this particular transportation review criteria objective and removing all flexibility and subjective judgment of the decision makers. No changes are proposed at this time.*

11.180 Tentative Plat Review Criteria. Approval of a tentative subdivision or partition plat will be granted if the review body finds that the applicant has met all of the following criteria which apply to the development:

- (3) The proposed street plan affords the best economic, safe, and efficient circulation of traffic possible under the circumstances.

## ARTICLE 22

### USE CATEGORIES AND DEFINITIONS

*Staff Comments: The City has received noise complaints from residents that live near a couple of existing bars. While noise is particularly a concern with new outdoor seating areas in several locations, there is periodic noise until closing when people go outside to smoke and converse, and then leave and go to their cars, often parked in front of residences.*

*In this Article of the Code, we propose to **separate restaurants into two use categories: restaurants and bars/taverns/breweries/nightclubs**. Prior to 2003, restaurants and bars/taverns were considered different use types in the Development Code. Hours of operation and prohibition of minors are proposed as a way to distinguish the two uses.*

*This will help balance the desire for great neighborhoods and a strong business environment.*

#### 22.130 Restaurants

- (1) *Characteristics.* Restaurants are involved in the sale of food ~~and/or beverages~~ to the general public. Businesses may also provide **beverages and entertainment** in addition to food sales. **Restaurants are generally not open past 10 or 11 p.m.**
- (2) *Accessory Uses.* Accessory uses may include offices, storage of goods and packaging of goods for sale on site, and parking.
- (3) *Use Examples.* Types of uses include, but are not limited to: cafes and delicatessens; restaurants with sit-down, carry-out, and fast food (with or without drive-through window), ~~taverns, bars and night clubs.~~
- (4) *Exceptions.* Food sales at events and entertainment centers are accessory uses to the primary use type.

#### 22.155 Taverns, Bars, Breweries, Nightclubs

- (1) *Characteristics.* A business or part of a business that sells alcoholic beverages to be consumed on the premises, and which prohibits minors for a portion of the operating hours and are generally open past 11:00 p.m. and often until 2:00 a.m. Businesses may also provide food and entertainment.
- (2) *Accessory Uses.* Accessory uses may include offices, storage of goods and packaging of goods for sale on site, and parking.
- (3) *Use Examples.* Types of uses include, but are not limited to: taverns, bars, sports bars, breweries, brewery pubs, wineries, and night clubs.
- (4) *Exceptions.* Beverage sales at events and entertainment centers are accessory uses to the primary use type.

**ARTICLE 12  
PUBLIC IMPROVEMENTS**

*Staff Comments: A resident asked us to evaluate 12.160, Street Alignment. The North Albany Citizens in Action group also asked the City to incorporate standards from the Traffic Impact Study Guidelines into the Albany Development Code. Staff is recommending that these issues be addressed comprehensively as a package to address street designs, alignments, intersection performance and sight distance standards after the Transportation System Plan (TSP) is adopted.*

12.000 Overview. This article contains the City's standards for public improvements that relate to the development process.

The following is a list of the main headings in this article.

- General Provisions
- Streets
- Sidewalks
- Street Trees
- Bikeways
- Utilities—General
- Water
- Sanitary Sewer
- Storm Drainage
- Improvement Assurances

[Ord. 5673, 6/27/2007]

**STREETS**

12.160 Street Alignment. As far as practical, streets shall be dedicated and constructed in alignment with existing streets. Arterial and collector streets shall have continuous alignments without offset or staggered intersections. In no case shall streets be designed so that jogs of less than 300 feet are created as measured from the centerline of any intersection involving an arterial or collector street. [Ord. 5338, 1/28/1998]

*Background Information: Questions regarding 12.160 arose during review of the Thornton Lake Estates subdivision. Residents in opposition to the application pointed out that the new street into the development from North Albany Road would be located within 300 feet of the current alignment of Jones Avenue. The staff report concluded this section of the ADC did not apply to the situation because Jones Avenue is not a public right-of-way and does not meet the current ADC definition of a public street. Had Jones Lane been public right-of-way, it is unlikely the issue would have provided sufficient justification for denial of the subdivision application; the 1997 TSP calls for Jones Lane to be converted to public right-of-way and realigned opposite the road into Thornton Lake Estates. That would have provided sufficient justification for issuance of a variance.*

*Staff Comments: The purpose of this code section is to limit the creation of new offset intersections along the arterial and collector streets. Offset intersections can result in turn-movement conflicts and associated safety problems. There have been several instances in the recent past, however, where developments were approved that resulted in an intersection spacing of less than 300 feet along arterial and collector streets. None have developed a crash problem. The situation comes up most often with single-family, residential infill development on small tracts located within an otherwise developed area. A new intersection and street is often needed to provide access to new lots and for development of the parcel at the density envisioned by its zone designation. Not allowing for new street connections in*

## **EXHIBIT F**

*those cases would result in either under utilization of the land (and ultimately increased pressure to expand the UGB) or the creation of private driveways and easements shared by more parcels than is currently allowed by the ADC. In general, allowing one new street connection to an arterial or collector street will result in less impact, conflict, and safety problems on the street system than allowing creation of several shared private driveways.*

### **Staff Recommendation:**

*Make no changes to ADC 12.160. The existing language allows the City to avoid creation of offset intersections along arterial and collector streets when alternatives exist, and to approve with a variance those that are unavoidable.*

## **TRAFFIC IMPACT STUDY GUIDELINES INTO THE ADC**

**Background Information:** *The City's Traffic Impact Study Guidelines currently reside in Public Work's "Engineering Standards," and are not part of the Development Code. Issues regarding application of the guidelines arose during the review of the Thornton Lake Estates subdivision. Because the guidelines are not Development Code standards, there were questions during the City's review of the application about how the standards contained in the guidelines should be applied to the land use decision.*

*The Traffic Impact Study Guidelines were originally adopted by Council in 1999, and last updated in June 2006. The purpose of the guidelines is to provide consultants with an outline of how to prepare and conduct traffic studies for new development applications. The guidelines primarily cover topics relating to the performance and organization of traffic studies. Items such as which current software programs can be used to analyze intersection performance, and what is the best method in a given situation to estimate background traffic are not topics that should be included within the Development Code. The state of the art changes too much and too quickly.*

**Staff Comments:** *While it was never intended that the guidelines function as development standards, when first created they by necessity had to provide direction on how to evaluate a few transportation issues not otherwise covered within the Development Code. Those issues included intersection performance (level of service and volume to capacity ratios), sight distance, and intersection and corridor accident rates. I believe standards concerning intersection performance and sight distance should be included in the Development Code so that it is clear those standards apply to all new development, and not just applications that incorporate a traffic study. One of the recommendations coming out of the Transportation Systems Plan (TSP) update is that the Development Code be amended to include intersection performance standards. In discussions concerning the TSP update, Council has also expressed an interest in revisiting the street design standards contained in Article 12 of the Development Code. Staff does not believe intersection and corridor accident rates should be standards contained in the Development Code. These standards should stay in the guidelines and can be used as a threshold test for when a development should conduct a detailed evaluation of its safety impacts.*

### **Staff Recommendation:**

*Incorporate intersection performance and sight distance standards into the Development Code. However, have those amendments and the discussion of those changes take place as part of the larger discussion Council intends to undertake regarding Article 12 at the end of the TSP update process. Once those Development Code changes are made, the City Engineer should revise the Traffic Impact Study Guidelines so they are consistent with the revisions made to the Development Code.*