COMMUNITY DEVELOPMENT
333 Broadalbin Street SW, PO Box 490, Albany, Oregon 97321-0144 | BUILDING 541-917-7553 | PLANNING 541-917-7550

Notice of Decision

File: DC-02-19 **January 13, 2020**

DATE OF NOTICE:	January 13, 2020
FILE:	DC-02-19
TYPE OF APPLICATION:	Albany Development Code Amendment (IV-Legislative) regarding accessory dwelling units, historic review of demolitions, and title of the Landmarks Commission.
REVIEW BODY:	Planning Commission and City Council (Type IV, Legislative Process)
APPLICANT:	City of Albany, Community Development Department, 333 Broadalbin Street SE, Albany, OR 97321
ADDRESS/LOCATION:	Not applicable; the code amendment is not site specific

On December 18, 2019, the Albany City Council, by a vote of 4 – 2 moved to adopt Ordinance No. 5935 to amend the Albany Development Code as described above. On January 6, 2020, the City Council received the mayor's veto of Ordinance No. 5935. On January 8, 2020, a motion to overturn the mayor's veto of Ordinance No. 5935 failed 4 - 2. The City Charter requires five votes in the affirmative for a vetoed ordinance to become law without the approval of the mayor. The veto stands.

The supporting documentation relied upon by the City in making this decision is available for review at the Community Development Department, City Hall, 333 Broadalbin Street SW, on the second floor. Office hours are 8:00 a.m. to 5:00 p.m., Monday through Friday. For more information, please contact David Martineau, planning manager at 541-917-7561.

The City's decision may be appealed to the Oregon Land Use Board of Appeals (LUBA). Per ORS 197.830, a notice of intent to appeal the plan and/or zoning map amendments shall be filed with LUBA no later than 21 days after the Notice of Decision is mailed or otherwise submitted to parties entitled to notice.

City of Albany Mayor

Attachment:
Ordinance No. 5935 with Associated Exhibit

Mail Date: January 13, 2020
Appeal Period Expiration: February 3, 2020

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ORDINANCE NO. 5935

AN ORDINANCE AMENDING ORDINANCE NO. 4441, WHICH ADOPTED THE CITY OF ALBANY DEVELOPMENT CODE, BY AMENDING THE ALBANY DEVELOPMENT CODE TEXT AND ADOPTING FINDINGS

WHEREAS, on October 28, 2019, the Albany Planning Commission held a public hearing and deliberated on proposed text amendments to the Albany Development Code relating related to accessory dwelling units; protection of National Register resources, and removal of the word "advisory" from all title references to the Albany Landmarks Commission (planning file DC-02-19); and

WHEREAS, on October 28, 2019, the planning commission recommended that the Albany City Council approve the proposed text amendments. This recommendation was based on evidence presented in the staff report and consideration of public testimony during the public hearing; and

WHEREAS, the city council held public hearings on the proposal on December 4, 2019, and reviewed the findings of fact and conclusions included in the October 21, 2019 staff report, November 27, 2019 staff memorandum, and testimony presented at the public hearing and then deliberated; and

WHEREAS, the text amendments to the development code considered by the planning commission and city council are presented as an attachment to this ordinance as Exhibit A.

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

Section 1: The text of the Albany Development Code is hereby amended as shown in Exhibit A of this ordinance.

Section 2: A copy of this ordinance shall be filed in the office of the city clerk of the City of Albany and these changes shall be made in the Albany Development Code.

Passed by the Council: December 18, 2019

Approved by the Mayor: _____

Effective Date: _____

_____
Mayor

ATTEST:

_____
City Clerk

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EXHIBIT A
Clean

COMMUNITY DEVELOPMENT
333 Broadalbin Street SW, PO Box 490, Albany, Oregon 97321-0144 | BUILDING 541-917-7553 | PLANNING 541-917-7550

Amendments to the Albany Development Code

DC-02-19 December 4, 2019

AMENDING THE SECTIONS OF ALBANY DEVELOPMENT CODE THAT RELATED TO ACCESSORY DWELLING UNITS, NATIONAL REGISTER RESOURCE PROTECTION, AND TITLE OF THE LANDMARKS COMMISSION.

Section 1: Albany Development Code (ADC) Article 1, Section 1.060 – When Land Use Applications are Required, Section 1.350 - Type II Procedure, Section 1.360 – Type III Procedure, Section 1.370 – Type IV Procedure, Section 1.520 – Appeal Procedures, Section 1.580 – Initiation, Section 1.630 – City Council Action amended as follows:

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 for a site with a completed development, the site must be brought into compliance with all applicable outstanding conditions of approval from previous land use approvals. [Ord. 5728, 1/27/10]

(4) Land use applications shall be approved by the Community Development Director, the Hearings Board, the Planning Commission, the Landmarks 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. [Ord. 5728, 1/27/10]

(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) 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.

1.350 Type II Procedure.

(1) The purpose of the Type II procedure is for the Director to review certain applications based on standards specified in this Code that may require limited discretion. A notice of filing is mailed to the applicant and property owners within 300 feet of the property being reviewed to allow the applicant or property owners an opportunity to comment on the proposal prior to the Director's Decision. Persons that provided written comment are mailed the notice of tentative decision and given a chance to appeal the decision at the local level.

[Ord. 5768, 12/7/11; Ord. 5886, 1/6/17]

(2) Once the application is deemed complete, a notice of filing shall be mailed to the applicant and persons who own property within 300 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: [Ord. 5886, 1/6/17]

(a) Provide a 14-day period for submission of written comments before the decision;

(b) State that issues shall be raised with sufficient specificity to enable the decision maker to respond to the issue;

(c) State the applicable review criteria for the decision;

(d) Set forth the street address or other easily understood geographical reference to the subject property;

(e) State the place, date and time that comments are due;

(f) State that copies of all evidence relied upon by the applicant are available for review, and that copies can be obtained at cost;

(g) Include the name and phone number of a local government contact person;

(h) Provide notice of the decision to the applicant and persons entitled to notice. The notice of decision must include an explanation of appeal rights;

(i) Briefly summarize the local decision-making process for the limited land use decision being made, and

(j) Include other information the Director deems appropriate. [Ord. 5728, 1/27/10, Ord. 5768, 12/7/11]

(3) The Director shall mail notice of the tentative decision to the applicant and any party who provided written comments on the proposal.

The Director's notice shall list the relevant criteria used to make the decision and any conditions of approval or findings of denial. The notice shall invite persons to contact the Planning staff in writing within ten days of notification to request a public hearing.

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

If no one requests a public hearing, the tentative decision becomes final ten days after the notice of decision is mailed to affected parties. [Ord. 5768, 12/7/11]

(4) If the applicant, the Director, any party entitled to notice initiates a public hearing on a Type II proposal, the Director shall, within 30 days of receiving a written request for a public hearing, set a date for a public hearing before the Planning Commission, Landmarks Commission, or the Hearings Board. The notice shall be mailed at least 20 days in advance of the hearing to those same persons specified in (2) above. The public hearing notice shall contain the information outlined in Section 1.400 (4). The subject property shall be posted in accordance with Section 1.410. [Ord. 5728, 1/27/10, Ord. 5768, 12/7/11]

(5) If a hearing is conducted, the Hearings Board, the Planning Commission, or the Landmarks 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. [Ord. 5728, 1/27/10, Ord. 5768, 12/7/11]

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

(2) Under the Type III procedure, an application is scheduled for public hearing at the Director's discretion before the Hearings Board, the Planning Commission, or the Landmarks Commission. The Director shall notify all persons who own property within 300 feet of the subject property and any neighborhood association recognized by the City and whose boundaries include the site and other neighborhood association recognized by the City within 300 feet of the site. The Director shall have discretion to increase the notice area up to 1,000 feet due to land use or transportation patterns or an expected level of public interest. The Director may require the applicant to post notices as set forth in Section 1.410.
[Ord. 5728, 1/27/10; Ord. 5768, 12/7/11]

(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.

1.370 Type IV Procedure.

(1) The purpose of the Type IV procedure is to provide for the review of certain land use applications by the Planning Commission, Hearings Board or Landmarks Commission and the City Council at public hearings. These decisions are usually complex in nature, and require the interpretation of Comprehensive Plan policies and the criteria of this Code.

(2) Under the Type IV Procedure, an application is scheduled for public hearing before the Hearings Board, Landmarks Commission, or the Planning Commission at the Director's discretion. If the application is quasi-judicial, the Director shall notify all persons who own property within 300 feet of the subject property and any neighborhood or community organization recognized by the City and whose boundaries include the site and to other organization recognized by the City within 400 feet of the site. The Director shall have discretion to increase the notice area up to 1,000 feet due to land use patterns or an expected level of public interest. The Director may require the applicant to post notices as set forth in Section 1.410. [Ord. 5763, 12/1/11; Ord. 5768, 12/7/11]

(3) For a quasi-judicial proposal on which the Hearings Board, Landmarks 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. Final action on qualifying residential developments subject to ORS 197.311 shall be taken within 100_days from the date the application is deemed complete. [Ord. 5912, 7/11/18]

(4) If the Planning Commission, Landmarks Commission, or Hearings Board recommend 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. [Ord. 5728, 1/27/10]

1.520 Appeal Procedures.

(1) See ADC 1.330(5) for appeals of Type I-L limited land use decisions.

(2) Appeals of a Type II land use decision made by the Director is to the Planning Commission (PC), Hearings Board, (HB), or the Landmarks Commission (LC). See Section 1.350 (2) through (5). A Type II decision made by the PC, HB, or LC may be appealed to the Land Use Board of Appeals (LUBA) when a person who participated in the land use process in writing or testimony files a Notice of Intent to Appeal with LUBA no later than 21 days after the hearing body's notice of decision is mailed. [Ord. 5728, 1/27/10; Ord. 5768, 12/7/11]

(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 Commission to the City Council by filing a Notice of Appeal within ten days from the date the City mails the notice of decision.

[Ord. 5475, 4/11/01; Ord.5728, 1/27/10]

(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. This review shall be conducted in accordance with appeal procedures specified herein.

(5) For any appeal proceeding, the Director shall cause notice to be provided in the same manner as 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; Ord. 5728, 1/27/10]

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 Commission, or 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 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.

1.630 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 Commission for further consideration. [Ord. 5728, 1/27/10]

Section 2: ADC Article 2, Section 2.200 – Frequency of Plan Amendments is amended as follows:

2.200 Frequency of Plan Amendments. Applications for Comprehensive Plan amendments submitted by property owners shall be reviewed semi-annually in April and October by the Planning Commission. The City Council, Planning Commission, Landmarks Commission, or Director may also initiate Plan amendments. These initiations are made without prejudice towards the outcome.

Section 3: ADC Article 3, Section 3.050 Schedule of Permitted Uses, Section 3.080 – General, and Section 3.230 – Setback Measurements are amended as follows:

3.050 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.

A number appearing 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 follow the schedule of uses, in Section 3.060.

The abbreviations used in the schedule have the following meanings:

Y Yes; use allowed without land use review procedures but must meet development standards in this article and 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 permitted conditionally under the provisions of Sections 2.230-2.260 through a Type III procedure.

CUII Uses permitted conditionally through the Type II procedure.

PD Use permitted only through planned development approval.

CD Use permitted only through cluster development approval.

N No; use not permitted in the zoning district indicated.

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

[Ord. 5673, 6/27/07]

SCHEDULE OF PERMITTED USES

Uses Allowed in Residential Zoning Districts								
Use Categories (See Article 22 for use descriptions.)	**Spec. Cond.**	**RR**	**RS-10**	**RS-6.5**	**HM**	**RS-5**	**RM**	**RMA**
RESIDENTIAL SINGLE FAMILY: One Unit per Property								
Single-Family, detached	19	Y	Y	Y	Y	Y	Y	N
Single-Family, attached (zero lot line)		N	PD/CD	PD/CD	N	Y	Y	Y
RESIDENTIAL TWO FAMILY: Two Units per Property								
2 attached units (Duplex)	3	N	Y-1, PD/CD-20	Y-1, PD/CD-20	N	Y-1, PDCD-20	Y	Y
2 detached units	2	N	PD/CD	PD/CD	S	PD/CD	Y	Y
Primary Residence with one accessory dwelling unit	4	Y	Y	Y	Y	Y	Y	Y

3.080 General. Where numbers appear in the column labeled "special conditions" or in a cell in the Schedule of Permitted Uses, the corresponding numbered conditions below shall apply to the particular use category as additional clarification or restriction:

(1) In the RS-6.5, RS-5, and RS-10 Districts, one duplex is permitted outright on a corner lot that meets the minimum lot size for a duplex in the zone. Exception for non-corner lots created between May 1, 2000 and January 11, 2006: A duplex is allowed on a non-corner lot created in this time period provided that the lot is at least 1.5 times the single-family minimum lot size in the zone. The lot size threshold may be reduced by use of the 10 percent transportation bonus provided the lot is not a flag lot and it meets the standards in Section 3.220. [Ord. 5445, 4/12/2000; Ord. 5635, 1/11/06; Ord. 5673, 6/27/07]

(2) When more than one single-family detached residence is located on a property of record in a residential zoning district and the buildings were legally constructed, the property may be divided in conformance with Article 11, even if the resulting lots do not meet the required minimum lot area and dimensional standards for the zoning district, if required setbacks and lot coverage can be met. [Ord. 5338, 1/28/98; Ord. 5673, 6/27/07]

(3) Duplexes and multi-family development may be divided so that each can be individually owned by doing a land division in conformance with Article 11. The total land area provided for the development as a whole must conform with the requirements of Article 3, Table 1, however, the amount of land on which each unit is located does not need to be split equally between the individual units - one may be larger and one smaller. [Ord. 5673, 6/27/07]

(4) Where detached single-family residences are permitted outright, one accessory dwelling unit (ADU) may be allowed per legally established detached single-family residence, called the "primary residence". The ADC shall comply with the following standards:

Accessory dwelling units shall be incidental in size to the primary residence and meet the following standards:

(a) The size of an ADU does not exceed 50 percent of the gross floor area of the primary residence (excluding garages or carports) or 750 square feet, whichever is less. (Note: ADU greater than 750 square feet that were <u>legally</u> constructed before July 1, 2007, may remain).

(b) All required building permits have been obtained. If the primary residence is on the Local Historic Inventory, historic review may be required.

(c) The size of the property meets the minimum single-family lot area requirements for the zoning district in which the lot is located. [Ord. 5338, 1/28/98; Ord. 5673, 6/27/07]

Detached ADUs must also meet the following development standards:

<u>Front Setback</u>: Greater than or equal to the location of the front wall of the primary residence; and

<u>Interior Setback</u>: 5 feet for one-story; 8 feet for two-story; and

<u>Maximum Height</u>: 24 feet to the ridge of the roof. [Ord. 5673, 6/27/07]

3.230 Setback Measurements. All setbacks must meet the minimum standards as set forth in Tables 1 and 2 in this Article, as appropriate. Setback distances shall be measured perpendicular to all portions of a property line. In addition to the setbacks in this article, all development must comply with Section 12.180, Clear Vision Area. See also Table 2, Accessory Structure Standards. [Ord. 5673, 6/27/07]

TABLE 2

ACCESSORY STRUCTURE STANDARDS	
STRUCTURE	**STANDARD**
All Accessory Structures	Front setback, see Table 1, by zone if not noted below
Detached Structure walls less than or equal to 8 feet tall (2)	Interior setback = 3 feet (1)
Attached Structure	Interior setback = 5 feet (1)
Detached Structure walls greater than 8 feet tall (2)	Interior setback = 5 feet
Accessory Dwelling Unit Building	Front setback is equal or greater than primary residence Interior setback, one-story = 5 feet (1) Interior setback, two-story = 8 feet (1)
Garage or carport with access to an alley	Alley setback = 20 feet, less the width of the alley right-of-way, but at least 3 feet. Other interior setbacks=see Table 1
Structures, including fences, intended for housing animals	Interior setback = 10 feet
Fences greater than 6 feet tall	See Table 1, by zone; building permit required.
Outdoor swimming pools with depths greater than or equal to 24 inches	Interior setback = 10 feet
Decks less than or equal to 30 inches from grade, with no rails or covers	No setback from property lines

ACCESSORY STRUCTURE STANDARDS	
Decks greater than 30 inches from grade	Interior setback = 5 feet

(1) Zero-lot line provisions are in Sections 3.265 and 3.270. [Ord. 5832, 4/9/14]
(2) The slab or foundation of accessory structures is not included in the wall height unless it is greater than 24-inches from the ground. [Ord. 5673, 6/27/07]

Section 4: ADC Article 4, Section 4.050 – Schedule of Permitted Uses and Section 4.060 – General are amended as follows:

4.050 Schedule of Permitted Uses. The specific uses listed in the following schedule (Table 4-1) 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 through the Type III procedure under the provisions of Sections 2.230-2.260.
CUII Uses considered conditionally through the Type II procedure under the provisions of Sections 2.230-2.260. [Ord. 5742, 7/14/10]
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]

TABLE 4-1
SCHEDULE OF PERMITTED USES

Commercial, Office and Industrial Zoning Districts									
Use Categories (See Article 22 for use category descriptions)	**Spec. Cond.**	**OP**	**NC**	**CC**	**RC**	**TD**	**IP**	**LI**	**HI**
INDUSTRIAL									
Contractors and Industrial Services		N	N	S-1	N	S-1	S-1	S-1	S
Manufacturing and Production	2	S/CU	N	S/CU,3	N	S/CU	S/CU	S/CU	S
Small-scale Manufacturing	2	S/CU	N	S/CU	S/CU	S/CU	S/CU	S/CU	S/CU
Railroad Yard		N	N	N	N	S	N	S	S
Warehousing and Distribution		N	N	N	N	N	CU	S	S
Waste and Recycling Related	4	N	N	CU	N	N	N	S/CU	S/CU
Wholesale Sales		N	N	N	N	N	S-5	S	N
COMMERCIAL									
Adult Entertainment		N	N	S-6	N	N	N	CU-6	N
Entertainment and Recreation: Indoor Outdoor	7	N N	N N	S-7 S	S-7 S	S N	S/CU-7 N	CUII-7 CU-7, 11 N-7	CU-7 CU
Offices: Traditional Offices Industrial		S S	S N	S S	S N	S N	CUII-8 S-8	N S-9	N S
Parking		N	N	S	S	S	S	S	S
Recreational Vehicle Park		N	N	CU	N	S	N	S	N
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
Retail Sales and Service		S-11	S-11	S	S	S	S-11	S/CU/N-11	N
Self-Serve Storage	12	N	N	S	S	N	CU	S	S-13

Taverns, Bars, Breweries, Nightclubs	25	CUII	CUII	S	S	S	CUII	CUII	CUII
Vehicle Repair		N	N	S	S	N	N	S	N
Vehicle Service, Quick-gas/oil/wash		N	N	S	S	N	CU	N-14	N
INSTITUTIONAL									
Basic Utilities		CU	CU	CU	CU	CU	S	S	S
Community Services	15	S/CU	S/CU	S/CU	S/CU	S/CU	CU	CU	N
Daycare Facility		CU	CU	S	N	N	S	CU	N
Educational Institutions	16	N	N	CU	N	CU	S/CU	S/CU	N
Hospitals		CU	N	N	N	N	CU	CU	N
Jails and Detention Facilities		N	N	N	N	N	N	CU	N
Parks, Open Areas and Cemeteries	17	CU	CU	CU	N	CU	CU	CU	N
Religious Institutions	16	CU	CU	S	N	N	CU	CU	N
RESIDENTIAL									
Assisted Living Facility		CU	CU	CU	N	N	N	N	N
Home Businesses (see 3.090-3.180 to determine if CU)		Y/CU	Y/CU	Y/CU	Y/CU	Y/CU	Y/CU	Y/CU	Y/CU
Residential Care or Treatment Facility		S	S	S	N	N	N	N	N
Single Family and Two Family Units	20	Y/CU-19	S-19	N	N	N	N	N	N
Three or More Units		CU	N	N	N	N	N	N	N
Use Categories (See Article 22 for use category descriptions.)	**Spec. Cond.**	**OP**	**NC**	**CC**	**RC**	**TD**	**IP**	**LI**	**HI**
Units Above or Attached to a Business		S	S	S	CU	S	S	S	N
Residential Accessory Buildings	21	Y/S	Y/S	N	N	N	N	N	N
OTHER CATEGORIES									

Agriculture (on Vacant Land)	22	N	N	N	Y	N	Y	Y	Y
Satellite Dish, Other Antennas, & Communication Facilities <50 ft.	23	Y	Y	Y	Y	Y	Y	Y	Y
Communication Facilities >= 50 ft.	23	N	N	CU	S	CU	CU	S	Y
Kennels	24	N	N	N	CU	N	N	S	N
Non-Res'l Accessory Buildings		S-18	Y	Y	Y	Y	Y	Y	Y
Passenger Terminals		N	N	S	CU	S	CU	CU	N
Rail and Utility Corridors		CU	CU	CU	CU	S	CU	S	S

Y = Yes, allowed, no Site Plan Review required
N = No, not allowed
CU = Conditional Use review, Type III procedure
S = Site Plan Review required
CUII = Conditional Use review, Type II procedure
[Ord. 5555, 2/7/03; Ord. 5728, 1/27/10; Ord. 5742, 7/14/10, Ord. 5767, 12/7/11; Ord. 5832, 4/9/14, Ord. 5886, 1/6/17]

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:

(19) Single-Family and Two-Family Units.

(a) In the OP zone, single-family residences are allowed outright. Attached single-family and two-family residences require a conditional use review. One accessory dwelling unit (ADU) may be allowed per legally established single-family residence, called the "primary residence". The ADU shall comply with the standards for ADUs in ADC 5.070(15).

(b) In the NC zone, single family residences require Site Plan Review. One accessory dwelling unit (ADU) may be allowed per legally established single-family residence, called "primary residence". The ADU shall comply with the standards for ADUs in ADC 5.707(15). [Ord. 5742, 7/14/10]

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

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

(b) All other residential district accessory buildings, garages or carports require a site plan review. [Ord. 5767, 12/7/11]

Section 5: ADC Article 5, Section 5.070 – General is amended as follows:

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

(15) Existing Single- and Two-Family. Single-family and two-family units built before December 11, 2002, may remain as a permitted use in any zone without being nonconforming. See Section 5.080. [Ord. 5673, 6/27/07]

Accessory Dwelling Units. Where detached single-family residences are permitted, one accessory dwelling unit (ADU) may be allowed per legally established detached single-family residence, called the "primary residence".

Accessory dwelling units shall be incidental in size to the primary residence and meet the following standards:

(a) The size of an accessory apartment may not exceed 50 percent of the gross floor area of the primary residence (excluding garages or carports) or 750 square feet, whichever is less.

(b) The size of the property meets the minimum single-family lot area requirements for the zoning district in which the lot is located.

(c) The front door of an ADU may not be located on the same façade as the front door of the primary residence unless the door already exists or the wall that contains the ADU front door is set back at least five feet from the front facade of the primary residence.

(d) Exterior additions must substantially match the existing materials, colors, and finish of the primary structure.

(e) All required building permits must be obtained. If the primary residence is on the Local Historic Inventory, historic review may be required.

(f) The front setback shall be greater than or equal to the location of the front wall of the primary residence. [Ord. 5673, 6/27/07]

(18) Residential Accessory Buildings. Accessory buildings are permitted outright in MUC, MUR, WF, HD, DMU, CB, ES, LE, and MS if they meet the following conditions: [Ord. 5894, 10/14/17]

(a) Detached accessory buildings, garages, and carports are less than 750 square feet and have walls equal to or less than 11 feet tall. [Ord. 5767, 12/7/11]

All other residential accessory buildings, garages or carports require a Site Plan Review in MUC, MUR, HD, DMU, CB, and WF, and are considered through a Conditional Use Type II review in ES, LE, and MS. [This is indicated by the use of a "/" in the matrix. For example, "Y/S" means accessory uses that don't meet the standards in (a) above require a Site Plan Review.] [Ord. 5556, 2/21/03; Ord. 5767, 12/7/11; Ord. 5894, 10/14/17]

Accessory buildings on the National Register of Historic Districts require historic review. See Article 7 for the review process and criteria.

Accessory dwelling units: see Special Condition 15. [Ord. 5673, 6/27/07]

Section 6: ADC Article 7, Section 7.010 – Applicability, Section 7.015 – Expiration of Historic Review Approval Section 7.020, Section 7.030 – Purpose, Section 7.035 – Initiation, Section 7.040 – Procedure, Section 7.060 – Submission of Application, Section 7.120 – Procedure, Section 7.165 – Decision/Appeals, Section 7.180 – Procedure, Section 7.220 – Conditions of Approval, Section 7.225 – Decision/Appeals, Section 7.240 – Procedure, Section 7.270 New Construction Review Criteria, Section 7.280 – Decisions/Appeals, Sections 7.310 – Procedure, Section 7.330 – Review Criteria, Section 7.350, Section 7.360 – Decisions/Appeals, Section 7.370 – Issuance of demolition permit after demolition review are amended as follows:

7.010 Applicability. This article is applied in the following manner:

(1) To properties in the Downtown, Hackleman, Monteith or Albany Municipal Airport National Register Historic Districts as identified in Figure 7-1 and 7-2.

(2) To all other structures and sites listed on the City's adopted Local Historic Inventory, including National Register Historic Resources listed prior to February 23, 2018.

(3) All National Register Resources are subject to Sections 7.300 – 7.370.

7.015 Expiration of Historic Review Approval. See Article 1, Section 1.080 (1).

7.020 Definitions. As used in this Article, the following words and phrases shall have the following meanings:

Demolition: Any act that destroys, removes, or relocates, in whole or part, a significant historic resource such that its historic, cultural, or architectural character and significance is lost.

Landmarks Commission: The Landmarks Commission conducts quasi-judicial public hearings on Type III planning applications affecting historic resources, and acts as an advisory board to the City Council on decisions that could affect historic resources, per Albany Municipal Code section 2.76.050.

Local Historic Inventory: A list of historic properties that have been determined significant by the Landmarks Commission and City Council for either their architecture or history based on the criteria of the National Register. It includes properties located within the listed National Register historic districts and buildings, sites, structures, objects and districts located outside of the listed National Register Districts.

National Register Resource: building, structures, objects, sites, or districts listed in the National Register of Historic Places pursuant to the National Historic Preservation Act of 1966 (PL 89-665: 16 U.S.C 470).

7.030 Purpose. The designation of historic landmarks allows the City to formally recognize, rate and protect its historic and architectural resources. The Local Historic Inventory identifies buildings, sites, structures, objects and districts of historical importance or architectural significance that are considered exemplary of their time and style. The regulation of designated and rated historic landmarks provides a means to review proposed changes and encourage the preservation of historical or architectural values. Periodically it may be necessary to re-rate or remove the designation of a historic landmark to reflect changing conditions, community values or needs. [Ord.5463, 9/13/00]

7.035 Initiation. The process for designating or removing a landmark or historic district may be initiated by the City Council, the Landmarks Commission, or by any other interested person. Initiations by the Landmarks 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. No historic resource shall be designated as a landmark without the written consent of the owner, or in the case of multiple ownership, a majority of the owners. Removal of properties from the National Register of Historic Places requires review and approval by the State Historic Preservation Office and State Advisory Committee. [Ord. 5463, 9/13/00]

7.040 Procedure.

(1) ***Designation***. 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 Commission replaces the Planning Commission as the initial review body. The City Council makes the final determination of historic designation.

(2) ***Amendment to Existing Historic Districts***. Changes or additions to the period of significance statement, property rating structure, or boundaries of an existing historic district shall be reviewed under the Type IV legislative process. The Landmarks Commission replaces the Planning Commission as the initial review body. The City Council reviews and adopts any amendments to the historic districts.

(3) ***Local Historic Inventory Removal***. Only landmarks outside the National Register Historic Districts that are not listed on the National Register of Historic Places individually are eligible for removal from the Local Historic Inventory. The Director may delete any demolished or removed historic structure outside the historic districts from the Local Historic Inventory through the Type I procedure. In the event a National Register building or structure is demolished or moved, an application shall be made to the State Historic Preservation Office to remove and/or redesignate the property from the National Register.

(4) ***Individual Property Re-Rating***. The Landmarks Commission shall review requests for re-rating of individual properties. [Ord. 5463, 9/13/00]

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 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.

7.120 Procedure. A request for an exterior alteration is reviewed and processed by either the Community Development Director or the Landmarks Commission. The Landmarks Commission replaces the Hearings Board or Planning Commission as the review body.

Any exterior or interior alteration to buildings participating in Oregon's Special Assessment of

Historic Property Program will also require review and approval by the State Historic Preservation Office.

(1) The Director will approve residential alteration requests 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 is not visible from the street.

(2) For all other requests, the Landmarks Commission will review and process the alteration proposal. The applicant and adjoining property owners within 100 feet will receive notification of the Landmarks Commission public hearing on the proposal. The Landmarks Commission will accept written and verbal testimony on the proposal. For buildings on the Special Assessment of Historic Property Program, the Landmarks Commission decision will be forwarded to the State Historic Preservation Office.

7.165 Decisions/Appeals. All decisions must specify the basis for the decision. Landmarks Commission decisions may be appealed to the Albany City Council. Decisions of the Community Development Director may be appealed to the Landmarks Commission.

[Ord. 5463, 9/13/00, Ord. 5488, 7/11/01]

7.180 Procedure. Review of a request for the use of substitute materials is reviewed and processed by the Landmarks Commission. The Landmarks Commission replaces the Hearings Board or Planning Commission as the review body.

The applicant and adjoining property owners within 100 feet will receive notification of the Landmarks Commission meeting on the proposal. The Landmarks Commission shall accept written and verbal testimony on the proposal.

The use of substitute materials on buildings participating in Oregon's Special Assessment of Historic Property Program will also require review and approval by the State Historic Preservation Office. The Landmarks Commission decision will be forwarded to the State Historic Preservation Office.

[Ord. 5463, 9/13/00]

7.220 Conditions of Approval. In approving an alteration request, the Landmarks Commission may attach conditions that 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 criterion.

[Ord. 5463, 9/13/00]

7.225 Decisions/Appeals. All decisions shall specify the basis for the decision. Landmarks Commission decisions may be appealed to the Albany City Council. Decisions of the Community Development Director may be appealed to the Landmarks Commission.

[Ord. 5463, 9/13/00, Ord. 5488, 7/11/01]

7.240 Procedure. The Community Development Director will review and decide on applications for new construction. At the Director's discretion, an application may be referred to the Landmarks Commission for a decision.

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

7.280 Decisions/Appeals. All decisions shall specify the basis for the decision. Landmarks Commission decisions may be appealed to the Albany City Council. Decisions of the Community.

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

(1) The Building Official shall issue a permit for relocation or demolition if any of the following conditions exist:

(a) The building or structure is designated non-contributing within a National Register nomination.

(b) The building or structure is not a designated contributing National Register Resource and it has been damaged in excess of 70 percent 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 reviewed by the Landmarks Commission. The application shall be submitted at least 35 days in advance of the next regularly scheduled public hearing/meeting of the Landmarks Commission, unless waived by the Director when adequate notice can otherwise be achieved. [Ord. 5463, 9/13/00]

7.330 Review Criteria. The Landmarks Commission must find that the demolition or relocation request meets the following applicable criteria:

(1) No prudent or feasible alternative exists, or

(2) The building or structure is deteriorated beyond repair and cannot be economically rehabilitated on the site to provide a reasonable income or residential environment compared to other structures in the general area, or

(3) There is a demonstrated public need for the new use that outweighs any public benefit that might be gained by preserving the subject buildings on the site.

(4) The proposed development, if any, is compatible with the surrounding area considering such factors as location, use, bulk, landscaping, and exterior design.

(5) If the building or structure is proposed to be moved, moving to a site within the same historic district is preferred to moving it outside the district.

(6) The request is consistent with Oregon Administrative Rules 660-023-0200(8)(a) and considers the following factors: condition, historic integrity, age, historic significance, value to the

community, economic consequences, design or construction rarity, and consistency with and consideration of other policy objectives in the Comprehensive Plan. [Ord. 5463, 9/13/00]

7.350 No provision in this ordinance shall be construed to prevent the alteration, demolition, or relocation of all or part of a locally significant historic resource if the Building Official certifies that such action is required for public safety.

[Ord. 5463, 9/13/00]

7.360 Decisions/Appeals. Following a public hearing, the Landmarks Commission may approve, approve with conditions, invoke a stay to the demolition, or deny the application. During the stay, the Landmarks 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, stay to the demolition, or denial shall specify the basis for the decision. Decisions of the Landmarks Commission can be appealed to the City Council. [Ord. 5463, 9/13/00]

7.370 Issuance of demolition permit after demolition review. If the review body approves demolition of the resource, a permit for demolition shall not be issued until the demolition review decision is final and appeals in accordance with ADC 1.520 have been exhausted or waived.

Section 7: ADC Article 8, Section 8.110 is amended as follows:

8.110 Applicability

(1) The standards of ADC Sections 8.110 through 8.160 apply to all new single-family detached units, manufactured homes, two-family units (duplexes), and single family attached units on individual lot in all zones that allow single-family housing, except as otherwise noted.

(2) In addition, except as otherwise noted, the standards of ADC Sections 8.110 through 8.160 apply to multifamily units with individual driveways permitted pursuant to ADC 12.100(2) that are located in the WF, CB, or DMU zone, or in the HD zone in a building where ground-floor residential use is permitted pursuant to ADC 5.070(17).

(3) These standards do not apply to detached accessory dwelling units, existing structures, new additions to existing structures, or to manufactured home parks.

(4) Development on flag lots or on lots that slope up or down from the street with an average slope of 20 percent or more is exempt from these standards.

Section 8: ADC Article 9, Section 9.380 - Standards is amended as follows:

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

Standards in Residential, MUR and MUC zones:

(a) Fences in front setbacks. Fences shall be no taller than 4 feet in required front setbacks unless allowed below.

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

Standards in HD, DMU, CB, and WF zones:

(5) Fences in front setbacks. Fences shall be no taller than 4 feet within 10 feet of a front lot line unless allowed under (a)-(c), below. Barbed wire on top of fences is not permitted within 10 feet of a front lot line.

(a) Properties listed on the National Register of Historic Places may have fences taller than four feet within ten feet of a front lot line if the fence is appropriate to the building style and scale, and is approved by the Landmarks Commission.

Section 9: ADC Article 13, Section 13.711- Variance for Historic Buildings and Section 13.830 – Exemption from Nonconforming Status are amended as follows:

13.711 Variances for Historic Buildings

For buildings listed as primary or secondary on the City's adopted Historic Inventory, a variance can be granted for a sign resembling an original historic sign when a recommendation is made by the Landmarks Commission or its successor on the entire signage of the structure, and the following criteria are met:

(1) The variance criteria of Section 13.710(1), (4) and (5) have been met.

(2) The sign takes the place of one of the permitted signs. (A variance for more than the permitted number will require full compliance with Section 13.710.)

(3) All signs on the structure are reviewed as part of the variance, and conditions can be attached regarding all signs on the structure to achieve greater consistency with the overall purpose of this Article.

13.830 Exemption from Nonconforming Status

An owner of a nonconforming sign in existence on the date of enactment of this ordinance may apply for a determination that the sign qualifies as an historic or significant sign. An owner must make such application within six months of being notified of a nonconforming status. Such exemption of nonconforming status may be made by the Hearings Board through a Type II procedure upon finding that any of the following applicable criteria have been met:

(1) The sign does not constitute a significant safety hazard due to structural inadequacies or the impact on traffic.

(2) Due to age, relation to an historic event, or general recognition, the sign has become a recognized Albany landmark.

(3) For an historic sign exemption, the sign is:

a. Attached to a primary or secondary structure as recognized on the City Historic Survey;

b. The sign adds to the architectural and historic significance of the premises, taking into account the size, location, construction, and lighting of the sign; and

c. A recommendation is received from the Landmarks Commission giving its recommendation on criteria (a) and (b) above.

(4) For significant signs, the sign is:

a. Maintained essentially as originally constructed, with sufficient remaining original workmanship and material to serve as instruction in period fabrication; and

b. The sign is associated with significant past trends in structure, materials, and design and is in conformance with generally accepted principles of good design, architecture, and maintenance.

Section 10: ADC Article 22, Section 22.320 - Residential Accessory Buildings and Section 22.400 - Definitions are amended as follows:

22.320 Residential Accessory Buildings

(1) A detached building that is subordinate to and consistent with the principal use of the property located on the same property as the principal dwelling. Residential accessory buildings are permitted in residential and mixed-use zones if they meet the following standards:

(a) Detached residential accessory buildings (other than Accessory Dwelling Units, which are addressed below) garages, and carports are allowed outright if they are less than 750 square feet and have walls equal to or less than eleven feet in height. Larger buildings may be permitted through site plan review, refer to the following standards:

- In residential zoning districts in Article 3, refer to Section 3.080(9).
- In commercial or industrial zones in Article 4, refer to Section 4.060(21).
- In mixed-use zones in Article 5, refer to Section 5.070(18).

(b) Accessory Dwelling Units have special conditions in Articles 3 and 5, Sections 3.080(4) and 5.070(15) respectfully.

22.400 Definitions. As used in this Code, the following words and phrases shall have the following meanings:

Accessory Dwelling Unit: A self-contained living unit that is attached to or interior to the primary single-family dwelling, a detached structure, or in a portion of a detached accessory structure (e.g. above a garage or workshop) that is incidental and subordinate to the principal dwelling unit (primary residence).

Approval Authority: The Director, Hearings Board, Landmarks Commission, Planning Commission, or City Council, whichever has jurisdiction for making a determination under the various provisions of this Code.

<u>I hereby veto ordinance no. 5935, which adopted the City of Albany Development Code, by amending the Albany Development Code text and adopting findings.</u>

This ordinance was item number 7, listed on December 18, 2019 agenda.

This ordinance includes changes to accessory dwelling units (ADU's) and the City Council by motion amended the ordinance by increasing the maximum size limit to 900 sq. ft. from our existing ordinance of 750 sq. ft.

The public notice and agenda for the ordinance was for 750 sq. ft. After the public hearing was closed on December 4th, the City Council moved to increase the size to 900 sq. ft. without any prior public notification to the increased size.

There was no public hearing at the December 18th City Council meeting, since the ordinance was set for a second reading. After the meeting two citizens were in the audience and came up to me over concerns with ADU's and wondered why the ordinance passed with 900 sq. ft. when 750 sq. ft. was proposed. ADU's are a divisive issue in our community and there should have been a public notification to citizens in knowing the City Council planned on increasing the maximum size limits for ADU's. I did not know the planned amendment to 900 sq. ft. was being considered at the December 4th meeting.

Making an amendment to an ordinance that had a twenty percent change in a dwelling's size is no different than advertising an amount for imposing a fee and a council increases it twenty percent without public notification.

Also, there were <u>no</u> findings to the ordinance supporting a size increase to 900 sq. ft. This veto will allow staff to bring back findings for the increased size and provide public notification.

I offered to accept 800 sq. ft. at the December 18, 2019 meeting, which is within the size range suggested by DLCD. The City Council did not agree.

The difference in the size amount is an extra bedroom, which can add more vehicles parking on a street and now state law prevents cities from requiring off-street parking for ADU's.

ORS 197.312(5) does not impose any penalty on a city that has not amended its local regulations over ADU's to conform to the statute's requirements by January 2020.

<u>This veto does not prevent an ADU from being built</u>, as we will be complying by following the rules of state law. The veto limits the maximum size to our long-time existing rule of 750 sq. ft.

I hereby veto this ordinance in authority by our Albany City Charter.

Sharon Konopa, Mayor of Albany

December 20, 2019

RECEIVED

DEC 20 2019 11:13 am

Initial: KRL