

ORDINANCE NO. 4969

TITLE: AN ORDINANCE AMENDING THE ALBANY MUNICIPAL CODE, TITLE 20, KNOWN AS THE "CITY OF ALBANY DEVELOPMENT CODE," RELATIVE TO SPECIAL PURPOSE DISTRICTS AND HISTORIC OVERLAY DISTRICT, ADOPTING FINDINGS, AND DECLARING AN EMERGENCY.

WHEREAS, the Albany City Council has directed staff to perform an update of the Albany Development Code; and

WHEREAS, the proposed amendments (Case No. DC-06-91) are a portion of that Development Code and Zoning Map update; and

WHEREAS, the Planning Commission following a public hearing on June 3, 1991, recommended approval of proposed amendments to the Development Code (Case No. DC-06-91) relative to existing Article 11 relating to special purpose districts and the Albany Municipal Code Chapter 18.04, the Historic Ordinance. The amendments incorporate Chapter 18.04 of the Albany Municipal Code into the Development Code to clear up inconsistencies in processing that now occur. Most of the proposed changes in the historic district regulations deal with format. The amendments also include hillside development standards which are consistent with policies in the Comprehensive Plan.

WHEREAS, a notice of the City Council public hearing has been published and posted; and

WHEREAS, the Albany City Council held a public hearing on August 14, 1991 and members of the public were given an opportunity to be heard.

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

Section 1: Article 11 of the Albany Municipal Code, Title 20, known as the "City of Albany Development Code," and Albany Municipal Code Chapter 18.04, the Historic Ordinance, are hereby amended as shown on Exhibit "A." This amendment deletes existing Article 11 and incorporates the Historic Ordinance of the Albany Municipal Code into the Development Code.

Section 2: The Findings below are hereby adopted in support of this decision:

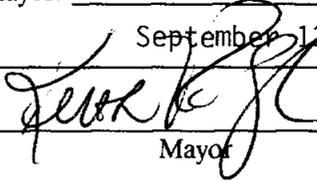
- A. The proposed amendments are in compliance with Development Code policies on satisfying applicable regulations at the state and federal level, protection of life and property from natural hazards, and protection of the city's beauty and character.
- B. The proposed amendments are in compliance with Comprehensive Plan policies regarding historic resource protection, wetland protection, Willamette Greenway conservation, and protection of life and property from natural hazards.
- C. The proposed amendments result in a Code structure that is easy to follow and utilize.
- D. The proposed amendments will clarify the text of the Code and improve readability of the regulations.
- E. The proposed amendments better achieve the goals and policies of the Comprehensive Plan than the existing regulatory language.

Section 3: A copy of this ordinance will be forwarded to the Department of Land Conservation and Development.

Passed by the Council: August 14, 1991

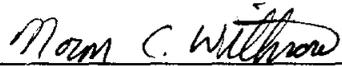
Approved by the Mayor: August 15, 1991

Effective Date: September 13, 1991



Mayor

ATTEST:



Deputy City Recorder

ARTICLE 6 SPECIAL PURPOSE DISTRICTS

6.010 Overview. Special purpose districts are overlay districts which are combined with a zoning district. The special purpose districts are intended to regulate development in areas where topographic or natural features, or proximity to an airport require that specific limitations or requirements be imposed. The regulations of a special purpose district are supplementary to the regulations of the zoning district. Both the zoning district and special purpose district regulations apply to sites within a special purpose district. Where the regulations and permitted uses of a zoning district conflict with those of a special purpose district, the more restrictive standards apply.

The following is a list of the overlay districts created in this article.

- Airport Approach
- Floodplain
- Hillside Development
- Wetland
- Willamette Greenway

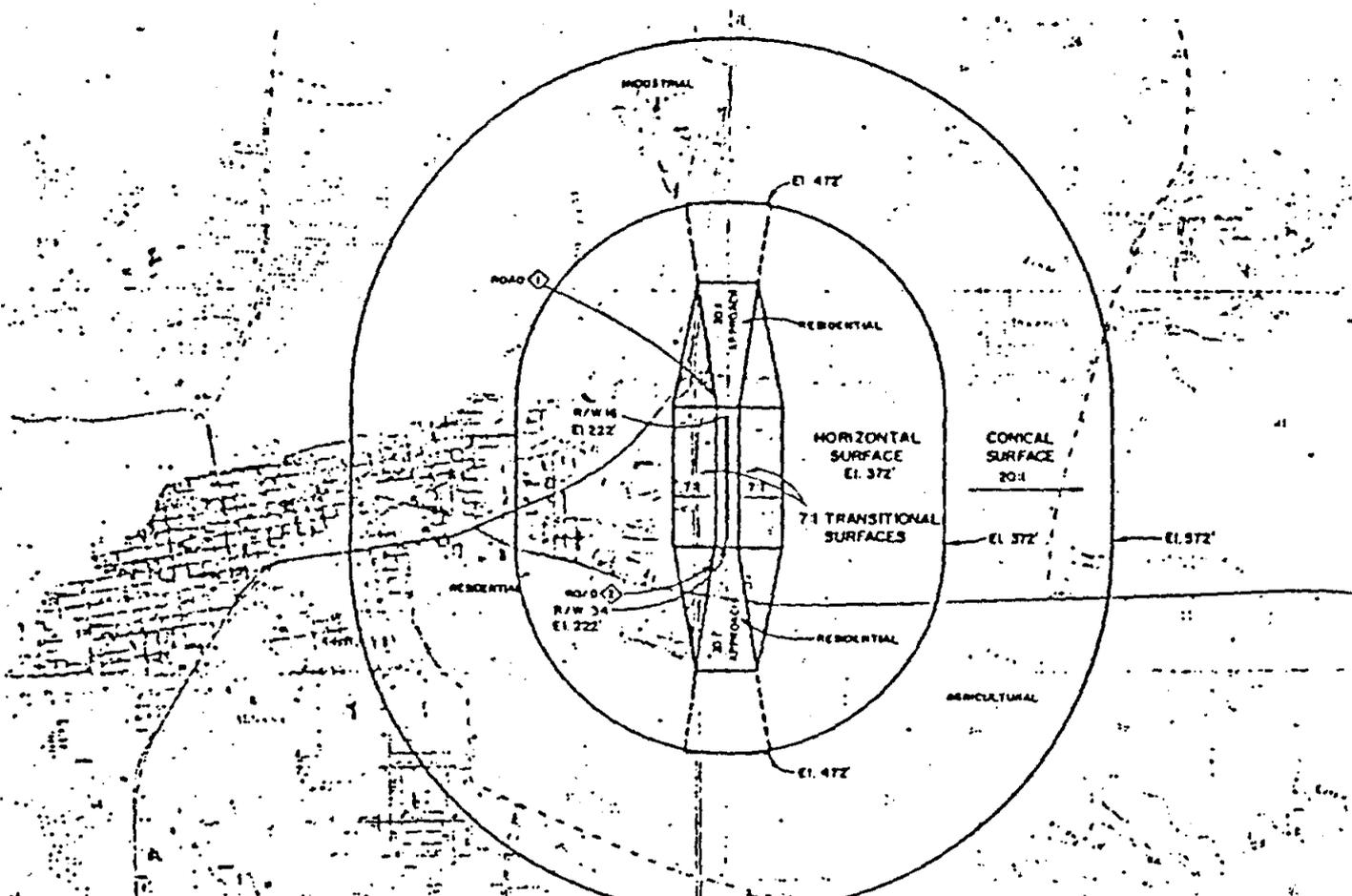
AIRPORT APPROACH

6.020 Purpose. The Airport Approach district is intended to protect both the public from excessive noise and air traffic from possible hazards on landing or takeoff.

6.030 Applicability. The regulations below apply to those areas indicated on Figures 6-1 and 6-2.

6.040 Height Restrictions. No structure, mast, antenna, or wire shall be erected, altered, or maintained, and no tree shall be allowed to grow to a height in excess of the height limit established within each of the following described zones (which are also graphically represented in Figure 6-1):

- (1) Visual Approach Area. Slopes twenty (20) feet outward for each foot upward beginning at the ends of the primary surface (200 feet from the end of the pavement) and at the same elevation as the primary surface, and extending to a horizontal distance of 5,000 feet along the extended runway centerline.
- (2) Transitional Areas. Slopes seven (7) feet outward for each foot upward beginning at the sides of and at the same elevation as the primary surface and the approach surface, and extending to a height of 150 feet above the airport elevation which is 222 feet above mean sea level. In addition, there are height limits sloping seven (7) feet outward for each foot upward beginning at the sides of and at the same elevation as the approach surface, and extending to where they intersect the conical surface.
- (3) Horizontal Area. 150 feet above the airport elevation or at a height of 372 feet above mean sea level.



ISOMETRIC VIEW

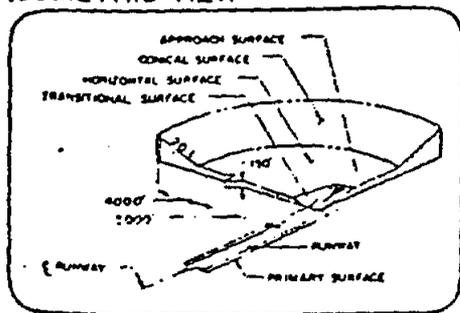


FIGURE 6-1

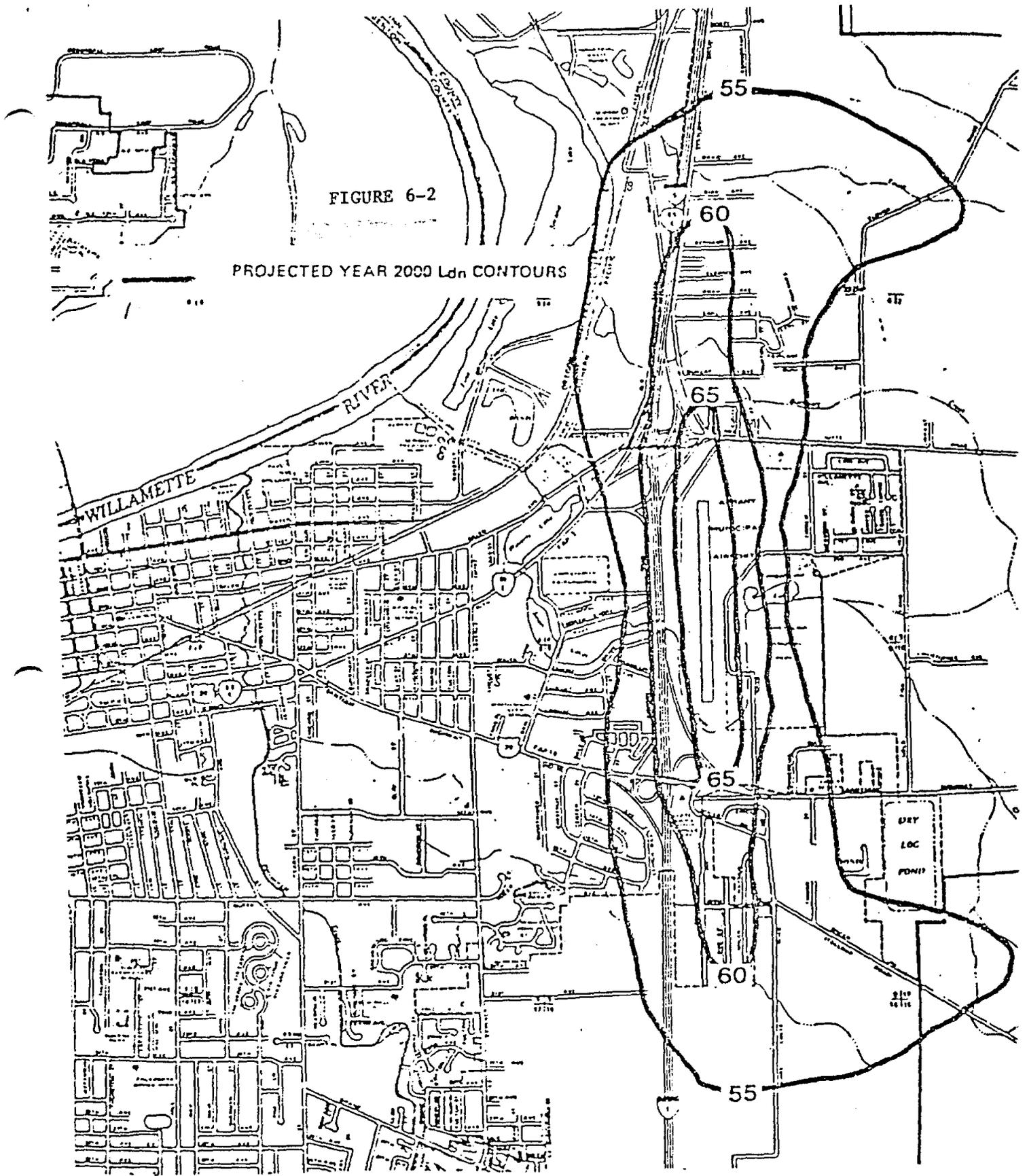


ALBANY MUNICIPAL AIRPORT
 ALBANY OREGON
 APPROACH AND
 CLEAR ZONE PLAN

0 400 800 1200
 SCALE IN FEET

FIGURE 6-2

PROJECTED YEAR 2000 Ldn CONTOURS

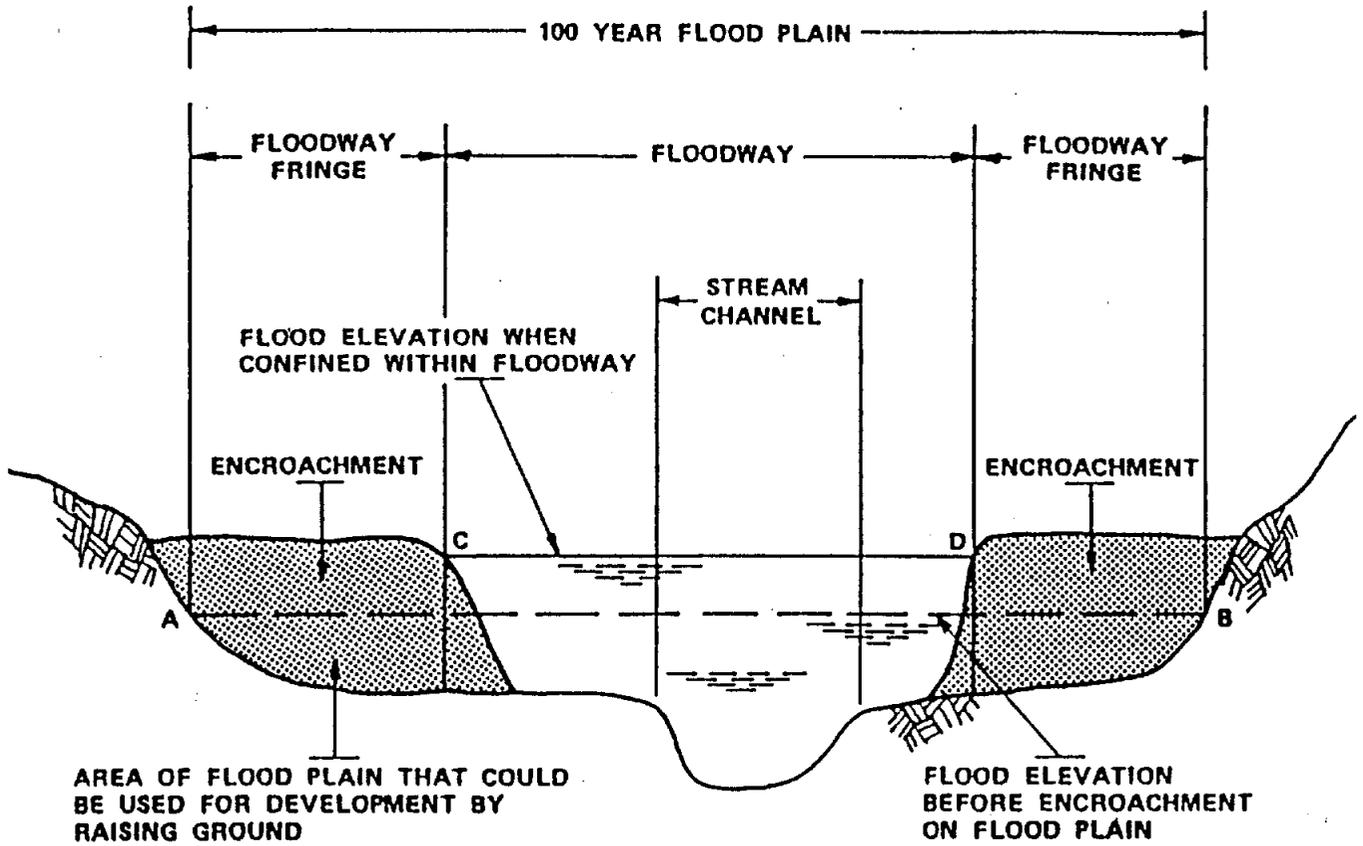


- (4) **Conical Area.** Slopes 20 feet outward for each foot upward beginning at the periphery of the horizontal zone and at 150 feet above the airport elevation and extending to a height of 350 feet above the airport elevation.
- 6.050 **Other Interference Prohibited.** Notwithstanding any other provisions of this ordinance, no use may be made of land or water within any zone established by this ordinance in such a manner as to create electrical interference with navigational signals or radio communication between the airport and aircraft, make it difficult for pilots to distinguish between airport lights and others, result in glare in the eyes of pilots using the airport, impair visibility in the vicinity of the airport, create bird strike hazards, or otherwise in any way endanger or interfere with the landing, takeoff, or maneuvering of aircraft intending to use the airport.
- 6.060 **Noise Construction Standards.** Within the designated airport noise contours indicated in Figure 6-2, the following regulations shall apply:
- (1) In the 55 to 60 Day-Night Sound Level (ldn) area, a declaration of anticipated noise levels shall be attached to any land use application and recording of such declaration may be required for approval on each parcel within such area.
 - (2) Development of "noise sensitive property" (e.g. residentially zoned areas, group quarters used for sleeping, motels, hotels, schools, churches, hospitals, libraries) within the 55 to 60 ldn area and above shall be subject to the provisions of Site Plan Review outlined in Article 13 and may be required to include additional sound buffering features within the development as a condition of approval.

FLOODPLAIN

- 6.070 **Purpose.** The floodplain district is intended to prevent development or uses which may result in water or erosion hazards, or which results in damaging increases in erosion or flood heights. All developments proposed within the floodplain district shall be subject to the provisions of Site Plan Review, floodplain district regulations, and if applicable, Willamette Greenway regulations. "Development," as defined in Article 22, includes cut and fill, residential and non-residential construction, manufactured housing, land divisions, and other forms of development. For graphic illustration of the relationships between terms used in this Section, refer to Figure 6-3.
- 6.080 **Applicability.** The floodplain district regulations apply at a minimum to those City floodplains, floodways, and base flood elevations defined by the Federal Emergency Management Agency (FEMA) in the Flood Insurance Study for Albany (March 16, 1989), for Benton County (August 5, 1986), and the preliminary study for Linn County (July 18, 1985). In addition, the City Council may adopt by resolution more current studies or boundary information approved by the Federal Emergency Management Agency (FEMA).

Precise floodplain district boundaries may be difficult to determine from the maps referred to above due to their large scale and lack of site specific studies. In such instances, the Director may apply FEMA base flood elevations to topographic maps or site surveys in order to determine actual boundaries. In the absence of FEMA base flood elevations, the Director may utilize other sources of floodplain and floodway data to determine base flood elevations and boundaries. However, when elevation data is not available through FEMA or another authoritative source and the development consists of 4 or more lots, 4 or more structures, or



LINE A-B IS THE FLOOD ELEVATION BEFORE ENCROACHMENT
 LINE C-D IS THE FLOOD ELEVATION AFTER ENCROACHMENT

FLOODWAY RELATIONSHIPS

4 or more acres, the applicant shall generate and have certified by a registered engineer the base flood elevation. Any decision of the Director regarding a determination of a base flood elevation or interpretation of a district boundary may be appealed in accordance with Section 1.410 of this Code.

6.090 State and Federal Approval. City approval of any land use application within the floodplain is conditioned upon receipt of any required state or federal permits. Required state and federal permits include but are not limited to:

- (1) Permits and associated wetland development regulations administered by the Oregon Division of State Lands.
- (2) Permits administered by the U.S. Army Corps of Engineers.
- (3) All discharge permits covered by the U.S. Environmental Protection Agency and Oregon Department of Environmental Quality.

6.100 Floodway Restrictions. No development is allowed in any floodway except where the review body finds that the development will not result in any increase in flood levels during the occurrence of a base flood (the 100-year flood). Such finding shall be based upon evidence certified by a registered professional engineer and documentation that one of the following three criteria have been met:

- (1) The development does not involve the construction of permanent or habitable structures.
- (2) The development is a public or private park or is a recreational use.
- (3) The development is a water-dependent structure such as a dock, pier, bridge, or floating marina.

If a floodway boundary is not designated on an adopted City or FEMA map available to the City, the floodway boundary can be estimated from available data. Proposed development along such estimated floodway boundary shall not result in an increase of the base flood level greater than one foot as certified by a registered professional engineer.

6.110 Alteration of a Watercourse. Any alterations of a watercourse must comply with site plan review criteria and be designed, constructed, and maintained to retain or improve the flood carrying capacity of the watercourse including, where possible, the containment of base year flood waters on open space lands. The Director will notify affected adjacent jurisdictions, and appropriate state and federal agencies prior to alteration of a watercourse.

6.120 Information Requirements. In addition to the information required for site plan approval or for the particular type of development proposal (such as a subdivision, or Conditional Use) any development proposed in the floodplain district must include the following information:

- (1) Elevations of the original contours.
- (2) Final elevations of proposed fills and excavations.
- (3) Base flood (100-year flood) elevations of the site.

- (4) Location of any designated floodway and base flood boundary.
- (5) Location of any designated wetlands and/or wildlife habitat.
- (6) Proposed elevation in relation to mean sea level of the lowest floor (including basement) of all structures.
- (7) Description of the extent to which a watercourse will be altered or relocated as a result of proposed development.
- (8) If floodproofing is required, the proposed description and elevation of floodproofing.

6.130 Floodplain Review. In addition to the Site Plan review criteria of 13.040, development within the floodplain district will be approved only upon determining that the following criteria have been satisfied:

GENERAL APPROVAL

- (1) Demonstration can be made that the proposed development of floodplain lands is needed to provide buildable lands for the proposed use which cannot be satisfied with a lesser amount of floodplain encroachment.
- (2) The proposed site or building will not, during potential future flooding, be so inundated by water as to result in injury to residents or serious damage to property or utilities.
- (3) Any development will not change the flow of surface water during future flooding so as to endanger residents or property in the area. (Special engineering reports on the changes in water flow and potential damage which may be caused as a result of proposed activities may be required by the City.)
- (4) It shall be demonstrated that fill is necessary to allow an approved development activity to occur and that the amount of fill proposed is the minimum necessary to raise roadways to a level of at least one foot below the base year flood and to raise floor levels of habitable structures to at least one foot above the base-year flood.

LAND DIVISION STANDARDS

- (5) All land division proposals shall be consistent with the need to minimize flood damage.
- (6) All land division proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.
- (7) All land division proposals shall have adequate drainage provided to reduce exposure to flood damage.
- (8) Any lot created for development purposes must have adequate area created outside of the Floodplain District to maintain a buildable site area meeting the minimum requirements of this Code.

DESIGN STANDARDS

- (9) The lowest floor, including basement, of any proposed structure (including manufactured homes and non-residential structures) shall be placed at least one (1) foot above the base year flood as determined by the latest Federal Insurance Study.
- (10) Any public or private street providing access to a residential development shall have a roadway crown elevation not more than one foot below the base flood elevation.

NOTE: Exceptions to (4), (8), (9), and (10) above can be considered as part of a Type II Variance as long as applicable FEMA standards for elevation, flood hazard reduction, and floodproofing have been met or exceeded and the request is for roadways, Planned Unit Developments, additions to existing structures, or new construction of non-habitable structures.

- (11) Problems of ponding, poor drainage, high water table, soil instability, or exposure to other flood hazards have been identified and mitigation proposed. Evaluations and mitigating measures shall be based on a base year flood and wet season characteristics. Drainage improvements shall adequately remove ponding and runoff waters from and through the development site without adversely affecting other developed areas or potential development sites.
- (12) If adjacent to a designated floodway or wetlands, the development shall be designed to use the natural amenities of the floodway or wetlands (such amenities include open space, scenic views and vegetation) in accordance with an approved site plan.
- (13) Any possible impacts on fish and wildlife habitat have been considered and appropriate protection measures included in project design.

CONSTRUCTION STANDARDS

- (14) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
- (15) All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.
- (16) Electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities shall be designed and/or otherwise elevated or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
- (17) All fill is engineered and compacted to City standards. Fill areas for structures shall have engineering certification that loading rates are adequate for the proposed structures.
- (18) All manufactured homes shall be on an adequately anchored, permanent foundation and be anchored to prevent flotation, collapse or lateral movement, and shall be installed using methods and practices that minimize flood damage. Anchoring methods may include, but are not limited to, the use of over-the-top or frame ties to ground anchors (reference FEMA's "Manufactured Home Installation in Flood Hazard Areas" guidebook for additional details).

- (19) All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement and shall be installed or constructed using materials, methods, and practices that minimize flood damage.

DOCUMENTATION

- (20) Property owners or developers shall file with the City a certificate whose format is acceptable to FEMA. This certificate must be approved by the Building Official, and prepared by a registered surveyor or professional engineer, architect or surveyor. The certificate must contain: 1) the actual elevation (in relation to mean sea level) of the lowest floor including basement of all new or substantially improved structures; 2) the elevation of any floodproofing; and 3) whether or not the structure contains a basement.
- (21) If flood hazard reduction methods are required as per Section 6.140, the property owners or developers shall file with the City certification by a registered professional engineer or architect that the flood hazard reduction methods meet or exceed FEMA standards.

NOTE: The information required in (20) and (21) above shall be maintained by the Director and made available to the public.

- (22) All land divisions or Planned Unit Developments in the floodplain district shall show the location of the base-year flood contour line followed by the date the flood elevation was established. Where elevation data is not available, either through the Flood Insurance Study or from another authoritative source, and the development is four or more acres or results in four or more lots or structures, the elevation shall be determined and certified by a registered engineer. In addition, a statement located on or attached to the recorded map or plat shall read as follows: "Development of property within the 100-year floodplain as most currently established by the Federal Emergency Management Agency or City of Albany may be restricted and subject to special regulations by the City."

6.140 Flood Hazard Reduction Standards. All flood hazard reduction measures are required, as applicable, and must be certified as required in 6.130 (20) and (21) above to at least meet the following standards:

- (1) For residential structures, fully enclosed areas below the lowest floor and lower than 1 foot above the base flood level must meet or exceed the following minimum criteria:
- (a) A minimum of two openings, having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding, shall be provided.
 - (b) The bottom of all openings shall be no higher than one foot above grade.
 - (c) Openings may be equipped with screens, louvers, or other coverings or devices, provided that they permit the automatic entry and exit of floodwaters.
- (2) Non-habitable construction and substantial improvements meeting the exceptions listed in 6.130 (9) and the certification requirements of 6.130 (20) & (21) can have the lowest floor and attendant utility and sanitary facilities located lower than one foot above the base flood elevation if:
- (a) The structure is floodproofed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water.

- (b) The structure has structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.
- (c) The applicant is notified that flood insurance premiums will be based on rates that are one foot below the floodproofed level.

- 6.150 Warning and Disclaimer of Liability. The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased as a result of failure of manmade structures and/or natural causes. This ordinance does not imply that the land outside the area of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This ordinance does not create liability on the part of the City of Albany or any officer or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made thereunder.
- 6.160 Storage of Material and Equipment. No storage of material or equipment is allowed within floodway areas. Storage within floodplain areas will be approved only upon determination that the following criteria have been satisfied:
- (1) Site Plan approval has been received.
 - (2) There is no storage or processing of material that is, in time of flooding, buoyant, flammable, toxic, explosive or otherwise could be injurious to human, animal, or plant life.
 - (3) The material or equipment is not subject to major damage by floods and is firmly anchored to prevent flotation or is readily removable from the area within the time available after flood warning.

HILLSIDE DEVELOPMENT

- 6.170 Purpose. The Hillside Development district is intended to protect the terrain in areas where steep slopes exist.
- 6.180 Applicability. The Hillside Development standards apply to all areas that have an average slope of 12% or greater.
- 6.190 General. All development proposed within the Hillside Development overlay district is required to provide for the preservation and, if possible, enhancement of the site's natural features during all phases of the design and development process. This includes consideration of soils, vegetation, hydrology, wildlife habitat, views and visual orientation, both from the site and to the site, and unusual or unique natural features.
- 6.200 Revegetation Standards - Slopes Greater Than 20%. Exposed soil which is not under continuous construction must be revegetated with temporary or permanent vegetation so that the soil is not left exposed for more than 60 days in the period between October 1 and April 1. Within 6 months of issuance of a Certificate of Occupancy, vegetation must be reestablished. If irrigation is not provided, then the exposed soil must be planted with species which can survive without irrigation. Vegetative cover or any alternative cover (rock, masonry, etc.) must be maintained in perpetuity.

- 6.210 Density Standards. Areas with average slopes of greater than 25% prior to grading shall not be subdivided or partitioned further. However, open space, greenways and recreational trails may be developed in these areas. For those lots of record which have an average slope of 25% or greater, the maximum residential development shall be one dwelling unit per lot of record. Density transfers are permitted in order to utilize the more buildable portions of a site. When density is transferred from areas in excess of 25% slope, density shall be allowed at a rate of two dwelling units per acre. In slope areas of 12-25%, the minimum lot size shall be 15,000 sq. ft.
- 6.220 Grading, Cut and Fill Standards. When possible, grading shall be kept to a minimum in all hillside areas. Contour grading practices must be used whenever possible. All cut and fill slopes generally must not exceed a two (horizontal) to one (vertical) ratio. Slopes which are steeper (i.e. 1:1-1/2 or 1:1) may be conditionally approved by the Director of Public Works upon certification, by a qualified soils engineer or geologist, that the slope will remain stable under foreseeable conditions. The certification must delineate any specific stabilization measures deemed necessary by the soils engineer or geologist.
- 6.230 Drainage. In all slope areas, impervious surface drainage from roofs, driveways, and parking areas must be directed to a City storm drain or other City-approved drainage system. Development and grading activities must not block the flow of stormwater in natural drainageways without prior approval from the Director of Public Works.
- 6.240 Street and Driveway Standards. Street grades shall generally be 12% or less. Grades on Arterial or Collector streets must be no more than 6 % and 10% respectively (see Section 10.140). Street grades of up to 15% may be permitted for a distance of no more than 200 feet. No intersections are permitted where street grades exceed 12%. Where practical, streets must be contoured to hillside areas in order to minimize environmental and scenic disruption. Driveways must have a grade of 15% or less, unless the Director of Public Works approves a greater slope.
- 6.250 Reports Required. When one acre or more of the land to be developed exceeds 12% average slope, the Director may require reports to address possible hazards to life, property, and adverse impacts to the natural environment. These reports might relate to soils, geology, grading, and verification of slopes and grade percentages. These regulations do not apply to construction of a single family house.
- 6.260 Modification of Standards. If the Director determines that the applicant's plan adequately implements the policies of the Comprehensive Plan, the Director may modify the standards of this Code as they apply to the entire proposed development, within the following limitations:
- (1) Front, side and rear yards may be reduced to zero (when in conformance with the Fire and Building Safety Codes); provided, however, where attached dwellings are proposed there shall not be more than 5 dwelling units in any group.
 - (2) The reduction of public right-of-way, pavement width, and/or requirements for the installation of sidewalk as specified in Article 10, Public Improvement Standards, may be made if provisions are made to provide off-street parking in addition to that required in other portions of this Code. Any reduction of these minimum street and sidewalk standards must be approved by the City Engineer. The additional parking requirements are as follows:

- (a) Detached Dwelling Units: 2 additional off-street parking spaces.
 - (b) Attached Dwelling Units: One-half additional off-street parking space for each bedroom more than one in each unit. In cases where a one-half space occurs in a total figure, the standard shall be increased to the next whole figure.
- (3) Height limitations may be removed, provided the additional height does not exceed 45 feet.

WETLANDS

- 6.270 Purpose. The Wetland district is intended to ensure that wetland sites within the City, as defined on Plate 6 of the Comprehensive Plan, are developed with all due sensitivity for the vital role these areas play in the environment.
- 6.280 Applicability. The wetland area regulations apply to those areas meeting Division of State Lands criteria, identified as wetlands on the Comprehensive Plan wetlands map exhibit, and designated as Open Space in the Comprehensive Plan. Precise wetland boundaries may vary from that shown on the Comprehensive Plan Map exhibit if on-site inspection and other City approved documentation indicate more accurate boundaries. Those more precise boundaries can be identified, mapped, and used for review and development without a change in the Comprehensive Plan Wetlands Map exhibit. All developments proposed within a designated wetland area shall be subject to the provisions of Conditional Use Review and the wetland area regulations. If the development area is within the floodplain district, then the floodplain district regulations of 6.070 to 6.160 shall also apply.
- 6.290 Restrictions on Development Within Wetlands. No development shall result in the elimination of a wetland area, result in eventual elimination of wetland characteristics, or be located totally within a wetland area without acquiring permit approval from federal and state regulatory agencies and the City of Albany and, where necessary, amending the open space plan and zoning designation. Development may not infringe upon any designated wetland unless the review authority finds the following criteria have been met:
- (1) The development cannot be located outside the wetland area, or the wetland is proposed to be reconfigured such that the proposed total area is at least equal in size and quality to the wetland area existing prior to the proposed development. If the wetland area has not been substantially relocated, it is not necessary to remove the Open Space designation for such a modification.
 - (2) The encroachment within the wetlands is the minimum required to complete the development.
 - (3) Any encroachment or change in drainage which would adversely impact favorable wetland characteristics in the short- or long-term has been mitigated.
 - (4) Development review is coordinated with the Division of State Lands and any other applicable agencies and other required permits have been obtained.
 - (5) The applicable floodway or floodplain requirements of 6.070-6.160 have been met.
 - (6) The open space, vegetation, and wildlife protection policies of the Comprehensive Plan have been addressed.

6.300 Floodplain District and Wetlands Density Calculation. Residential lands located in a Floodplain District or Wetland area shall not be used in calculating total project density except as follows:

- (1) Land which has been approved for development features (structures, roads, required yard areas, etc.) under the provisions of Section 6.130 or 6.290.
- (2) In Planned Developments, land in a flood fringe or wetland area shall be calculated at 50% of the allowed density provided that the additional units can be incorporated harmoniously into the Planned Development and without adverse impacts on adjoining projects and provided further that the floodplain lands and wetlands can be effectively utilized within the Planned Development or dedicated for public use under the provisions of 6.040.

WILLAMETTE GREENWAY

6.310 Purpose. The Greenway district is intended to guide development along the Willamette River in a manner which preserves the existing scenic, use and natural features.

6.320 Applicability. The area of the city which is within the Willamette Greenway District is the area so designated by the boundary shown on Figure 6-1.

6.330 Procedure. Except for land use developments and uses exempted in Section 6.340 below, an application for development approval within the Willamette Greenway District will be approved under the Type II procedure. Approval of a Greenway Use application will be granted only if the proposal complies with all applicable sections of this Code. In the case of conflict between the provisions of this Article and the provisions of any other Article of this ordinance, the more restrictive provisions shall apply.

6.340 Greenway Use Permit Exceptions. The following developments and uses shall not be subject to the provisions of this Article but shall comply with other applicable provisions of this Code:

- (1) Customary dredging and channel maintenance conducted under a permit from the State of Oregon.
- (2) Gravel removal from the bed of the Willamette River conducted under a permit from the State of Oregon or a seasonal increase in gravel operations.
- (3) The placing by a public agency of signs, markers, aids, to serve the public.
- (4) Activities to protect, conserve, enhance, and maintain public recreational, scenic, historical, and natural uses of public lands; except that a substantial increase in the level of development of existing public recreational, scenic, historical, or natural uses on public lands shall require review as provided by this Article.
- (5) Agriculture as allowed within the subject major zoning district.

- (6) Reasonable emergency procedures necessary for the safety or protection of property and not in conflict with the provisions of this Code.
- (7) Maintenance and repair usual and necessary for the continuance of an existing use.
- (8) Landscaping, construction of driveways, repair or maintenance of existing structures, and the construction or placement of accessory structures less than 250 square feet, provided that such activities are conducted in conjunction with uses already existing on the same property and that they are accomplished in a manner compatible with the purpose of this Article.

6.350 Criteria. An application for a Greenway Use development will be granted if the review body finds that the proposal conforms with the following applicable criteria:

- (1) Lands designated on the Comprehensive Plan as Open Space are preserved and maintained in open space use.
- (2) Significant air, water and land resources including but not limited to natural and scenic areas, viewpoints, vistas, fish and wildlife habitats, etc. in and adjacent to the Greenway are protected, preserved, restored, or enhanced to the maximum extent possible.
- (3) Areas of annual flooding, floodplains, and wetlands are preserved in their natural state to the maximum possible extent to protect water retention, overflow, and other natural functions.
- (4) The natural vegetative fringe along the river are maintained to the maximum extent that is practical in order to assure scenic quality, protection of wildlife, and protection from erosion.
- (5) The harvesting of timber will be done in a manner which ensures that wildlife habitat and the natural scenic qualities of the Greenway are maintained or will be restored.
- (6) The proposed development, change, or intensification of use is compatible with existing uses on the site and the surrounding area and provides the maximum possible landscaped area, open space, or vegetation between the activity and the river.
- (7) Extraction of aggregate deposits shall be conducted in a manner designed to minimize adverse effects on water quality, fish and wildlife, vegetation, bank stabilization, stream flow, visual quality, noise and safety, and necessary reclamation will be guaranteed.
- (8) Any public recreational use of facility will be developed, maintained, and operated in such a way as to minimize adverse effects on adjacent properties.
- (9) Building setbacks from the floodway line shall be determined by the setback and height plane as defined in Section 6.140 of this Code.
- (10) Public access will be provided to and along the Willamette River by appropriate legal means for all development in conformance with plans approved by the City.

6.360 Conditions of Approval. The review body has the power to impose conditions, restriction, or limitations upon any use proposed in the Greenway District if such conditions, restrictions, or limitations are found to be necessary in order to satisfy the criteria of Section 6.350.

6.370 Special Notification. Notification regarding requests for Greenway Use Permits will be sent to the Oregon State Department of Transportation River Programs Section. Notification of the Oregon State Department of Transportation will be given by certified mail (return receipt requested) and sent within seven days of the receipt of the application for the conditional use. Notice of the decision on the Greenway use permit application will be mailed to the Department of Transportation River Programs Section within ten days of such decision.

ARTICLE 7 HISTORIC OVERLAY DISTRICT

7.000 Overview. The regulations of the Historic Overlay District supplement the regulations of the underlying zoning district. The historic overlay district provides a means for the City to formally recognize and protect its historic and architectural resources. Recognition of historical landmarks helps preserve a part of the heritage of the City. Where the regulations and permitted uses of a zoning district conflict with those of the historic overlay district, the more restrictive standards apply.

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

- Designation of Historic Landmarks and Districts
- Re-rating or Removal of Historic Landmark Designation
- Historic Review of Exterior Alterations
- Historic Review of New Construction
- Historic Review of Demolitions/Moving

7.010 Applicability. This article is applied:

- (1) To all properties in the Downtown, Hackleman, or Monteith Historic Districts as identified on Figure 7-1.
- (2) To all structures and sites that appear on the City's adopted Historic Inventory, including individually designated Historic Landmarks.

DESIGNATION OF HISTORIC LANDMARKS AND DISTRICTS

7.020 Purpose. The designation of historic landmarks allows the City to formally recognize, rate and protect its historic and architectural resources. Designated historic landmarks identify districts, buildings, portions of buildings, sites, cemeteries, bridges, signs, or other objects of historical importance or architectural significance. Degrees of significance are reflected in an individual resource's rating of "primary," "secondary" or "compatible." The regulation of designated and rated landmarks provides a means to review proposed changes and encourage the preservation of historical or architectural values.

7.030 Initiation. The process for designating a landmark or historic district may be initiated by the City Council, the Landmarks Advisory Commission, or by any other interested person. Initiations by the Landmarks Advisory Commission are made without prejudice towards the outcome. At the time of initiation, the Community Development Director shall provide the property owner and applicant with information regarding the benefits and obligations of designation.

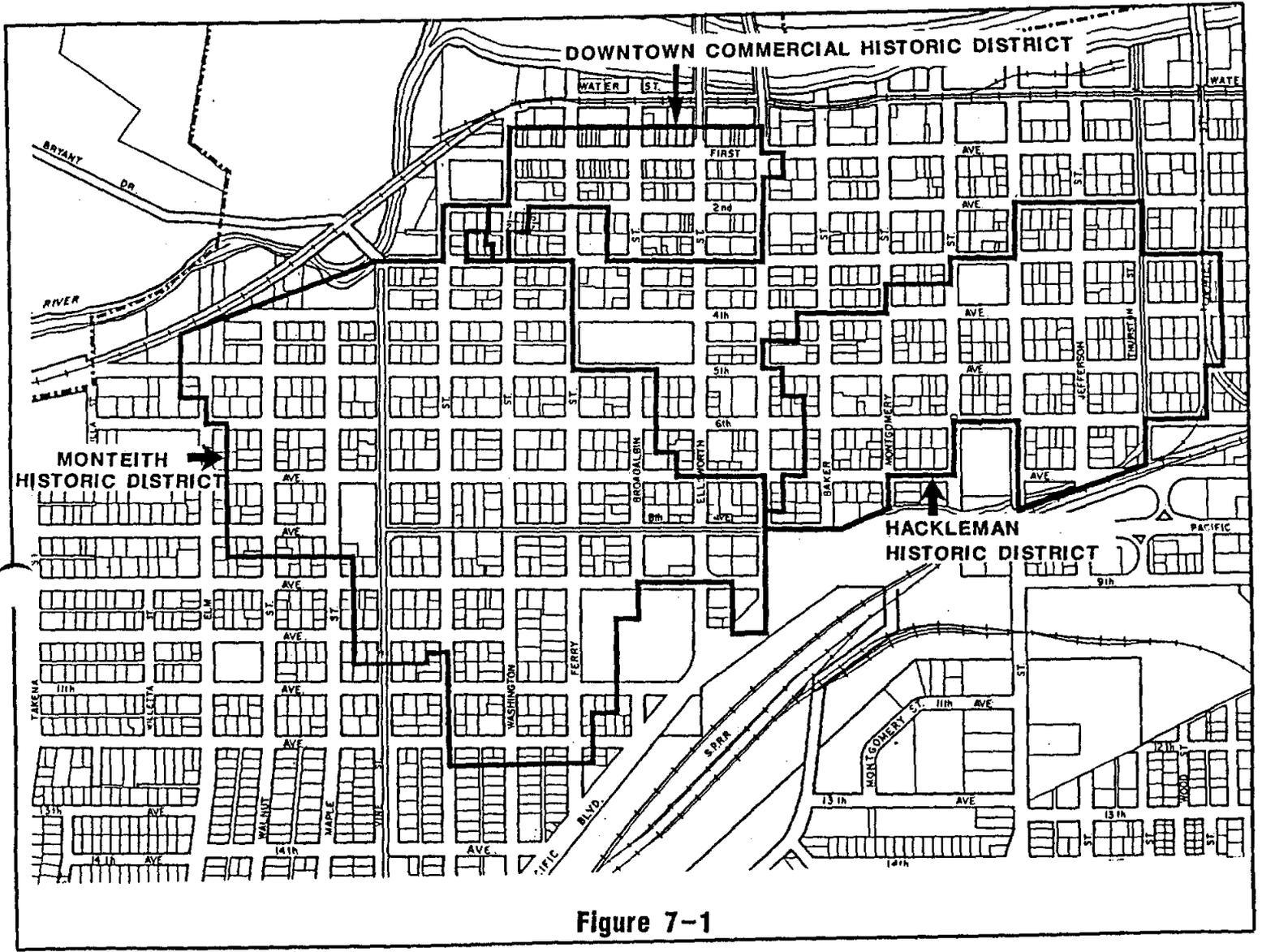


Figure 7-1

- 7.040 Procedure. Requests for designations of historic landmarks and districts are reviewed through the Type IV legislative or quasi-judicial procedure. The process is legislative when it affects a large number of persons or properties. The Landmarks Advisory Commission replaces the Planning Commission as the review body.
- 7.050 Application Contents. An application for designation of a landmark must include the following information:
- (1) A written description of the boundaries of the proposed district or the location of the proposed landmark or property to be evaluated.
 - (2) A map illustrating the boundaries of the proposed district or the location of the proposed landmark or the property to be evaluated.
 - (3) A statement explaining the following:
 - (a) The reason(s) why the proposed district, landmark or property should be designated.
 - (b) The reason(s) why the proposed boundaries of the proposed district are appropriate for designation.
 - (c) The potential impact, if any, that designation of the proposed district or landmark would have on the owners, surrounding residents or other property owners in the area.
- 7.060 Submission of Application. Applications must be submitted at least 35 days in advance of the next regularly scheduled public meeting of the Landmarks Advisory Commission unless waived by the Director when legal notice can otherwise be achieved. 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 the public hearing (10 days before the first evidentiary hearing if two or more evidentiary hearings are required). If additional documents, evidence or written materials are provided in support of a quasi-judicial application less than 20 days (10 days before the first evidentiary hearing if two or more evidentiary hearings are required) prior to the public hearing, any party shall be entitled to a continuance of the hearing. Such a continuance shall not be subject to the limitations of ORS 227.178.
- 7.070 Review Criteria. The review bodies must find that one of the following criteria has been met in order to approve a proposed landmark or district:
- (1) The proposed landmark or district has historic significance because:
 - (a) There is an association with the life or activities of a person, group, organization, or institution that has made a significant contribution to the city, county, state, or nation;
 - (b) There is an association with an event that has made a significant contribution to the city, county, state, or nation;
 - (c) There is an association with broad patterns of political, economic, or industrial history in the city, county, state, or nation;
 - (d) Existing land use surrounding the resource contributes to the integrity of the historic period represented;
 - (e) The resource contributes to the continuity or historic character of the street, neighborhood, and/or community; or

- (f) The property is 50 years old or older in conjunction with other criteria listed above.
 - (2) The proposed landmark or district has architectural significance because:
 - (a) It is an example of a particular architectural style, building type and/or convention;
 - (b) It has a high quality of composition, detailing and/or craftsmanship;
 - (c) It is an example of a particular material and/or method of construction;
 - (d) The resource retains its original design features, materials and/or character;
 - (e) It is the only remaining, or one of a few remaining resources of a particular style, building type, design, material, or method of construction; or
 - (f) It is a visual landmark.
 - (3) The proposed landmark or district is listed on the National Register of Historic Places.
- 7.080 Decision. All decisions, whether to approve or deny the request, must specify the basis for the decision.

RE-RATING OR REMOVAL OF HISTORIC LANDMARK DESIGNATION

- 7.090 Purpose. Periodically it may be necessary to re-rate or remove the designation of a historic landmark. Re-rating or removal is an effort to reflect changing conditions, community values or needs.
- 7.100 Initiation. The process for re-rating or removing a historic landmark from the inventory may be initiated by the Director, City Council, the Landmarks Advisory Commission or by any other interested person.
- 7.110 Procedure. The following procedures shall be followed when re-rating or removing an historic landmark designation:
- (1) The Director shall delete any demolished or removed landmark from the official inventory through the Type I procedure.
 - (2) A Type I-L process will be followed for reviewing all re-rating requests.
 - (3) A Type IV process will be followed for reviewing all inventory removal requests. Properties within designated historic districts may not be removed from the inventory unless they have been demolished or moved.
- 7.120 Application Contents. See Section 7.050.
- 7.130 Review Criteria. The review body must find that one of the following criteria is met in order to approve a re-rating or remove a landmark from the Historic Inventory:
- (1) The inventory was in error.

- (2) Additional research has uncovered an association with a person, group, organization, institution or events that have made a significant contribution to the city, county, state or nation or additional research has been compiled regarding the architectural significance of a structure or style.
- (3) Alterations to the structure have caused it to more closely approximate the historical character, appearance, or material composition of the original structure.
- (4) Alterations to the structure have removed distinguishing features or otherwise altered the exterior such that the existing rating is no longer justified.
- (5) The reasons for designating the historic landmark no longer apply.

HISTORIC REVIEW OF EXTERIOR ALTERATIONS

- 7.140 Purpose. The purpose of reviewing alterations to historic landmarks is to encourage the preservation of characteristics which led to its designation as a historic landmark. Review is required for all exterior alterations or additions to rated structures within the districts and primary and secondary rated structures outside of the districts.
- 7.150 Exemptions from Review. Historic review is not required for repair, maintenance, and replacement with comparable materials, or a change in paint color.
- 7.160 Procedure. Review of a request for an exterior alteration is processed either through a Type I or Type I-L land use procedure. The Landmarks Advisory Commission replaces the Hearings Board or Planning Commission as the review body.
- (1) The Director shall approve residential alteration requests as a Type I procedure if one of the following criteria is met:
 - (a) There is no change in historic character, appearance or material composition from the existing structure.
 - (b) The proposed alteration materially duplicates the affected exterior building features as determined from an early photograph, original building plans, or other evidence of original building features.
 - (c) The proposed alteration to a compatible structure (including compatible commercial structures) causes the structure to more closely resemble its original appearance, or
 - (d) The proposed alteration is not visible from the street.
 - (2) For all other requests, the Type I-L limited land use procedure described in Section 1.300 is followed. In addition to the applicant and adjoining property owners entitled to notice, the Landmarks Advisory Commission will also receive notification during the 14-day comment period prior to the city decision.
- 7.170 Relationship to Other Land Use Reviews. Projects which require an historic review may also require other land use reviews. If other reviews are required, the review procedures may be handled concurrently.

7.180 Application Contents. Every application for an alteration approval shall include information (e.g. drawings, photographs) which clearly shows the intended alteration and resulting appearance change of the structure.

7.190 Review Criteria. The review body must find that one of the following criteria has been met in order to approve an alteration request:

- (1) The proposed alteration will cause the structure to more closely approximate the historical character, appearance or material composition of the original structure than the existing structure, or
- (2) The proposed alteration is compatible with the historic characteristics of the area and with the existing structure in massing, size, scale materials and architectural features.

The review body will use the Secretary of the Interior's Standards of Rehabilitation (listed below in Section 7.200) as guidelines in determining whether the proposed alteration meets the review criteria.

7.200 The Secretary of the Interior's Standards for Rehabilitation. The following standards are to be applied to rehabilitation projects in a reasonable manner, taking into consideration economic and technical feasibility.

- (1) A property shall be used for its historic purpose or be placed in a new use that requires minimal change to the defining characteristics of the building and its site and environment.
- (2) The historic character of a property shall be retained and preserved. The removal of historic material or alteration of features and spaces that characterize a property shall be avoided.
- (3) Each property shall be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or architectural elements from other buildings, shall not be undertaken.
- (4) Most properties change over time; those changes that have acquired historic significance in their own right shall be retained and preserved.
- (5) Distinctive features, finishes, and construction techniques or examples of craftsmanship that characterize a historic property shall be preserved.
- (6) Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture, and other visual qualities and, where possible, materials. Replacement of missing features shall be substantiated by documentary, physical, or pictorial evidence.
- (7) Chemical or physical treatments, such as sandblasting, that cause damage to historic material shall not be used. The surface cleaning of structures, if appropriate, shall be undertaken using the gentlest means possible.
- (8) Significant archeological resources affected by a project shall be protected and preserved. If

such resources must be disturbed, mitigation measures shall be undertaken.

- (9) New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property and its environment.
- (10) New additions and adjacent or related new construction shall be undertaken in such a manner that if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

Added above are the newly revised Secretary of the Interior's Standards for Rehabilitation. These have been recommended for adoption by SHPO. Deleted below are the old Secretary of the Interior's standards.

- 7.210 Conditions of Approval. In approving an alteration request, the Director or Landmarks Advisory Commission may attach conditions which are appropriate for the promotion and/or preservation of the historic or architectural integrity of the district, building or site. All conditions must relate to a review criteria.
- 7.220 Decisions/Appeals. All decisions to approve, approve with conditions or deny shall specify the basis for the decision. These limited land use decisions are appealable to the Land Use Board of Appeals.

HISTORIC REVIEW OF NEW CONSTRUCTION

- 7.230 Purpose. The purpose of reviewing the exterior design of new construction within an historic district is to ensure that new structures over 100 square feet are compatible with the character of that district.
- 7.240 Procedure. Review of a request for new construction exterior design is processed through the Type I or Type I-L land use procedure, except that the Landmarks Advisory Commission replaces the Hearings Board or Planning Commission as the review body.
- (1) The Director shall review a request as a Type I procedure if the structure is less than 200 square feet.
 - (2) For all other requests, a Type I-L limited land use procedure described in Section 1.300 is followed. In addition to the applicant and adjoining property owners entitled to notice, the Landmarks Advisory Commission will also receive notification during the 14-day comment period prior to the city decision.
- 7.250 Relationship to Other Planning Reviews. Projects which require a historic review may also require other land use reviews. If other reviews are required, the review procedures may be handled concurrently.
- 7.260 Application Contents. Any application for new construction design approval must include the following information:

- (1) A site plan showing the location of the structure on the site, setback dimensions, the location of driveways and landscape areas, and the general location of structures on adjacent lots.
- (2) Elevations sufficient in detail to show the general scale, bulk building materials, and architectural elements of the structure.

7.270 Review Criteria. The Director or the Landmarks Advisory Commission must find that the request meets the following applicable criteria in order to approve the new construction request:

- (1) Within the Monteith and Hackleman Districts:
 - (a) The development maintains any unifying development patterns such as sidewalk and street tree location, setbacks, building coverage, and orientation to the street.
 - (b) The structure is of similar size and scale of surrounding buildings, and as much as possible reflects the craftsmanship of those buildings.
 - (c) Building materials are reflective of and complementary to existing buildings within the district.
- (2) Within the Downtown District:
 - (a) The development maintains the horizontal elements of adjacent buildings. (These horizontal elements can include an alignment of window frames, roof lines, facades and clear distinction between first floors and upper floors.)
 - (b) The development maintains other historic patterns, such as the horizontal/vertical pattern of upper story windows and the pattern of entrances along the street.
 - (c) Building materials are reflective of and complementary to existing historic buildings within the district.
 - (d) Lot coverage, setbacks, and building orientation to the street are consistent with the surrounding development patterns.
 - (e) The development maintains the pedestrian scale and orientation of the downtown district.

7.280 Conditions of Approval. In approving a new construction request, the Director or Landmarks Advisory Commission may attach conditions which are appropriate for the promotion and/or preservation of the historic or architectural integrity of the district, building or site. All conditions must relate to a review criteria.

7.290 Decisions/Appeals. All decisions to approve, approve with conditions, or deny shall specify the basis for the decision. These limited land use decisions are appealable to the Land Use Board of Appeals.

HISTORIC REVIEW OF DEMOLITIONS/MOVING

7.300 Purpose. The purpose of reviewing demolition/moving requests involving a historic landmark is to explore all possible alternatives for preservation. Demolition of historic landmarks is an extreme and final measure.

7.310 Procedure. Demolition/Moving permits will be processed in accordance with the following:

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- (1) The Building Official shall issue a permit for moving or demolition if any of the following conditions exist:
 - (a) The building is not designated as compatible within an historic district, or designated as primary or secondary within the city limits.
 - (b) The structure is detached from any other structure and less than 750 square feet in area.
 - (c) The structure has been damaged in excess of 70% of its previous value in a fire, flood, wind, or other Act of God, or vandalism.
- (2) Those requests not meeting Building Official approval conditions shall be processed under a Type III procedure. The application shall be submitted at least 35 days in advance of the next regularly scheduled public hearing/meeting of the Landmarks Advisory Commission, unless waived by the Director when adequate notice can otherwise be achieved.

7.320 Application Contents. Any application for demolition or moving of a rated structure must contain the following information:

- (1) A description of the previous and existing uses of the structure and the intended future use of the property.
- (2) A drawing showing the location of the building on the property and any other buildings which will remain.
- (3) The overall height of the building and the general type of construction.

7.330 Review Criteria. The review body must find that the request meets the following applicable criteria in order to approve a demolition or moving request:

- (1) The structure cannot be economically rehabilitated on the site to provide a reasonable income or residential environment compared to other structures in the general area.
- (2) There is a demonstrated public need for the new use which outweighs any public benefit which might be gained by preserving the subject buildings on the site.
- (3) The proposed development, if any, is compatible with the surrounding area considering such factors as location, use, bulk, landscaping, and exterior design.
- (4) If the building is proposed to be moved, the new site and surrounding area will benefit from the move.

7.340 Decisions/Appeals. Following a public hearing, the Landmarks Advisory Commission may either approve the request or invoke a stay to the demolition. During the stay, the Landmarks Advisory Commission will notify the owner of potential rehabilitation programs and benefits and encourage public or private acquisition and restoration of the landmark. The length of the stay will be no more than 365 days from the date a complete application was received by the City. All decisions to approve, approve with conditions, or stay shall specify the basis for the decision. Decisions of the Landmarks Advisory Commission can be appealed to the City Council.