



## COMMUNITY DEVELOPMENT

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

# Staff Report

Albany Development Code Amendments

- 1) Accessory Dwelling Units
- 2) National Register Resource Protection
- 3) Landmarks Commission Title

DC-02-19

October 21, 2019

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HEARING BODIES:	Planning Commission	City Council
HEARING DATES:	Monday, October 28, 2019	Wednesday, December 4, 2019
HEARING TIMES:	5:15 p.m.	7:15 p.m.
HEARING LOCATION:	Council Chambers, Albany City Hall, 333 Broadalbin Street SW	

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## Application Information

Proposal:	Albany Development Code (ADC) amendments related to Accessory Dwelling Units (ADU); protection of national register resources, and removal of the word “advisory” from all title references to the Landmarks Commission (LC)
Review Bodies:	Planning Commission and City Council (Type IV - Legislative review process)
Applicant:	City of Albany, Community Development Department
Staff:	Planning Manager David Martineau, Planner III Laura LaRoque

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## Overview

The ADC allows for the Community Development director to initiate legislative amendments to the ADC. The City has implemented a process to periodically evaluate and adopt changes to the ADC to include both clarifying and policy edits. The proposed amendment package (planning file DC-02-19) would:

- Amend sections of ADC Articles 3, 4, 5, 8, and 22 related to ADUs to comply with Legislation in Senate Bill 1051 and House Bill 2001 (see Attachments C - D).
- Amend sections of ADC Article 7 related to the protection of National Register Resources to comply with Oregon Administrative Rule (OAR) 660-023-0200(8) (see Attachment E).
- Amend sections of ADC Articles 1, 2, 7, 9, 13, and 22 to remove the word “advisory” from all title references to the LC in accordance with recent amendments to Albany Municipal Code (AMC) Title 2, Chapter 2.76 and LC (see Attachments F - G).

## Notice Information

Notice was provided to the Oregon Department of Land Conservation and Development (DLCD) on September 19, 2019, at least 35 days before the first evidentiary hearing, in accordance with OAR 660-018-0020 and ADC 1.640.

Notice of the public hearing was mailed on October 14, 2019, to Linn and Benton County Planning Divisions and the City of Millersburg.

Notice of the public hearing was also published in the *Albany Democrat-Herald* on October 14 and 21, 2019. In addition, the staff report for the proposed development code amendments was posted on the City's website on October 21, 2019, at least seven days before the first evidentiary public hearing.

As of the date of this report, no comments have been received by the Community Development Department.

## Review Process and Appeals

Amendments to the ADC are made through a Type IV legislative land use review process. Following this process, the planning commission will hold a public hearing to consider proposed amendments and will make a recommendation to the city council. The planning commission's recommendation cannot be appealed. The city council will hold a subsequent public hearing to consider the proposed amendments. After closing the public hearing, the city council will deliberate and make a final decision. Within five days of the city council's final action on the proposed amendments, the Community Development director will provide written notice of the decisions to any parties entitled to notice. A city council decision can be appealed to the Oregon Land Use Board of Appeals (LUBA) if a person with standing files a Notice of Intent to Appeal within 21 days of the date the decision is reduced to writing and bears the necessary signatures of the decision makers.

## Staff Analysis

Proposed amendments as they would appear in the ADC, and other relevant documents are included as attachments. Proposed section amendments are provided as Attachment A and are in numeric order by ADC Article. In this report and attached section amendments, proposed new text is in red font and proposed deleted text is in red strike-out font. A "clean" copy of proposed section amendments, without red strike-out font, is provided in Attachment B. Both the strike-out and clean versions of the amended sections of the ADC contain text boxes that explain proposed changes. Should the proposed amendments be approved, the text boxes with the explanations will be removed and the approved amendments made part of the ADC.

This report first summarizes the changes to state law and related proposed ADC revisions. It then analyzes the proposed amendments for conformance with the two applicable review criteria in ADC 2.290.

## Summary of Proposed Amendments

### Accessory Dwelling Unit Amendments

Over the past three years, multiple Oregon Revised Statutes (ORS) have been changed to facilitate the development of more affordable housing. Legislation in Senate Bill 1051, which was signed into law on August 15, 2017, attempts to achieve this goal by requiring jurisdictions to *"allow in areas zoned for detached single-family dwellings the development of at least one accessory dwelling unit for each detached single-family dwelling, subject to reasonable local regulations relating to siting and design"* (see Attachment C). Legislation in House Bill 2001, which was signed into law on August 8, 2019, states *"Reasonable local regulations relating to siting and design" does not include owner-occupancy requirements of either the primary or accessory structure or requirements to construct additional off-street parking*" (see Attachment D). To comply with these state statutes, the ADC needs to be amended. This staff report addresses proposed amendments that would be the minimum to comply with State law.

## National Register Resource Protection Amendments

In 2017, the Department of Land Conservation and Development (DLCD), with guidance from the State Historic Preservation Office (SHPO), amended Goal 5 rule for historic resources (OAR 660-023-0200) to: 1) achieve a base level protection for historic resources listed in the National Register of Historic Places; 2) clarify circumstances under which owner consent provisions in ORS 197.772(1) apply to historic resources listed in the National Register; 3) clarify procedural steps (i.e. inventory, designating historic resources, and application of historic resource protection ordinances); 4) clarify standing under the owner consent provisions of ORS 197.772(2) and describe the circumstances in which a local government may remove a resource from a resource list.

On February 23, 2018, amendments to OAR 660-023-0200, became effective and include new and amended definitions, clearer distinction between procedural steps (i.e. inventory, designating historic resources, and application of historic resource protection ordinances), and set standards for implementing the “shall protect” directive for National Register resources (see Attachment E).

Included in the 2017 amendments to OAR 660-023-0200 was a requirement (OAR 660-023-0200(8)(c)) that local governments **must** amend local land use regulations to comply with OAR 660-023-0200(8)(a) which requires National Register resources to be protected by review of demolition or relocation that includes, at minimum, a public hearing process that results in approval, approval with conditions, or denial upon consideration of 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 objective in the acknowledged comprehensive plan.

Two other amendments apply directly to local government decisions until the local governments amend their land use regulations to conform with the rule. These amendments include, OAR 660-023-0200(9) which set standards for the removal of a locally designated significant historic resource from a resource list and OAR 660-023-0200(10) that requires a 120-day demolition permit delay for demolition or modification of a locally significant historic resource.

This staff report addresses proposed amendments to comply with OAR 660-023-0200(8) – the protection of National Register resources. Subsequent amendments must be conducted to become fully compliant with OAR 660-023-0200.

## Landmarks Commission Title Amendments

On February 11, and May 22, 2019, city council discussed amendments to Title 2, Administration and Personnel of the AMC that relate to the City’s boards and commissions. These amendments included the reassignment of appointment duties of several advisory bodies including the LC.

On March 11, March 25, and June 24, 2019, city council also discussed options to resolve conflicting language in the AMC and ADC regarding the decision-making authority of the LC. Amendments included the removal of the word “advisory” from the title references to the LC in all sections of AMC 2.76, modification of AMC 2.76.040 to reflect current election and recording practices, and modification of AMC 2.76.050 regarding the decision-making authority of the LC under AMC 2.76.050

The amendments to the AMC resolved the conflicting language between the AMC and ADC regarding the decision-making authority of the LC but created conflicting language in terms of the LC title. Proposed amendments to the ADC will resolve these conflicts by removing the word “advisory” from all title references to the LC and amending the definition of the LC under Section 7.020 to reflect the reassignment of appointment duties and decision-making authority under AMC 2.76.

## Analysis of ADC Criteria

ADC section 2.290, “Development Code Amendments” includes two review criteria that must be met for the proposed amendments to be approved. They are:

1. **The proposed amendments better achieve the goals and policies of the Comprehensive Plan than the existing language.**
2. **The proposed amendments are consistent with development code policies on purpose and with the purpose statement for the base zone, special purpose district, or development regulation where the amendment is proposed.**

Analysis of the proposal’s compliance with these criteria is provided below beginning with Criterion 1 and the proposed amendments consistency with applicable Comprehensive Plan policies. The findings are organized by the Comprehensive Plan/Statewide Planning goals. Applicable goals and policies are provided in *italics* within the findings below and are considered as separate review criteria.

### Criterion 1 – Comprehensive Plan Goals, ADC 2.290(1)

**The proposed amendments better achieve the goals and policies of the Comprehensive Plan than the existing language.**

#### Goal 1: Citizen Involvement

1.1 The following Citizen Involvement goal and policy are relevant to the proposed ADC amendments:

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

*Policy 2: When making land use and other planning decisions:*

- a. *Actively seek input from all points of view from citizens and agencies and assure that interested parties from all areas of the Urban Growth Boundary have the opportunity to participate.*
- b. *Utilize all criteria relevant to the issue.*
- c. *Ensure the long-range interests of the general public are considered.*
- d. *Give particular attention to input provided by the public.*
- e. *Where opposing viewpoints are expressed, attempt to reach consensus where possible.*

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

- 1.2 Prior to the amendments described in this staff report, discussion of proposed ADC amendments pertaining to ADUs occurred during separate, duly advertised public meetings of the planning commission, Landmarks Advisory Commission, and city council on April 2, April 9, and May 2, 2018, respectively. The city council did not approve amendments proposed through that process; however, that review process is relevant to the current amendment process as it was on the same topic and informed the current proposal.
- 1.3 On October 14 and 21, 2019, public notices regarding the proposed amendments were placed in the Albany Democrat Herald. These notices informed the public that the amendments would be considered during the October 28th planning commission and December 4th, 2019, city council public hearings, consistent with the legislative hearing notice requirements of ADC 1.600. These two hearings provide an opportunity for the public to review and comment on proposed amendments, and for decision makers to consider those comments as they recommend or decide on the final ADC text.
- 1.4 Providing opportunities for public involvement as described above is consistent with citizen involvement goals and policies for land use actions in Comprehensive Plan Goal 1: Citizen Involvement.

## Goal 2: Land Use Planning

1.5 The following Land Use Planning goal is relevant to the proposed ADC amendments:

*Goal: Undertake Periodic Review and Update of the Albany Comprehensive Plan to ensure the Plan:*

1. Remains current and responsive to community needs.
2. Retains long-range reliability.
3. Incorporates the most recent and reliable information.
4. Remains consistent with state laws and administrative rules.

1.6 The intent of the above Comprehensive Plan goal is to ensure the Plan remains current and responsive to community needs, including implementing ordinances to assure Plan and ordinance consistency.

1.7 The ADC amendments are proposed to bring the ADC into compliance with state laws and administrative rules. Therefore, the amendments are being responsive to community needs while remaining consistent with the City Comprehensive Plan policies related to development of housing and historic resource protection.

## Goal 5, Natural Resources – Vegetation and Wildlife Habitat; Open Space & Riparian Resources

1.8 The proposed National Register Resource protection amendments support the following Comprehensive Plan goals and policies related to Statewide Planning Goal 5, Natural Resources:

*Goal: Protect Albany's historic resources and utilize and enhance those resources for Albany residents and visitors.*

*Policy 3: Within the city limits, maintain historic review ordinances for historic structures and districts which incorporate the following:*

- a. *Except where public safety is jeopardized, allow the demolition of historic structures only when the existing structure cannot be economically rehabilitated or moved, or there is a demonstrated public need for the new use; and the proposed development is compatible with the adjacent properties.*
- b. *Ensure that exterior alterations of historic structures maintain the historic value of the structure and conform with the Secretary of the Interior's Standards for Historic Preservation.*
- c. *Ensure that the design of new construction within historic districts does not detract from the architectural qualities of the district.*
- d. *Where the original or intended use of a structure is not feasible, encourage compatible adaptive uses of historic structures (i.e. establishment of bed and breakfast operations, specialty shops, restaurants, and professional offices) provided the historic integrity of the structure is maintained.*

*Implementation Methods 11: Periodically review and update the city historic ordinance concerning demolition, historic alteration, and new construction within historic districts.*

1.9 The term “protect” is not defined in the Comprehensive Plan but is under OAR 660-023-0200(1)(i) as a “review of application for demolition, relocation, or major exterior alteration of a history resource, or to delay approval of, or deny, permits for these actions in order to provide opportunities to continue preservation.” The ADC already affords protection of National Register Resources and locally significant historic resources through a Type III Quasi-Judicial review procedure with the following exceptions: 1) building or structures that are designated as non-contributing within a historic district; and 2) building and structures that have been damaged in excess of 70 percent of its previous value in a fire, flood, wind, or other act of God, or vandalism.

1.10 Proposed amendments clarify that a Type III Quasi-Judicial review of demolition and relocation is required for all National Register Resources except building and structures that are designated as non-contributing within a historic district. OAR 660-023-0200(8)(a) allows local jurisdictions to exclude accessory structures and non-contributing resources within a National Register nomination from demolition and relocation review.

- 1.11 Proposed amendments also clarify that a denial of demolition and relocation of a National Register Resource is permissible upon consideration of 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 objective in the acknowledge comprehensive plan.
- 1.12 Therefore, all proposed amendments concerning the protection of National Register resources are consistent with the goal, policies, and implementation methods of Comprehensive Plan, Goal 5: Open Spaces, Scenic and Historic Area, and National Resource.

### Goal 10: Housing

- 1.13 The proposed ADU amendments support the following Comprehensive Plan goals and policies related to Statewide Planning Goal 10, Housing:

*Goal: Provide a variety of development and program opportunities that meet the housing needs of all Albany's citizens.*

*Goal: Create a city of diverse neighborhoods where residents can find and afford the values they seek.*

*Policy 1: Ensure an adequate supply of residentially-zoned land in areas accessible to employment and public services.*

*Policy 2: Provide a variety of choices regarding type, location, density and cost of housing units corresponding to the needs and means of city residents.*

*Policy 3: Encourage innovation in housing types, densities, lot sizes and design to promote housing alternatives. Examples include:*

- a. Attached single-family housing and condominium ownership opportunities in the Waterfront zoning district*
- b. The adaptive reuse of the upper floors of structures within the Downtown Business District for residential purposes.*
- c. Mixed-housing types and price ranges at a minimum of ten units per acre in Village Center Comprehensive Plan districts.*
- d. Neighborhoods with a variety of lot and housing sizes and types.*
- e. Accessory dwelling units.*
- f. Other actions directed at reducing housing costs which conform to the Comprehensive Plan, including innovative development code regulations.*

*Policy 9: Encourage new residential developments to provide housing choices that allow for persons to stay within their neighborhoods ("age in place") as their housing needs change.*

*Policy 10: Preserve and enhance Albany's historic housing as a unique and valuable resource.*

*Policy 16: Encourage the development of affordable housing in a range of types and appropriate sizes to meet Albany's housing needs. Examples include accessory apartments, manufactured housing, and attached single-family houses.*

*Policy 17: Recognize groups needing housing such as the elderly, handicapped, homeless, and other disadvantaged groups when identifying housing programs and opportunities.*

*Policy 19: Comply with federal, state, and local fair housing laws and policies that affirm access to housing opportunities for all persons in Albany.*

*Implementation Method 1: Use a variety of techniques to reduce housing costs including:*

- a. Timely processing of development permits.*
- b. Providing opportunities for the use of innovative techniques in development, design, and construction.*
- c. Promoting Cluster Developments to allow flexibility in residential development and the transfer of density within the development when protecting natural features, open areas, and park spaces.*
- d. Allowing increased densities within Planned Unit Developments, zero lot line setbacks, attached single-family housing, and other innovative housing techniques.*

- e. *Developing new residential street designs that may reduce pavement widths in appropriate situations and allow for natural drainage.*

*Implementation Method 2: Periodically review the residential zoning district standards and the subdivision standards in the development code for ways to better meet the housing need of all income levels and of all housing types.*

- 1.14 As previously mentioned, over the past two years, multiple ORS have been changed to facilitate the development of more affordable housing. This would occur by facilitating the development of more housing and more housing options by requiring jurisdictions to allow ADUs in zones where single-family detached homes are allowed.
- 1.15 Amending the ADC to comply with state law and facilitate ADU development would provide the opportunity to increase housing options in residential areas, as ADUs may be more affordable because of their smaller size. ADUs also offer flexibility to accommodate changes in household size or composition, allowing for intergenerational living and on-site caretakers/assistants. ADU development also represents an efficient use of residential land and existing public services that serve those areas.
- 1.16 Amending the ADC as proposed is consistent with policies of Comprehensive Plan, Goal 10: Housing. Even though the proposed amendments do not add residentially zoned land, they do acknowledge special processes in state law that promote an adequate housing supply. This is consistent with Policy 1.
- 1.17 The proposed amendments are consistent with Policy 2 because they would facilitate a variety of housing choices throughout residential areas and would provide housing for wider range of income levels within all residentially zoned neighborhoods. The ADU related amendments are consistent with policies 3, 16, and 17, as ADUs are an example of the type of housing that would encourage “innovation in housing type, densities, lot sizes and design to promote housing alternatives”. ADUs also provide opportunities for persons to age in place, or to accommodate a person needing specialized housing, such as extra care, to live on the same site as their family or caretaker.
- 1.18 All proposed amendments are also consistent with Policy 19, which calls for compliance with state laws and policies that affirm access to housing opportunities for all persons in Albany.
- 1.19 The proposed amendments are consistent with Goal 10 Implementation Methods 1 and 4, as they are intended to reduce housing costs through the “timely processing of development permits” and provide opportunities to increase densities through “innovative housing techniques”.

#### **Goal 14: Urbanization**

- 1.20 The proposed amendments related to ADUs and National Register Resource protection support the following Comprehensive Plan goals and policies related to Statewide Planning Goal 14, Urbanization:

*Goal (North Albany) Land Use: Create great neighborhoods that offer diversity in housing choices.*

*Policy 2: Encourage development patterns that promote the efficient use of land and infrastructure and conservation of significant natural resources.*

*Implementation Method 1: Continue to refine planning policies and appropriate map designation to promote desirable housing opportunities in North Albany.*

*Policy 4: Protect and enhance cultural and historic resources.*

*Implementation Methods: Utilize historic review procedures to protect North Albany’s historic resources.*

*Policies – (South Albany) Natural and Cultural Resources*

*Policy 6: Historic properties should be preserved and enhanced, where feasible. Three potentially significant historic properties were*

*identified in the project area: (1) 6732 Seven Mile Way, (2) 6061 Columbia Street, and (3) 3795 Lochner Road. Properties from the 1800s are becoming increasingly rare in Oregon as structures become more fragile through weathering and difficulties with maintenance. For those historic structures that can survive and even be rehabilitated, they can become anchor points in the community.*

- 1.21 The proposed amendments concerning the protection of National Register Resources are consistent with North Albany and South Albany Natural Cultural Resources Policies 4 and 6, respectively, as they clarify that all National Register resources are protected through review of demolition and relocation after consideration of review criteria including factors such as condition, historic integrity, age historic significance, value to the community, economic consequences, design or construction rarity, and consistency with and consideration of other policy objective in the acknowledge comprehensive plan.

### Criterion 1 Conclusions Summary

As explained above, the proposed amendments would facilitate the development of ADUs and protection of National Register resources consistent with state law. The proposed amendments are consistent with applicable Comprehensive Plan goals, policies and implementation methods. Given this, the proposed amendments better achieve the goals and policies of the Comprehensive Plan than the existing language.

### Criterion 2 – Development Code Purposes

#### ADC 2.290(2)

**The proposed amendments are consistent with development code policies on purpose and with the purpose statement for the base zone, special purpose district, or development regulation where the amendment is proposed.**

Criterion 2 in ADC 2.290, above, requires ADC amendments to be consistent with ADC policies and purpose statements for the affected base zones. Below are purpose statements from Article 1 – Administration and Procedures, Article 2 – Review Criteria, Article 3 – Residential Zoning Districts, Article 4 – Commercial and Industrial Zoning Districts, Article 5 – Mixed Use Zoning District, Article 7 – Historic Overlay District, Article 8 – Design Standards, Article 9 – On-site Development and Environmental Standards, Article 13 – Signs, and Article 22 – Definitions. Articles 1, 2, 8, 9, 13, and 22 apply to the entire ADC, Articles 3, 4, and 5 contain base zone provisions that would be affected by proposed ADU amendments, and Article 7 is the historic overlay zone provisions that would be affected by the proposed National Register Resource protection amendments.

#### *Article 1 – Administration and Procedures*

##### Introduction

**1.020 Purpose.** The general purpose of this code is to set forth and coordinate city regulations governing the development and use of land. The code is more specifically intended to do the following:

1. Serve as the principal vehicle for implementation of the City’s Comprehensive Plan in a manner that protects the health, safety, and welfare of the citizens of Albany.
2. Satisfy relevant requirements of federal law, state law, statewide goals, and administrative rules.
3. Facilitate prompt review of development proposals and the application of clear and specific standards.
4. Provide for public information, review, and comment on development proposals that may have a significant impact on the community.

5. **Guide public and private planning policies and actions to ensure provision of adequate water, sewage, transportation, drainage, parks, open space and other public facilities and services for each development.**
6. **Establish procedures and standards requiring that the design of site improvements and building improvements consistent with applicable standards and design guidelines.**
7. **Provide for review and approval of the relationship between land uses and traffic circulation in order to minimize congestion, with particular emphasis on not exceeding the planned capacity of residential streets.**
8. **Require that permitted uses and development designs provide reasonable protection from fire, flood, landslide, erosion, or other natural hazards, as well as prevent the spread of blight, and help prevent crime.**
9. **Protect and enhance the City's beauty and character.**
10. **Protect constitutional property rights, provide due process of law, and give consideration in all matters to affected property owner interests in making land use decisions.**

**1.050 Consistency with Plan and Laws. Actions initiated under this code shall be consistent with the adopted Comprehensive Plan of the City of Albany and with applicable state and federal laws and regulations as these plans, laws, and regulations may now or hereafter provide. Since the City of Albany has a Comprehensive Plan and implementing regulations that have been acknowledged by the State of Oregon as being in compliance with statewide goals, any action taken in conformance with this code shall be deemed also in compliance with statewide goals and the Comprehensive Plan. Unless stated otherwise within this code, specific findings demonstrating compliance with the Comprehensive Plan are not required for land use application approval. However, this provision shall not relieve the proponent of the burden of responding to allegations that the development action requested is inconsistent with one or more Comprehensive Plan policies.**

## **Article 1 Purposes - Findings of Fact and Conclusions**

- 2.1 As described previously under Criterion 1, proposed amendments are consistent with applicable Comprehensive Plan goals, policies, and implementation methods. Proposed amendments would allow detached ADUs in all zones where detached single-family homes are permitted, which is required by state law. They are also related to opportunities to facilitate the prompt review of development applications. Proposed amendments related to National Register resource protection clarify that all National Register resources are protected through review of demolition and relocation, which is required by state law. Given this, the proposed amendments are consistent with Article 1 purpose statements 1, 2, and 3.
- 2.2 Proposed amendments related to ADUs establish reasonable development standards which take into consideration existing lot development standards, and standards and review processes in Article 6 – Natural Resource Districts, and Article 7 – Historic Overlay District. As such, the proposed amendments are consistent with Article 1 purpose statements 3, 6 and 8. These standards which include setback, height and current lot coverage standards help protect and enhance the City's beauty and character while also providing opportunities for property owners to develop an ADU. As such, the proposed amendments are consistent with Article 1 purpose statements 9 and 10.
- 2.3 Proposed amendments related to the protection of National Register resources clarify that a quasi-judicial Type III review procedure is required for demolition and relocation review of all National Register resources in Article 7 – Historic Overlay District. As such, the proposed amendments are consistent with Article 1 purpose

statements 3, 4, and 10. Review criteria for demolition and relocation of a National Register resources includes factors such as value to the community, design or construction rarity, and consistency with and consideration of other policies objectives in the Comprehensive Plan which help protect and enhance the City's beauty and character. Therefore, the proposed amendments are also consistent with Article 1 purpose statement 9.

- 2.4 Proposed amendments comply with state law and are consistent with the City's Comprehensive Plan. Thus, they are consistent with the provisions in ADC 1.050 – Consistency with Plan and Laws.

### *Article 3 – Residential Zones*

**3.010 Overview.** The residential zones are intended to preserve land for housing. This code preserves the character of neighborhoods by providing seven zones with different density standards. The site development standards allow for flexibility of development while maintaining compatibility within the City's various neighborhoods. These regulations provide certainty to property owners, developers and neighbors by stating the allowed uses and development standards for the base zones. Sites within overlay districts are also subject to the regulations in Articles 6 and 7.

### *Article 4 – Commercial and Industrial Zoning Districts*

**4.010 Overview.** The zones created in this article are intended to provide land for commercial, office and industrial uses. The differences among the zones, in the permitted uses and development standards, reflect the existing and potential intensities of commercial and industrial development. The site development standards allow for flexibility of development while minimizing impacts on surrounding uses. The regulations in this article promote uses and development that will enhance the economic viability of specific commercial and industrial areas and the city as a whole. Development may also be subject to the provisions in Article 8, Design Standards, Article 9, On-Site Development and Environmental Standards, and Article 12, Public Improvements. Sites within overlay districts are also subject to the provisions in Article 6, Special Purpose Districts, and Article 7, Historic Overlay Districts.

### *Article 5 – Mixed Use Zoning District*

**5.020 Overview.** The mixed-use zoning districts are the center of neighborhood and commercial activity, providing a horizontal or vertical mix of retail and residential uses to serve nearby neighborhoods. Other uses may include offices, and community and personal services. Centers are easily accessible to nearby residences, are pedestrian-friendly, and relate to adjacent land uses. Commercial uses must fit the scale of adjacent neighborhoods and the desired character envisioned for each Village Center or mixed-use area. The mixed-use zones differ in permitted uses, development standards, and design based on the unique objectives of each area. Design standards may be adopted to define the unique architectural and streetscape features of each area.

## Articles 3 and 5 Purposes – Findings of Fact and Conclusions

- 2.5 The purpose statements for both Article 3 – Residential Zoning Districts, and Article 5 – Mixed Use Zoning District contemplate residential development. Zones addressed in each article also currently permit accessory apartments, or ADUs. Proposed amendments continue to allow ADUs in zones where currently permitted and would not further restrict the ability for an ADU to be constructed. For example, proposed text in Article 8 – Design Standards makes clear that standards in that Article do not apply to ADUs. Consequently, proposed amendments related to ADUs are consistent with the purposes of Articles 3 and 5, which contain provisions regarding each of the base zones where ADUs would be allowed.

## Article 4 Purposes – Findings of Fact and Conclusions

2.6 Article 4 zones are primarily intended for commercial and industrial purposes; however, single-family detached homes are permitted outright in the Office Professional zone. Since these single-family detached homes are permitted outright in the Office Professional zone, ADUs could be developed in association with them.

## 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. When the regulations and permitted uses of a zoning district conflict with those of the historic overlay district, the more restrictive standards apply.

## Article 7 Purposes - Findings of Fact and Conclusions

2.7 Proposed amendments for Article 7 – Historic Overlay District are to protect National Register Resources in accordance with OAR 660-023-0200(8). The term “protect” is defined under OAR 660-023-0200(1)(i) as “review of applications for demolition, relocation, or major exterior alterations of a [National Register Resource].” This “review” must at a minimum include a public hearing process that results in approval, approval with conditions, or denial upon consideration of 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 acknowledge comprehensive plan.

2.8 Proposed amendments to Article 7 are as follows:

- a. Sections 7.010 - Applicability, 7.310 - Procedure, and 7.350 of the ADC to clarify that all National Registered Resources are subject to review of demolition and relocation through a Type III quasi-judicial review procedure as opposed to a Type I permit.
  - b. Section 7.020 – Definitions to amend the word “demolition” to what is provided under OAR 660-023-0200(1)(a). The term definition under OAR 660-023-0200(1)(a) applies directly to local land use decisions regarding a National Register Resource. This definition applies directly to other local land use decisions regarding a historic resource unless the local comprehensive plan or land use regulations contain a different definition.
  - c. Section 7.020 - Definitions to add the phrase “National Register Resource” to what is provided under OAR 660-023-0200(1)(g).
  - d. Section 7.330 – Review Criteria to add factors listed in OAR 660-023-0200(8)(a) that must be taken into consideration during demolition or relocation review of a National Register Resource.
  - e. Section 7.360 – Decision/Appeals to add denial as a decision outcome in demolition and relocation reviews in accordance with OAR 660-023-0200(8)(a).
  - f. Section 7.370 – to add a new section entitled “issuance of demolition permit after demolition review” to align the issuance of a demolition permit with the conclusion of the demolition review appeal period.
- 2.9 All proposed amended will ensuring that National Register resources are protected in accordance with OAR 660-023-0200(8). Therefore, the proposed amendments are consistent with Article 7 purpose statement.

## Article 8 – Design Standards

**8.100 Purpose.** The design standards for single-family homes are intended to create pedestrian-friendly, sociable, safe and attractive neighborhoods through human-scale design. These standards emphasize the functional relationship between the home and the street. Compatibility standards protect the architectural

character of existing neighborhoods. These design standards are adaptable to many different architectural styles.

## Article 8 Purposes- Findings of Fact and Conclusions

2.10 Any design standards required of ADUs must be clear and objective, according to ORS 197.307(4). ADC 8.110(3) was modified to make it clear that Single-Family Design Standards do not apply to detached ADUs.

### *Article 2 – Review Criteria*

**2.190 Purpose.** The Comprehensive Plan is the City’s official and controlling land use document, guiding public and private activities that affect Albany’s growth, development, and livability. The Plan is intended to be a flexible document, reflecting changing circumstances and community attitudes through occasional amendments. This section provides a process for amending the Comprehensive Plan without violating its integrity or frustrating its purposes. This process applies to proposed changes to the Comprehensive Plan Map designations, text and the Urban Growth Boundary.

### *Article 9 – On-site Development and Environmental Standards*

**9.360 Purpose.** Fences can create a sense of privacy, protect children and pets, provide separation from busy streets, and enhance the appearance of property. The negative effects of fences can include the creation of street walls that inhibit police and community surveillance, decrease the sense of community, hinder emergency access, lessen solar access, hinder the safe movement of pedestrians and vehicles, and create an unattractive appearance. These standards are intended to promote the positive aspects of fences and to limit the negative ones.

### *Article 13 – Signs*

#### 13.110 Purpose

- 1.1 While signs communicate all types of helpful information, unregulated signs obstruct views, distract motorists, displace alternative uses for land, and pose other problems that legitimately call for regulation. The purpose of this article is to regulate the size, illumination, movement, materials, location, height, and condition of all signs placed on private property for exterior observation, thus ensuring the protection of property values; the character of the various neighborhoods; the creation of a convenient, attractive, and harmonious community; protection against destruction of or encroachment on historic convenience to citizens and encouraging economic development. This article allows adequate communication through signage while encouraging aesthetic quality in the design, location, size, and purpose of all signs. This article shall be interpreted in a manner consistent with the First Amendment guarantee of free speech. If any provision of this article is found by a court of competent jurisdiction to be invalid, such finding shall not affect the validity of other provisions of this article which can be given effect without the invalid provision.
- 1.2 A sign placed on land or on a building for the purpose of identification, protection, or directing persons to a use conducted therein must be deemed to be an integral, but accessory and subordinate, part of the principal use of land or building. Therefore, the intent of this article is to establish limitations on signs to ensure they are appropriate to the land, building, or use to which they are appurtenant and are adequate for their intended purpose while balancing the individual and community interests identified in subsection (1) of this section.
- 1.3 These regulations are intended to promote signs that are compatible with the use of the property to which they are appurtenant, landscape and architecture of surrounding buildings, are legible and

appropriate to the activity to which they pertain, are not distracting to motorists, and are constructed and maintained in a structurally sound and attractive condition.

- 1.4 These regulations do not regulate every form and instance of visual communication that may be displayed anywhere within the jurisdictional limits of the City. Rather, they are intended to regulate those forms and instances that are most likely to meaningfully affect one or more of the purposes set forth above.
- 1.5 These regulations do not entirely eliminate all of the harms that may be created by the installation and display of signs. Rather, they strike an appropriate balance that preserves ample channels of communication by means of visual display while still reducing and mitigating the extent of the harms caused by signs.

### *Article 22 – Definitions*

**22.010 Introduction to the Use Categories.** This section classifies land uses and activities into use categories based on common functional, product, or physical characteristics. The use categories provide a systematic basis for assigning present and future uses to zones. The decision to allow or prohibit the use categories in the various zones is based on the zoning district purpose statements.

### Article 2, 9, 13, and 22 Purposes - Findings of Fact and Conclusions

- 2.11 The proposed amendments to sections 2.200, 9.380, 13.710, and 22.400 concerning title of the LC are reflective of recent changes to AMC Chapter 2.76 regarding the title, appointment process, and decision-making authority of the LC under Ord. 5928 and Ord 5931 (see Attachments F - G).
- 2.12 The proposed amendments to section 22.400, Definitions, provide clarity and consistency in distinguishing ADUs from residential accessory structures and accessory apartments.

### Criterion 2 Conclusions Summary

As explained above, the proposed amendments are consistent with ADC policies and purpose statements for the base zones, special purpose district, or development regulation where the amendment is proposed. Therefore, the proposed amendments satisfy the criterion in ADC 2.290(2).

## Overall Conclusions and Recommendation

This report provides analysis of proposed amendments related to ADUs; protection of national register resources, and removal of the word “advisory” from LC title and finds that proposed amendments satisfy applicable review criteria. Based on the analysis in this report, staff suggests that the planning commission recommend that the city council approve the proposed amendments as shown in Attachments A and B of this staff report. Decision options and suggested motions are provided below

### Decision Options

1. Recommend approval of the application as proposed;
2. Recommend approval of the application as modified;
3. Recommend denial of the application, thus retaining current ADC text.

### Suggested Motion

*I move to recommend that the city council approve the proposed Albany Development Code Legislative Amendment regarding accessory dwelling units, protection of National Register Resources, and title of the Landmarks Commission (planning file DC-*

02-19). *This motion is based on findings and conclusions in the staff report, and findings in support of the application made during deliberations on this matter.*

## Attachments

- A. Proposed ADC Amendments – red font strike-out
- B. Proposed ADC Amendments - clean
- C. Senate Bill 1051
- D. House Bill 2001
- E. Oregon Administrative Rule Chapter 660, Division 023, Section 0200
- F. Ordinance No. 5928
- G. Ordinance No. 5931

## Acronyms

ADC	Albany Development Code
ADU	Accessory Dwelling Unit
AMC	Albany Municipal Code
DC	Development Code Text Amendment File Designation
DLCD	Oregon Department of Land Conservation and Development
LC	Landmarks Commission
LUBA	Oregon Land Use Board of Appeals
OAR	Oregon Administrative Rule
ORS	Oregon Revised Statutes
SHPO	State Historic Preservation Office



## 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

October 21, 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 ~~Advisory~~ Commission, or the City Council pursuant to the provisions of this Code. The Director shall not approve a land use application for the division, improvement, or use of land that has been previously divided in violation of state or local codes or otherwise developed in violation of this Code unless the violation is corrected prior to or concurrent with issuance of required permits. [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 ~~Advisory~~ 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 ~~Advisory~~ Commission shall review the request and any written comments and testimony; adopt findings based on the established criteria, and make a decision by approving, conditionally approving, or denying the application. Conditions and/or restrictions may be applied to the approval of any land use application granted under a Type II procedure in accordance with the relevant provisions of this Code. [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 ~~Advisory~~ Commission at a public hearing. Such actions may be complex in nature, requiring the interpretation of Plan policies and the requirements of this Code.
- (2) Under the Type III procedure, an application is scheduled for public hearing at the Director's discretion before the Hearings Board, the Planning Commission, or the Landmarks ~~Advisory~~ Commission. The Director shall notify all persons who 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 ~~Advisory~~ 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 ~~Advisory~~ 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 ~~Advisory~~ Commission, or Planning Commission has made a favorable recommendation, the City Council shall hold a public hearing and make a final decision prior to expiration of the 120-day land use processing rule, if applicable. An applicant may request a review delay of up to 6 months and extend the 120-day time frame. 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 ~~Advisory~~ 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 ~~Advisory~~ Commission (LAC). See Section 1.350 (2) through (5). A Type II decision made by the PC, HB, or LAC may be appealed to the Land Use Board of Appeals (LUBA) when a person who participated in the land use process in writing or testimony files a Notice of Intent to Appeal with LUBA no later than 21 days after the hearing body's notice of decision is mailed. [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 ~~Advisory~~ 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 ~~Advisory~~ 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 ~~Advisory~~ 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 ~~Advisory~~ 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]

The table below is amended to clarify that an accessory unit is an accessory dwelling unit.

#### 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
<b>RESIDENTIAL SINGLE FAMILY: One Unit per Property</b>								
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
<b>RESIDENTIAL TWO FAMILY: Two Units per Property</b>								
2 attached units (Duplex)	3	N	Y-1,	Y-1,	N	Y-1,	Y	Y

			PD/CD-20	PD/CD-20		PDCD-20		
2 detached units	2	N	PD/CD	PD/CD	S	PD/CD	Y	Y
Primary Residence with one accessory <u>dwelling</u> 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]

ORS 197.307 requires standards for all housing to be clear and objective. ORS 197.312 requires that at least one ADU be allowed for each detached single-family dwelling, subject to reasonable siting and design regulations. Reasonable siting and design regulations does not include owner-occupancy requirements of either the primary or accessory structure or requirements to construct additional off-street parking. As proposed, ADC Section 3.080(4) satisfies this ORS requirement by removing the restrictions on detached ADUs, including owner-occupancy and additional off-street parking and allowing ADUs in all Article 3 zones where a single-detached house is permitted. A revised definition of an ADU is provided in Article 22 – Definitions.

- ~~(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:~~
- ~~(4) One accessory apartment is permitted per primary single-family residence, called the “primary residence.” The accessory apartment may be:~~
- ~~(a) An addition to or within the primary residence, OR~~
- ~~(b) In a detached building built before February 1, 1998, OR~~
- ~~(c) On a lot in a subdivision of at least ten lots, when the tentative plat was approved after~~

~~July 1, 2007.~~

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

~~(a) One of the residences is owner occupied.~~

~~(b)~~(a) The size of an ~~accessory apartment~~ 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: ~~Accessory apartments~~ ADU greater than 750 square feet that were legally constructed before July 1, 2007, may remain).

~~(c) At least three off-street parking spaces are provided on the property to serve the two residences. [Ord. 5338, 1/28/98]~~

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

~~(e)~~(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 ~~accessory apartment units~~ ADUs must also meet the following development standards:

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

Interior Setback: 5 feet for one-story; 8 feet for two-story; and

Maximum Height: 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**

<b>ACCESSORY STRUCTURE STANDARDS</b>	
<b>STRUCTURE</b>	<b>STANDARD</b>
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)

<b>ACCESSORY STRUCTURE STANDARDS</b>	
Detached Structure walls greater than 8 feet tall (2)	Interior setback = 5 feet
Accessory <del>Apartments</del> <u>Dwelling Unit</u> 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
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**

<b>Commercial, Office and Industrial Zoning Districts</b>									
<b>Use Categories</b> (See Article 22 for use category descriptions)	<b>Spec. Cond.</b>	<b>OP</b>	<b>NC</b>	<b>CC</b>	<b>RC</b>	<b>TD</b>	<b>IP</b>	<b>LI</b>	<b>HI</b>
<b>INDUSTRIAL</b>									
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
<b>COMMERCIAL</b>									
Adult Entertainment		N	N	S-6	N	N	N	CU-6	N

Entertainment and Recreation:								CUII-7	
Indoor	7	N	N	S-7	S-7	S	S/CU-7	CU-7, 11	CU-7
Outdoor		N	N	S	S	N	N	N-7	CU
Offices: Traditional		S	S	S	S	S	CUII-8	N	N
Offices Industrial		S	N	S	N	N	S-8	S-9	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	25	CUII	S	S	S	S	S	N	N
w/ drive-thru or mostly delivery		N	CU-10	S	S	N	CU	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
<b>INSTITUTIONAL</b>									
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
<b>RESIDENTIAL</b>									
Assisted Living Facility		CU	CU	CU	N	N	N	N	N

Home Businesses (see 3.090-3.180 to determine if 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
<b>Use Categories (See Article 22 for use category descriptions.)</b>	<b>Spec. Cond.</b>	<b>OP</b>	<b>NC</b>	<b>CC</b>	<b>RC</b>	<b>TD</b>	<b>IP</b>	<b>LI</b>	<b>HI</b>
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
<b>OTHER CATEGORIES</b>									
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:

ORS 197.307 requires standards for all housing to be clear and objective. ORS 197.312 requires that at least one ADU be allowed for each single-family dwelling, subject to reasonable siting and

design regulations that does not include an owner occupancy requirement or additional off-street parking spaces. Proposed revisions to special condition 19 satisfy this ORS requirement by allowing ADUs to be constructed in the Office Professional (OP) and the Neighborhood Commercial (NC) zone, where single-family detached homes are permitted. Since ADC Article 4 does not have standards governing ADUs, proposed revisions require a new ADU to comply with the ADU standards in Article 5 – Mixed Use Zoning Districts. A revised definition of an ADU is provided in Article 22 – Definitions.

(19) Single-Family and Two-Family Units ~~in the OP zone.~~

(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).

~~(a)~~(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:

ORS 197.307 requires standards for all housing to be clear and objective. ORS 197.312 requires that at least one ADU be allowed for each single-family dwelling, subject to reasonable siting and design regulations. Reasonable siting and design regulations does not include owner-occupancy requirements of either the primary or accessory structure or requirements to construct additional off-street parking. As proposed, ADC Section 5.070(15) satisfies this ORS requirement by removing the restrictions on detached ADUs, including owner-occupancy and additional off-street parking and allowing ADUs in all Article 5 zones where a single-detached house is permitted, including the MUR zone. A revised definition of an ADU is provided in Article 22 – Definitions.

- (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 Apartments. One accessory apartment is permitted per single-family residence on a property. The single-family residence is referred to as the “primary residence” below.~~

~~The accessory apartment may be:~~

- ~~• An addition to or within the primary residence; OR~~
- ~~• In a detached building built before February 1, 1998; OR~~
- ~~• On a lot in a subdivision of at least 10 lots, when the tentative plat was approved after July 1, 2007.~~

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

~~(a) One of the residences is owner-occupied.~~

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

~~(b)(c)~~ The front door of an ADU accessory apartment 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 apartment-ADU front door is set back at least five feet from the front facade of the primary residence.

~~(b)(e)~~ At least three off-street parking spaces are provided on the property to serve the two residences.

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

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

~~(b)(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: apartments~~ 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:

*Staff Recommendation:*

Staff proposes the following amendments to ADC 7.010 in order to comply with state law: Amend ADC 7.010(2) to clarify that National Register Resources listed on or before February 23, 2018 (the effective date of the rule) continue to be subject to the regulations of Article 7. Add ADC 7.010(3) to clarify that demolition/relocation review is required for all National Register Resources.

*Background Information:*

OAR 660-023-0200 states that local governments must amend land use regulations to protect National Register Resources. The term “protect” is defined as “review of applications for demolition, relocation, or major exterior alterations of a [National Register Resource].” This “review” must at a minimum include a public hearing process that results in approval, approval with conditions, or denial upon consideration of 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 acknowledge comprehensive plan. Local jurisdictions may exclude accessory structures and non-contributing resources within a National Register nomination from protection.

OAR 660-023-0200 further states that local government may provide additional protection of National Register Resources at its discretion through a public hearing process. Protection measure applied by a local government to a National Register resource listed before the effective date of the rule (February 23, 2018) continue to apply until the local government amends or removes them.

**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 ~~that appear listed~~ on the City’s adopted Local Historic Inventory, including ~~individually designated~~ National Register Historic ~~Landmarks~~ Resources listed prior to February 23, 2018.
- (2)(3) All National Register Resources are subject to Sections 7.300 – 7.370.

**Staff Recommendation:**

Staff proposes to amend ADC 7.015 to correct an outdated reference to a subsection that no longer exists.

**Background Information:**

ADC 1.080(2) was amended to ADC 1.080(3) by Ord. 5768, effective 12/1/11 and then repealed by Ord. 5832, effective 4/19/14. Ord 5832 included an amended of ADC 1.080, to increase the expiration of historic reviews approval from one year to three years (like other land use decisions) and added an opportunity for an extension of the approval period.

**7.015 Expiration of Historic Review Approval.** See Article 1, Section 1.080 (~~12~~).

[Ord. 5720, 08/12/2009]

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

Staff proposes to amend the term “Demolition” to what is provided under OAR 660-023-0200(1)(a). The term definition under OAR 660-023-0200(1)(a) applies directly to local land use decision regarding a National Register Resource. This definition applies directly to other local land use decision regarding a historic resource unless the local comprehensive plan or land use regulations contain a different definition.

Demolition: ~~The intentional destruction of all or part of a building or structure. 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.~~

Staff proposes to amend the title and definition of the Landmarks Commission to reflect recent changes to Albany Municipal Code Chapter 2.76 regarding the title, appointment process, and decision-making authority of the Landmarks Commission under Ord. 5928 eff. 6/21/19 and Ord 5931 eff. 8/23/19.

Landmarks Advisory Commission: ~~The Mayor appoints the Commission to make advisory recommendations about historic districts, conservation districts, buildings and sites. The Commission has the authority to recommend rules and regulations for adoption; compile and maintain a list of all historic buildings, sites and objects; conduct an educational program on historic properties within its jurisdiction; make recommendations about the designation of particular historic buildings and sites; and recommend removal from any list of designated historic buildings and sites any property it finds no longer worthy of such designation. 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.~~ [Ord. 5488, 7/11/01]

Local Historic Inventory: A list of historic properties that have been determined significant by the Landmarks ~~Advisory~~ 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.

Staff proposes to add “National Register Resource” as defined in OAR 660-023-0200(1)(g).

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).

*Staff Recommendation:*

Staff proposes to amend ADC 7.030 to comply with state law. National Register Resources may not be “automatically” designated to a “resource list” or regulated under Article 7 without designating the National Register Resource a “locally significant historic resource” or adding additional protections.

Future evaluation of terminology under ADC 7.020 is recommended to ensure accuracy and clarity in interpretation of Article 7. For example, the term Local Historic Inventory presently describes the City’s resource list not the inventory which is the record used to identify historic resource that may be determined significant and designated to the resource list.

*Background Information:*

A resource list is a list of Locally Significant Historic Resources adopted by a local government as significant to the community and afforded the protection under Article 7.

Locally Significant Historic Resources are buildings, structure, object, sites, or districts deemed by a local government to be a significant resource according to the requirements of OAR 660-023 and criteria in the comprehensive plan.

**7.030 Purpose.** The designation of historic landmarks allows the City to formally recognize, rate and protect its historic and architectural resources. ~~Properties listed on the National Register of Historic Places are eligible for automatic listing on the Local Historic Inventory.~~ 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 ~~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. 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 ~~Advisory~~ 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 ~~Advisory~~ 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 ~~Advisory~~ 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 ~~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.

**7.120 Procedure.** A request for an exterior alteration is reviewed and processed by either the Community Development Director or the Landmarks ~~Advisory~~ Commission. The Landmarks ~~Advisory~~ 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 ~~Advisory~~ Commission will review and process the alteration proposal. The applicant and adjoining property owners within 100 feet will receive notification of the Landmarks ~~Advisory~~ 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 ~~Advisory~~ 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 ~~Advisory~~ 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 ~~Advisory~~ Commission. The Landmarks ~~Advisory~~ 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 ~~Advisory~~ 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 ~~Advisory~~ 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 ~~Advisory~~ 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 ~~Advisory~~ Commission decisions may be appealed to the Albany City Council. Decisions of the Community Development Director may be appealed to the Landmarks ~~Advisory~~ 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 ~~Advisory~~ Commission for a decision.

**7.270 New Construction Review Criteria.** The Community Development Director or the Landmarks ~~Advisory~~ 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 ~~Advisory~~ Commission decisions may be appealed to the Albany City Council. Decisions of the Community.

*Staff Recommendation:*

Staff proposes the following three amendments to comply with state law: 1) Amend ADC 7.310 to clarify that relocation and demolition review of National Register Resources may not be done through a Type I review procedure. 2) Amend ADC 7.330 to ensure that factors listed in OAR 660-023-0200(8)(a) are taken into consideration during relocation or demolition review of a National Register Resource. 3) Amend ADC 7.350 to clarify that relocation and demolition review of National Register Resources may not be done through a Type I review procedure. 4) Amend ADC 7.360 to clarify that denial is a decision outcome for relocation or demolition review.

Staff further proposed to add ADC 7.370 to align the issuance of a demolition permit with the conclusion of the demolition review appeal period.

**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, an historic district,~~
  - (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 ~~Advisory~~ Commission. 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.

[Ord. 5463, 9/13/00]

**7.330 Review Criteria.** The Landmarks ~~Advisory~~ 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 Landmark on the Local Historic Inventory 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 ~~Advisory~~ Commission may ~~either~~ approve, approve with conditions, ~~the request or~~ invoke a stay to the demolition, ~~or deny the application.~~ 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 to the demolition, or denial shall specify the basis for the decision. Decisions of the Landmarks ~~Advisory~~ 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**

ADC 8.110(3) has been modified, below, to make it clear that Design Standards do not apply to detached accessory dwelling units.

- (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, ~~to~~ 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 ~~Advisory~~ 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 ~~Advisory~~ 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 ~~Advisory~~ 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 ~~Advisory~~ 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~~ ~~apartments~~ 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 ~~Apartment~~ Dwelling Unit: A self-contained living unit that is attached to or ~~a part of interior to the primary~~ a single-family dwelling, ~~a detached structure, or construction within a portion of~~ a detached accessory structure ~~(e.g. above a garage or workshop) built before February 1, 1998, or constructed in a subdivision platted after July 1, 2007, and~~ that is incidental and subordinate to the principal dwelling unit (primary residence).

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



## 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

October 21, 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]

The table below is amended to clarify that an accessory unit is an accessory dwelling unit.

#### 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
<b>RESIDENTIAL SINGLE FAMILY: One Unit per Property</b>								
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
<b>RESIDENTIAL TWO FAMILY: Two Units per Property</b>								
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]

ORS 197.307 requires standards for all housing to be clear and objective. ORS 197.312 requires that at least one ADU be allowed for each detached single-family dwelling, subject to reasonable siting and design regulations. Reasonable siting and design regulations does not include owner-occupancy requirements of either the primary or accessory structure or requirements to construct additional off-street parking. As proposed, ADC Section 3.080(4) satisfies this ORS requirement by removing the restrictions on detached ADUs, including owner-occupancy and additional off-street parking and allowing ADUs in all Article 3 zones where a single-detached house is permitted. A revised definition of an ADU is provided in Article 22 – Definitions.

- (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 legally 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:

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

Interior Setback: 5 feet for one-story; 8 feet for two-story; and

Maximum Height: 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**

<b>ACCESSORY STRUCTURE STANDARDS</b>	
<b>STRUCTURE</b>	<b>STANDARD</b>
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.

<b>ACCESSORY STRUCTURE STANDARDS</b>	
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
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**

<b>Commercial, Office and Industrial Zoning Districts</b>									
<b>Use Categories</b> (See Article 22 for use category descriptions)	<b>Spec. Cond.</b>	<b>OP</b>	<b>NC</b>	<b>CC</b>	<b>RC</b>	<b>TD</b>	<b>IP</b>	<b>LI</b>	<b>HI</b>
<b>INDUSTRIAL</b>									
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
<b>COMMERCIAL</b>									
Adult Entertainment		N	N	S-6	N	N	N	CU-6	N
Entertainment and Recreation:								CUII-7	
Indoor	7	N	N	S-7	S-7	S	S/CU-7	CU-7, 11	CU-7
Outdoor		N	N	S	S	N	N	N-7	CU
Offices: Traditional		S	S	S	S	S	CUII-8	N	N
Offices Industrial		S	N	S	N	N	S-8	S-9	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		CUII	S	S	S	S	S	N	N
w/ drive-thru or mostly delivery	25	N	CU-10	S	S	N	CU	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
<b>INSTITUTIONAL</b>									
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
<b>RESIDENTIAL</b>									
Assisted Living Facility		CU	CU	CU	N	N	N	N	N
Home Businesses (see 3.090-3.180 to determine if 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
<b>Use Categories (See Article 22 for use category descriptions.)</b>	<b>Spec. Cond.</b>	<b>OP</b>	<b>NC</b>	<b>CC</b>	<b>RC</b>	<b>TD</b>	<b>IP</b>	<b>LI</b>	<b>HI</b>
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
<b>OTHER CATEGORIES</b>									

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:

ORS 197.307 requires standards for all housing to be clear and objective. ORS 197.312 requires that at least one ADU be allowed for each single-family dwelling, subject to reasonable siting and design regulations that does not include an owner occupancy requirement or additional off-street parking spaces. Proposed revisions to special condition 19 satisfy this ORS requirement by allowing ADUs to be constructed in the Office Professional (OP) and the Neighborhood Commercial (NC) zone, where single-family detached homes are permitted. Since ADC Article 4 does not have standards governing ADUs, proposed revisions require a new ADU to comply with the ADU standards in Article 5 – Mixed Use Zoning Districts. A revised definition of an ADU is provided in Article 22 – Definitions.

(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:

ORS 197.307 requires standards for all housing to be clear and objective. ORS 197.312 requires that at least one ADU be allowed for each single-family dwelling, subject to reasonable siting and design regulations. Reasonable siting and design regulations does not include owner-occupancy requirements of either the primary or accessory structure or requirements to construct additional off-street parking. As proposed, ADC Section 5.070(15) satisfies this ORS requirement by removing the restrictions on detached ADUs, including owner-occupancy and additional off-street parking and allowing ADUs in all Article 5 zones where a single-detached house is permitted, including the MUR zone. A revised definition of an ADU is provided in Article 22 – Definitions.

- (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:

*Staff Recommendation:*

Staff proposes the following amendments to ADC 7.010 in order to comply with state law: Amend ADC 7.010(2) to clarify that National Register Resources listed on or before February 23, 2018 (the effective date of the rule) continue to be subject to the regulations of Article 7. Add ADC 7.010(3) to clarify that demolition/relocation review is required for all National Register Resources.

*Background Information:*

OAR 660-023-0200 states that local governments must amend land use regulations to protect National Register Resources. The term “protect” is defined as “review of applications for demolition, relocation, or major exterior alterations of a [National Register Resource].” This “review” must at a minimum include a public hearing process that results in approval, approval with conditions, or denial upon consideration of 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 acknowledge comprehensive plan. Local jurisdictions may exclude accessory structures and non-contributing resources within a National Register nomination from protection.

OAR 660-023-0200 further states that local government may provide additional protection of National Register Resources at its discretion through a public hearing process. Protection measure applied by a local government to a National Register resource listed before the effective date of the rule (February 23, 2018) continue to apply until the local government amends or removes them.

**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.

***Staff Recommendation:***

Staff proposes to amend ADC 7.015 to correct an outdated reference to a subsection that no longer exists.

***Background Information:***

ADC 1.080(2) was amended to ADC 1.080(3) by Ord. 5768, effective 12/1/11 and then repealed by Ord. 5832, effective 4/19/14. Ord 5832 included an amended of ADC 1.080, to increase the expiration of historic reviews approval from one year to three years (like other land use decisions) and added an opportunity for an extension of the approval period.

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

[Ord. 5720, 08/12/2009]

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

Staff proposes to amend the term "Demolition" to what is provided under OAR 660-023-0200(1)(a). The term definition under OAR 660-023-0200(1)(a) applies directly to local land use decision regarding a National Register Resource. This definition applies directly to other local land use decision regarding a historic resource unless the local comprehensive plan or land use regulations contain a different definition.

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.

Staff proposes to amend the title and definition of the Landmarks Commission to reflect recent changes to Albany Municipal Code Chapter 2.76 regarding the title, appointment process, and decision-making authority of the Landmarks Commission under Ord. 5928 eff. 6/21/19 and Ord 5931 eff. 8/23/19.

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. [Ord. 5488, 7/11/01]

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.

Staff proposes to add “National Register Resource” as defined in OAR 660-023-0200(1)(g).

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).

*Staff Recommendation:*

Staff proposes to amend ADC 7.030 to comply with state law. National Register Resources may not be “automatically” designated to a “resource list” or regulated under Article 7 without designating the National Register Resource a “locally significant historic resource” or adding additional protections.

Future evaluation of terminology under ADC 7.020 is recommended to ensure accuracy and clarity in interpretation of Article 7. For example, the term Local Historic Inventory presently describes the City’s resource list not the inventory which is the record used to identify historic resource that may be determined significant and designated to the resource list.

*Background Information:*

A resource list is a list of Locally Significant Historic Resources adopted by a local government as significant to the community and afforded the protection under Article 7.

Locally Significant Historic Resources are buildings, structure, object, sites, or districts deemed by a local government to be a significant resource according to the requirements of OAR 660-023 and criteria in the comprehensive plan.

**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

**Staff Recommendation:**

Staff proposes the following three amendments to comply with state law: 1) Amend ADC 7.310 to clarify that relocation and demolition review of National Register Resources may not be done through a Type I review procedure. 2) Amend ADC 7.330 to ensure that factors listed in OAR 660-023-0200(8)(a) are taken into consideration during relocation or demolition review of a National Register Resource. 3) Amend ADC 7.350 to clarify that relocation and demolition review of National Register Resources may not be done through a Type I review procedure. 4) Amend ADC 7.360 to clarify that denial is a decision outcome for relocation or demolition review.

Staff further proposed to add ADC 7.370 to align the issuance of a demolition permit with the conclusion of the demolition review appeal period.

**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**

ADC 8.110(3) has been modified, below, to make it clear that Design Standards do not apply to detached accessory dwelling units.

- (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.

80th OREGON LEGISLATIVE ASSEMBLY--2019 Regular Session

# Enrolled Senate Bill 1051

Sponsored by Senators BEYER, DEMBROW, Representative POWER

CHAPTER .....

AN ACT

Relating to mitigating fuel costs; creating new provisions; amending sections 42, 46 and 47, chapter \_\_\_\_\_, Oregon Laws 2019 (Enrolled House Bill 2020); repealing section 48, chapter \_\_\_\_\_, Oregon Laws 2019 (Enrolled House Bill 2020); and prescribing an effective date.

**Be It Enacted by the People of the State of Oregon:**

## CREDIT FOR FUEL USED TO PROPEL ELIGIBLE MOTOR VEHICLES ON PUBLIC HIGHWAYS

**SECTION 1. As used in sections 1 to 5 of this 2019 Act:**

- (1) "Eligible motor vehicle" means a passenger motor vehicle that is powered by fuel.
- (2) "Eligible person" means an individual with an adjusted gross income that does not exceed 250 percent of the federal poverty guidelines, based on the individual's household size and household members.
- (3) "Fuel" means:
  - (a) Motor vehicle fuel as defined in ORS 319.010; and
  - (b) Fuel as defined in ORS 319.520.
- (4) "Median vehicle miles traveled" means, for a county, the median number of miles traveled, per eligible motor vehicle, by residents of that county who are eligible persons using eligible motor vehicles.
- (5) "Oregon Climate Action Program" has the meaning given that term in section 15, chapter \_\_\_\_\_, Oregon Laws 2019 (Enrolled House Bill 2020).
- (6) "Per-gallon carbon price" means the portion of the price of a gallon of fuel in Oregon that is attributable to the cost to a fuel producer or importer of being regulated under the Oregon Climate Action Program.

**SECTION 2. (1)(a) Not later than August 15 of each year, the Department of Transportation, in consultation with the Climate Policy Office, shall prepare an annual estimate of the per-gallon carbon price and, for each county, an annual estimate of:**

- (A) The median vehicle miles traveled for that county; and
  - (B) The median number of gallons of fuel used by an eligible motor vehicle in traveling the median vehicle miles traveled for that county.
- (b) The annual estimate of the per-gallon carbon price required under paragraph (a) of this subsection shall be expressed in a positive amount of dollars per gallon of fuel.
- (c) The department may contract with an independent third-party organization to assist in preparing the estimates required under this subsection.

(2) Using the estimates prepared under subsection (1) of this section, the department shall develop a schedule that lists for each county the annual per capita credit amount available to each eligible person who is a resident of the county. The annual per capita credit amount shall be computed:

(a) To reflect the median number of gallons of fuel used by an eligible motor vehicle in traveling the median vehicle miles traveled for the county, multiplied by the applicable per-gallon carbon price;

(b) To closely approximate the carbon price indirectly paid by eligible persons in the county through the purchase of fuel to propel eligible motor vehicles on the public highways; and

(c) To reflect any adjustments necessary to account for differences between the total moneys available for issuance of credits during the previous calendar year in the Climate Action Reimbursement Fund established under section 5 of this 2019 Act and the total moneys issued as payment of credits during the previous calendar year, if the amount claimed as credits exceeded the total moneys available.

(3) Not later than August 15 of each year, the Department of Transportation shall notify the Department of Revenue of, as calculated for each county for the immediately preceding fiscal year:

(a) The estimates required under this section; and

(b) The annual per capita credit amount available to an eligible person.

(4) The Department of Transportation may adopt rules necessary to carry out this section.

**SECTION 3.** (1) Each eligible person may apply for a credit under this section in an amount equal to the annual per capita credit amount for the county in which the eligible person resided as of December 31 of the year for which the credit is applied for, as computed under section 2 of this 2019 Act.

(2) The Department of Revenue shall provide a means on the personal income tax return, beginning with returns filed for tax years beginning on or after January 1, 2021, by which an eligible person may apply for the credit. An eligible person may apply for the credit on the return filed by the eligible person for any personal income tax year beginning on or after the date on which the estimate required under section 2 of this 2019 Act is made.

(3) The department shall allow for an eligible person who is not required to file a personal income tax return to apply for the credit in a form prescribed by the department by rule.

(4) An eligible person claiming a credit under this section shall provide to the department:

(a) Proof of registration in Oregon, as of December 31 of the year for which the credit is applied for, to the eligible person of at least one eligible motor vehicle; and

(b) Any other information required by the department by rule.

(5) The amount of credit allowed under this section shall equal, for residents of each county:

(a) Twice the amount of the per capita credit amount listed for that county on the schedule developed under section 2 of this 2019 Act, if claimed on a joint return, provided the return includes proof of registration of two eligible motor vehicles; or

(b) The per capita credit amount listed for that county on the schedule developed under section 2 of this 2019 Act, for credits claimed on all types of personal income tax returns other than joint returns.

(6) In no event may more than twice the per capita credit amount be allowed on the basis of one return, regardless of the number of eligible motor vehicles registered to an eligible person.

(7) The amounts authorized under this section shall be credited by the department out of the Climate Action Reimbursement Fund established under section 5 of this 2019 Act and in the manner of refund payments in excess of tax liability under ORS chapter 316.

(8) Amounts received through a credit issued under this section are exempt from personal income taxation under Oregon law.

(9) Credits allowed under this section do not bear interest.

**SECTION 4.** Except as otherwise provided in section 3 of this 2019 Act, or where the context requires otherwise, the provisions of ORS chapters 305 and 314 as to the audit and examination of reports and returns, periods of limitation, determination of and notices of deficiencies, assessments, collections, liens, delinquencies, claims for refund and refunds, conferences, appeals to the Oregon Tax Court, stays of collection pending appeal, confidentiality of returns and the penalties and procedures relative thereto, apply to the determinations of taxes, credits, penalties and interest under section 3 of this 2019 Act.

**SECTION 5.** The Climate Action Reimbursement Fund is established in the State Treasury, separate and distinct from the General Fund. The Climate Action Reimbursement Fund shall consist of moneys transferred to the fund under section 42, chapter \_\_\_\_\_, Oregon Laws 2019 (Enrolled House Bill 2020). Interest earned by the fund shall be credited to the fund. Moneys in the fund are continuously appropriated to the Department of Revenue to issue credits under section 3 of this 2019 Act and to pay the administrative expenses of the department in connection with implementation and administration of sections 1 to 5 of this 2019 Act.

#### REFUND FOR FUEL USED IN CERTAIN FARM OR FOREST ACTIVITIES

**SECTION 6.** (1) As used in this section, “fuel” and “per-gallon carbon price” have the meaning given those terms in section 1 of this 2019 Act.

(2) The following persons may apply to the Department of Transportation for a refund equal to the number of gallons of fuel used during a calendar year for the following purposes, multiplied by the per-gallon carbon price for that calendar year, as estimated by the department under section 2 of this 2019 Act:

(a) A farmer, as defined in ORS 319.320 (4), for fuel used in farming operations in the operation of any motor vehicle on any road, thoroughfare or property in private ownership.

(b) Any person, for fuel used in operation of a motor vehicle on any road, thoroughfare or property, other than a state highway, county road or city street, for the removal of forest products as defined in ORS 321.005, or the product of forest products converted to a form other than logs at or near the harvesting site, or when used for the construction or maintenance of the road, thoroughfare or property, pursuant to a written agreement or permit authorizing the use, construction or maintenance of the road, thoroughfare or property, with:

- (A) An agency of the United States;
- (B) The State Board of Forestry;
- (C) The State Forester; or
- (D) A licensee of an agency named in this paragraph.

(c) Any person, for fuel used in operation of a motor vehicle on any county road for the removal of forest products as defined in ORS 321.005, or the products of forest products converted to a form other than logs at or near the harvesting site, if:

(A) The use of the county road is pursuant to a written agreement entered into with the State Board of Forestry, the State Forester or an agency of the United States, authorizing the person to use the road and requiring the person to pay for or to perform the construction or maintenance of the county road;

(B) The board, officer or agency that entered into the agreement or granted the permit, by contract with the county court or board of county commissioners, has assumed the responsibility for the construction or maintenance of the county road; and

(C) Copies of the agreements or permits required by this subsection are filed with the Director of Transportation.

(3) An application for a refund under this section shall be in a form prescribed by the Department of Transportation by rule and must include a statement, signed by the applicant under penalties for false swearing, that sets forth the number of gallons of fuel proposed under subsection (2) of this section as the basis for computing the amount of the refund. An application for a refund under this section must be filed with the department within 15 months of the date of purchase of fuel proposed under subsection (2) of this section as the basis for computing the amount of the refund.

(4)(a) The department may investigate a refund application submitted under this section and gather and compile such information related to the application as the department considers necessary.

(b) The department may examine the relevant records of the applicant in order to establish the validity of an application.

(c) If an applicant does not permit the department to examine the relevant records, the applicant waives all rights to the refund to which the application relates.

(5)(a) The department shall reject or approve an application for a refund submitted under this section.

(b) The department may allow the applicant to modify an application without refiling to any reasonable extent necessary for approval of the application.

(c) If the department rejects an application, the department shall notify the applicant and explain the reasons for the rejection. An applicant may request review of a rejection in the manner prescribed for a contested case under ORS chapter 183.

(d) If the department approves an application, the department shall notify the applicant and issue payment of the refund.

(6) The refunds authorized under this section shall be paid by the department out of the Farm and Forest Climate Action Reimbursement Fund established under section 7 of this 2019 Act.

(7) The refunds available under this section shall be in addition to and not in lieu of any other refund available pursuant to ORS 319.320 or 319.831.

(8) Amounts received through a refund issued under this section are exempt from personal income taxation under Oregon law.

(9) Refunds allowed under this section do not bear interest.

(10) The department may adopt rules necessary to carry out this section.

**SECTION 7.** (1) The Farm and Forest Climate Action Reimbursement Fund is established in the State Treasury, separate and distinct from the General Fund. Interest earned by the Farm and Forest Climate Action Reimbursement Fund shall be credited to the fund. Moneys in the fund are continuously appropriated to the Department of Transportation to issue refunds under section 6 of this 2019 Act and to pay the administrative expenses of the department in connection with implementation and administration of section 6 of this 2019 Act.

(2) The Farm and Forest Climate Action Reimbursement Fund shall consist of:

(a) Moneys transferred to the fund under section 42, chapter \_\_\_\_\_, Oregon Laws 2019 (Enrolled House Bill 2020);

(b) Moneys allocated from the Climate Investments Fund established under section 46, chapter \_\_\_\_\_, Oregon Laws 2019 (Enrolled House Bill 2020);

(c) Funds appropriated by the Legislative Assembly; and

(d) Any moneys deposited in the fund from any other public or private source.

## **TRANSPORTATION DECARBONIZATION INVESTMENTS ACCOUNT AMENDMENTS**

**SECTION 8.** If House Bill 2020 becomes law, section 42, chapter \_\_\_\_\_, Oregon Laws 2019 (Enrolled House Bill 2020), is amended to read:

**Sec. 42.** (1) The Transportation Decarbonization Investments Account is established as a separate account within the State Highway Fund. Interest earned by the Transportation Decarbonization Investments Account shall be credited to the account.

(2) Moneys in the Transportation Decarbonization Investments Account are continuously appropriated to the Department of Transportation for the purposes described in subsections (4) and (5) of this section and sections 43 and 44, **chapter \_\_\_\_\_, Oregon Laws 2019 (Enrolled House Bill 2020)** [of this 2019 Act].

(3) The Transportation Decarbonization Investments Account consists of moneys deposited in the account under sections 34 and 35, **chapter \_\_\_\_\_, Oregon Laws 2019 (Enrolled House Bill 2020)** [of this 2019 Act].

(4)(a) Of the moneys deposited in the Transportation Decarbonization Investments Account each biennium, **the department shall:**

(A) **First, transfer 30 percent to the Climate Action Reimbursement Fund established under section 5 of this 2019 Act; and**

(B) **Second, transfer an amount to the Farm and Forest Climate Action Reimbursement Fund established under section 7 of this 2019 Act, as necessary to pay the refunds authorized under section 6 of this 2019 Act for which moneys in the Transportation Decarbonization Investments Account may constitutionally be used.**

(b) **Of the moneys available each biennium after meeting the requirements of paragraph (a) of this subsection:**

[(a)] (A) 50 percent shall be used by the Department of Transportation for transportation projects selected by the Oregon Transportation Commission pursuant to section 44, **chapter \_\_\_\_\_, Oregon Laws 2019 (Enrolled House Bill 2020)** [of this 2019 Act]; and

[(b)] (B) 50 percent shall be used to provide grants for transportation projects pursuant to sections 43 and 44, **chapter \_\_\_\_\_, Oregon Laws 2019 (Enrolled House Bill 2020)**, [of this 2019 Act] and to provide technical assistance, which may include grant writing assistance, to applicants for and recipients of the grants.

(5) The amount of moneys used to provide technical assistance under subsection [(4)(b)] **(4)(b)(B)** of this section may not exceed one percent of the amount of moneys [deposited in the account each biennium] **available each biennium after meeting the requirements of subsection (4)(a) of this section.**

(6) Expenditures [from the Transportation Decarbonization Investments Account] **under subsection (4)(b) of this section** shall, to the extent feasible and consistent with law, be in addition to and not in replacement of any existing allocation or appropriation for transportation projects.

(7) Examples of uses of moneys [deposited in the Transportation Decarbonization Investments Account] **pursuant to subsection (4)(b) of this section** may include, but are not limited to, uses related to:

(a) Enhancing roadway drainage, improving slope stability, investment in the safe routes to schools program established under ORS 184.741, the repower, retrofit or replacement of certain diesel engines, reducing vehicle miles traveled through bike, pedestrian or other multimodal improvements and traffic signal optimization; and

(b) Increasing the resilience of transportation infrastructure and evacuation routes against the effects of climate change, extreme precipitation, sea level rise, and extreme temperatures and wildfires.

#### **CLIMATE INVESTMENTS FUND AMENDMENTS**

**SECTION 9.** If House Bill 2020 becomes law, section 46, chapter \_\_\_\_\_, Oregon Laws 2019 (Enrolled House Bill 2020), is amended to read:

**Sec. 46.** (1) The Climate Investments Fund is established in the State Treasury, separate and distinct from the General Fund. The Climate Investments Fund shall consist of moneys deposited in the fund under sections 34 and 35, **chapter \_\_\_\_\_, Oregon Laws 2019 (Enrolled House Bill**

**2020**) [of this 2019 Act]. Interest earned by the fund shall be credited to the fund. The Oregon Department of Administrative Services shall administer the fund.

(2) Moneys in the fund are continuously appropriated to be used only for programs, projects and activities that further one or more of the purposes set forth in section 14, **chapter \_\_\_\_\_, Oregon Laws 2019 (Enrolled House Bill 2020)**, [of this 2019 Act] consistent with section 59, **chapter \_\_\_\_\_, Oregon Laws 2019 (Enrolled House Bill 2020)** [of this 2019 Act].

(3) The Legislative Assembly shall allocate the moneys deposited in the fund as informed by the biennial climate action investment plan delivered by the Climate Policy Office under section 57, **chapter \_\_\_\_\_, Oregon Laws 2019 (Enrolled House Bill 2020)** [of this 2019 Act].

(4) Of the moneys deposited in the fund each biennium:

(a) 10 percent shall be allocated for uses that directly benefit eligible Indian tribes, as defined in section 15, **chapter \_\_\_\_\_, Oregon Laws 2019 (Enrolled House Bill 2020)** [of this 2019 Act];

(b) 40 percent shall be allocated for uses that benefit impacted communities, as defined in section 15, **chapter \_\_\_\_\_, Oregon Laws 2019 (Enrolled House Bill 2020)** [of this 2019 Act];

(c) 20 percent shall be allocated for uses that benefit natural and working lands, as defined in section 15, **chapter \_\_\_\_\_, Oregon Laws 2019 (Enrolled House Bill 2020)** [of this 2019 Act];

(d) No more than one percent shall be allocated to provide technical assistance to applicants for or recipients of moneys described in paragraphs (a) to (c) of this subsection; [and]

(e) \$10 million shall be allocated for deposit in the Just Transition Fund established in section 51, **chapter \_\_\_\_\_, Oregon Laws 2019 (Enrolled House Bill 2020)**, [of this 2019 Act] to be used to establish a Just Transition Program and develop a Just Transition Plan pursuant to section 52, **chapter \_\_\_\_\_, Oregon Laws 2019 (Enrolled House Bill 2020)** [of this 2019 Act.]; and

(f) **An amount shall be allocated for deposit in the Farm and Forest Climate Action Reimbursement Fund established under section 7 of this 2019 Act, as necessary for the payment of refunds authorized under section 6 of this 2019 Act that may not be paid with moneys deposited in the Transportation Decarbonization Investments Account established under section 42, chapter \_\_\_\_\_, Oregon Laws 2019 (Enrolled House Bill 2020).**

(5) Moneys allocated for investments and expenditures that benefit natural and working lands pursuant to subsection (4)(c) of this section shall be allocated to promote adaptation and resilience in the face of climate change and ocean acidification through actions that may include, but need not be limited to:

(a) Programs, projects or activities that achieve energy efficiency or emissions reductions in the agricultural sector such as through fertilizer management, soil management, bioenergy or biofuels;

(b) Programs, projects or activities that result in sequestration of carbon in forests, agricultural soils, and other terrestrial and aquatic areas;

(c) Improving forest and natural and working lands health and resilience to climate change impacts through actions including thinning, prescribed fire and wildland fire prevention;

(d) Project-specific planning, design and construction projects that reduce the storm water impacts of existing infrastructure and development;

(e) Reducing the risk of flooding by restoring natural floodplain ecological functions, protecting against damage caused by floods and protecting or restoring naturally functioning areas where floods occur;

(f) Improving the availability and reliability of water supplies for instream uses and out-of-stream uses;

(g) Projects to prepare for sea level rise and to restore and protect estuaries, fisheries, marine shoreline and inland habitats; and

(h) Increasing the ability to adapt to and remediate the impacts of ocean acidification.

(6) Allocations from the Climate Investments Fund shall, to the maximum extent feasible and consistent with law, be in addition to and not in replacement of any existing allocations or appropriations for programs, projects and activities.

**SECTION 10.** If House Bill 2020 becomes law, section 47, chapter \_\_\_\_\_, Oregon Laws 2019 (Enrolled House Bill 2020), is amended to read:

**Sec. 47.** The amendments to section 46, chapter \_\_\_\_\_, Oregon Laws 2019 (Enrolled House Bill 2020), [of this 2019 Act] by [section 48 of this 2019 Act] section 11 of this 2019 Act become operative on July 1, 2027.

**SECTION 11.** If House Bill 2020 becomes law, section 48, chapter \_\_\_\_\_, Oregon Laws 2019 (Enrolled House Bill 2020) (amending section 46, chapter \_\_\_\_\_, Oregon Laws 2019 (Enrolled House Bill 2020)), is repealed and section 46, chapter \_\_\_\_\_, Oregon Laws 2019 (Enrolled House Bill 2020), as amended by section 9 of this 2019 Act, is amended to read:

**Sec. 46.** (1) The Climate Investments Fund is established in the State Treasury, separate and distinct from the General Fund. The Climate Investments Fund shall consist of moneys deposited in the fund under sections 34 and 35, chapter \_\_\_\_\_, Oregon Laws 2019 (Enrolled House Bill 2020). Interest earned by the fund shall be credited to the fund. The Oregon Department of Administrative Services shall administer the fund.

(2) Moneys in the fund are continuously appropriated to be used only for programs, projects and activities that further one or more of the purposes set forth in section 14, chapter \_\_\_\_\_, Oregon Laws 2019 (Enrolled House Bill 2020), consistent with section 59, chapter \_\_\_\_\_, Oregon Laws 2019 (Enrolled House Bill 2020).

(3) The Legislative Assembly shall allocate the moneys deposited in the fund as informed by the biennial climate action investment plan delivered by the Climate Policy Office under section 57, chapter \_\_\_\_\_, Oregon Laws 2019 (Enrolled House Bill 2020).

(4) Of the moneys deposited in the fund each biennium:

(a) 10 percent shall be allocated for uses that directly benefit eligible Indian tribes, as defined in section 15, chapter \_\_\_\_\_, Oregon Laws 2019 (Enrolled House Bill 2020); **and**

[(b) 40 percent shall be allocated for uses that benefit impacted communities, as defined in section 15, chapter \_\_\_\_\_, Oregon Laws 2019 (Enrolled House Bill 2020);]

[(c) 20 percent shall be allocated for uses that benefit natural and working lands, as defined in section 15, chapter \_\_\_\_\_, Oregon Laws 2019 (Enrolled House Bill 2020);]

[(d) No more than one percent shall be allocated to provide technical assistance to applicants for or recipients of moneys described in paragraphs (a) to (c) of this subsection;]

[(e) \$10 million shall be allocated for deposit in the Just Transition Fund established in section 51, chapter \_\_\_\_\_, Oregon Laws 2019 (Enrolled House Bill 2020), to be used to establish a Just Transition Program and develop a Just Transition Plan pursuant to section 52, chapter \_\_\_\_\_, Oregon Laws 2019 (Enrolled House Bill 2020); and]

[(f)] (b) An amount shall be allocated for deposit in the Farm and Forest Climate Action Reimbursement Fund established under section 7 of this 2019 Act, as necessary for the payment of refunds authorized under section 6 of this 2019 Act that may not be paid with moneys deposited in the Transportation Decarbonization Investments Account established under section 42, chapter \_\_\_\_\_, Oregon Laws 2019 (Enrolled House Bill 2020).

[(5) Moneys allocated for investments and expenditures that benefit natural and working lands pursuant to subsection (4)(c) of this section shall be allocated to promote adaptation and resilience in the face of climate change and ocean acidification through actions that may include, but need not be limited to:]

[(a) Programs, projects or activities that achieve energy efficiency or emissions reductions in the agricultural sector such as through fertilizer management, soil management, bioenergy or biofuels;]

[(b) Programs, projects or activities that result in sequestration of carbon in forests, agricultural soils, and other terrestrial and aquatic areas;]

[(c) Improving forest and natural and working lands health and resilience to climate change impacts through actions including thinning, prescribed fire and wildland fire prevention;]

[(d) Project-specific planning, design and construction projects that reduce the storm water impacts of existing infrastructure and development;]

[(e) Reducing the risk of flooding by restoring natural floodplain ecological functions, protecting against damage caused by floods and protecting or restoring naturally functioning areas where floods occur;]

*[(f) Improving the availability and reliability of water supplies for instream uses and out-of-stream uses;]*

*[(g) Projects to prepare for sea level rise and to restore and protect estuaries, fisheries, marine shoreline and inland habitats; and]*

*[(h) Increasing the ability to adapt to and remediate the impacts of ocean acidification.]*

[(6)] (5) Allocations from the Climate Investments Fund shall, to the maximum extent feasible and consistent with law, be in addition to and not in replacement of any existing allocations or appropriations for programs, projects and activities.

#### CAPTIONS

**SECTION 12.** The unit captions used in this 2019 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2019 Act.

#### OPERATIVE DATE

**SECTION 13.** (1) Sections 1 to 7 of this 2019 Act and the amendments to sections 42 and 46, chapter \_\_\_\_\_, Oregon Laws 2019 (Enrolled House Bill 2020), by sections 8 and 9 of this 2019 Act become operative on January 1, 2021.

(2) The Department of Transportation and the Department of Revenue may adopt rules or take any actions before the operative date specified in subsection (1) of this section that are necessary to enable the departments, on and after the operative date specified in subsection (1) of this section, to carry out the provisions of sections 1 to 7 of this 2019 Act and the amendments to sections 42 and 46, chapter \_\_\_\_\_, Oregon Laws 2019 (Enrolled House Bill 2020), by sections 8 and 9 of this 2019 Act.

#### EFFECTIVE DATE

**SECTION 14.** This 2019 Act does not take effect unless House Bill 2020 becomes law.

**SECTION 15.** If House Bill 2020 becomes law, this 2019 Act takes effect on the later of:

(1) The 91st day after the date on which the 2019 regular session of the Eightieth Legislative Assembly adjourns sine die; or

(2) The effective date of chapter \_\_\_\_\_, Oregon Laws 2019 (Enrolled House Bill 2020).

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**Passed by Senate June 13, 2019**

.....  
Lori L. Brocker, Secretary of Senate

.....  
Peter Courtney, President of Senate

**Passed by House June 19, 2019**

.....  
Tina Kotek, Speaker of House

**Received by Governor:**

.....M.,....., 2019

**Approved:**

.....M.,....., 2019

.....  
Kate Brown, Governor

**Filed in Office of Secretary of State:**

.....M.,....., 2019

.....  
Bev Clarno, Secretary of State

80th OREGON LEGISLATIVE ASSEMBLY--2019 Regular Session

# Enrolled House Bill 2001

Sponsored by Representative KOTEK; Representatives FAHEY, HERNANDEZ, MARSH, MITCHELL, POWER, STARK, WILLIAMS, ZIKA (Presession filed.)

CHAPTER .....

AN ACT

Relating to housing; creating new provisions; amending ORS 197.296, 197.303, 197.312 and 455.610 and section 1, chapter 47, Oregon Laws 2018; and declaring an emergency.

**Be It Enacted by the People of the State of Oregon:**

**SECTION 1. Section 2 of this 2019 Act is added to and made a part of ORS chapter 197.**

**SECTION 2. (1) As used in this section:**

(a) "Cottage clusters" means groupings of no fewer than four detached housing units per acre with a footprint of less than 900 square feet each and that include a common courtyard.

(b) "Middle housing" means:

- (A) Duplexes;
- (B) Triplexes;
- (C) Quadplexes;
- (D) Cottage clusters; and
- (E) Townhouses.

(c) "Townhouses" means a dwelling unit constructed in a row of two or more attached units, where each dwelling unit is located on an individual lot or parcel and shares at least one common wall with an adjacent unit.

(2) Except as provided in subsection (4) of this section, each city with a population of 25,000 or more and each county or city within a metropolitan service district shall allow the development of:

(a) All middle housing types in areas zoned for residential use that allow for the development of detached single-family dwellings; and

(b) A duplex on each lot or parcel zoned for residential use that allows for the development of detached single-family dwellings.

(3) Except as provided in subsection (4) of this section, each city not within a metropolitan service district with a population of more than 10,000 and less than 25,000 shall allow the development of a duplex on each lot or parcel zoned for residential use that allows for the development of detached single-family dwellings. Nothing in this subsection prohibits a local government from allowing middle housing types in addition to duplexes.

(4) This section does not apply to:

- (a) Cities with a population of 1,000 or fewer;
- (b) Lands not within an urban growth boundary;
- (c) Lands that are not incorporated and also lack sufficient urban services, as defined in ORS 195.065;

(d) Lands that are not zoned for residential use, including lands zoned primarily for commercial, industrial, agricultural or public uses; or

(e) Lands that are not incorporated and are zoned under an interim zoning designation that maintains the land's potential for planned urban development.

(5) Local governments may regulate siting and design of middle housing required to be permitted under this section, provided that the regulations do not, individually or cumulatively, discourage the development of all middle housing types permitted in the area through unreasonable costs or delay. Local governments may regulate middle housing to comply with protective measures adopted pursuant to statewide land use planning goals.

(6) This section does not prohibit local governments from permitting:

(a) Single-family dwellings in areas zoned to allow for single-family dwellings; or

(b) Middle housing in areas not required under this section.

**SECTION 3.** (1) Notwithstanding ORS 197.646, a local government shall adopt land use regulations or amend its comprehensive plan to implement section 2 of this 2019 Act no later than:

(a) June 30, 2021, for each city subject to section 2 (3) of this 2019 Act; or

(b) June 30, 2022, for each local government subject to section 2 (2) of this 2019 Act.

(2) The Land Conservation and Development Commission, with the assistance of the Building Codes Division of the Department of Consumer and Business Services, shall develop a model middle housing ordinance no later than December 31, 2020.

(3) A local government that has not acted within the time provided under subsection (1) of this section shall directly apply the model ordinance developed by the commission under subsection (2) of this section under ORS 197.646 (3) until the local government acts as described in subsection (1) of this section.

(4) In adopting regulations or amending a comprehensive plan under this section, a local government shall consider ways to increase the affordability of middle housing by considering ordinances and policies that include but are not limited to:

(a) Waiving or deferring system development charges;

(b) Adopting or amending criteria for property tax exemptions under ORS 307.515 to 307.523, 307.540 to 307.548 or 307.651 to 307.687 or property tax freezes under ORS 308.450 to 308.481; and

(c) Assessing a construction tax under ORS 320.192 and 320.195.

(5) When a local government makes a legislative decision to amend its comprehensive plan or land use regulations to allow middle housing in areas zoned for residential use that allow for detached single-family dwellings, the local government is not required to consider whether the amendments significantly affect an existing or planned transportation facility.

**SECTION 4.** (1) Notwithstanding section 3 (1) or (3) of this 2019 Act, the Department of Land Conservation and Development may grant to a local government that is subject to section 2 of this 2019 Act an extension of the time allowed to adopt land use regulations or amend its comprehensive plan under section 3 of this 2019 Act.

(2) An extension under this section may be applied only to specific areas where the local government has identified water, sewer, storm drainage or transportation services that are either significantly deficient or are expected to be significantly deficient before December 31, 2023, and for which the local government has established a plan of actions that will remedy the deficiency in those services that is approved by the department. The extension may not extend beyond the date that the local government intends to correct the deficiency under the plan.

(3) In areas where the extension under this section does not apply, the local government shall apply its own land use regulations consistent with section 3 (1) of this 2019 Act or the model ordinance developed under section 3 (2) of this 2019 Act.

(4) A request for an extension by a local government must be filed with the department no later than:

(a) **December 31, 2020, for a city subject to section 2 (3) of this 2019 Act.**

(b) **June 30, 2021, for a local government subject to section 2 (2) of this 2019 Act.**

(5) **The department shall grant or deny a request for an extension under this section:**

(a) **Within 90 days of receipt of a complete request from a city subject to section 2 (3) of this 2019 Act.**

(b) **Within 120 days of receipt of a complete request from a local government subject to section 2 (2) of this 2019 Act.**

(6) **The department shall adopt rules regarding the form and substance of a local government's application for an extension under this section. The department may include rules regarding:**

(a) **Defining the affected areas;**

(b) **Calculating deficiencies of water, sewer, storm drainage or transportation services;**

(c) **Service deficiency levels required to qualify for the extension;**

(d) **The components and timing of a remediation plan necessary to qualify for an extension;**

(e) **Standards for evaluating applications; and**

(f) **Establishing deadlines and components for the approval of a plan of action.**

**SECTION 5.** ORS 197.296 is amended to read:

197.296. (1)(a) The provisions of subsections (2) to (9) of this section apply to metropolitan service district regional framework plans and local government comprehensive plans for lands within the urban growth boundary of a city that is located outside of a metropolitan service district and has a population of 25,000 or more.

(b) The Land Conservation and Development Commission may establish a set of factors under which additional cities are subject to the provisions of this section. In establishing the set of factors required under this paragraph, the commission shall consider the size of the city, the rate of population growth of the city or the proximity of the city to another city with a population of 25,000 or more or to a metropolitan service district.

(2) At periodic review pursuant to ORS 197.628 to 197.651 or at any other legislative review of the comprehensive plan or regional framework plan that concerns the urban growth boundary and requires the application of a statewide planning goal relating to buildable lands for residential use, a local government shall demonstrate that its comprehensive plan or regional framework plan provides sufficient buildable lands within the urban growth boundary established pursuant to statewide planning goals to accommodate estimated housing needs for 20 years. The 20-year period shall commence on the date initially scheduled for completion of the periodic or legislative review.

(3) In performing the duties under subsection (2) of this section, a local government shall:

(a) Inventory the supply of buildable lands within the urban growth boundary and determine the housing capacity of the buildable lands; and

(b) Conduct an analysis of **existing and projected** housing need by type and density range, in accordance with **all factors under** ORS 197.303 and statewide planning goals and rules relating to housing, to determine the number of units and amount of land needed for each needed housing type for the next 20 years.

(4)(a) For the purpose of the inventory described in subsection (3)(a) of this section, "buildable lands" includes:

(A) Vacant lands planned or zoned for residential use;

(B) Partially vacant lands planned or zoned for residential use;

(C) Lands that may be used for a mix of residential and employment uses under the existing planning or zoning; and

(D) Lands that may be used for residential infill or redevelopment.

(b) For the purpose of the inventory and determination of housing capacity described in subsection (3)(a) of this section, the local government must demonstrate consideration of:

(A) The extent that residential development is prohibited or restricted by local regulation and ordinance, state law and rule or federal statute and regulation;

(B) A written long term contract or easement for radio, telecommunications or electrical facilities, if the written contract or easement is provided to the local government; and

(C) The presence of a single family dwelling or other structure on a lot or parcel.

(c) Except for land that may be used for residential infill or redevelopment, a local government shall create a map or document that may be used to verify and identify specific lots or parcels that have been determined to be buildable lands.

(5)(a) Except as provided in paragraphs (b) and (c) of this subsection, the determination of housing capacity *[and need]* pursuant to subsection [(3)] **(3)(a)** of this section must be based on data relating to land within the urban growth boundary that has been collected since the last *[periodic]* review or *[five]* **six** years, whichever is greater. The data shall include:

(A) The number, density and average mix of housing types of urban residential development that have actually occurred;

(B) Trends in density and average mix of housing types of urban residential development;

(C) **Market factors that may substantially impact future urban residential development; and**

*[(C) Demographic and population trends;]*

*[(D) Economic trends and cycles; and]*

*[(E)]* **(D)** The number, density and average mix of housing types that have occurred on the buildable lands described in subsection (4)(a) of this section.

(b) A local government shall make the determination described in paragraph (a) of this subsection using a shorter time period than the time period described in paragraph (a) of this subsection if the local government finds that the shorter time period will provide more accurate and reliable data related to housing capacity *[and need]*. The shorter time period may not be less than three years.

(c) A local government shall use data from a wider geographic area or use a time period *[for economic cycles and trends]* longer than the time period described in paragraph (a) of this subsection if the analysis of a wider geographic area or the use of a longer time period will provide more accurate, complete and reliable data relating to trends affecting housing need than an analysis performed pursuant to paragraph (a) of this subsection. The local government must clearly describe the geographic area, time frame and source of data used in a determination performed under this paragraph.

(6) If the housing need determined pursuant to subsection (3)(b) of this section is greater than the housing capacity determined pursuant to subsection (3)(a) of this section, the local government shall take one or *[more]* **both** of the following actions to accommodate the additional housing need:

(a) Amend its urban growth boundary to include sufficient buildable lands to accommodate housing needs for the next 20 years. As part of this process, the local government shall consider the effects of measures taken pursuant to paragraph (b) of this subsection. The amendment shall include sufficient land reasonably necessary to accommodate the siting of new public school facilities. The need and inclusion of lands for new public school facilities shall be a coordinated process between the affected public school districts and the local government that has the authority to approve the urban growth boundary[;].

(b) Amend its comprehensive plan, regional framework plan, functional plan or land use regulations to include new measures that demonstrably increase the likelihood that residential development will occur at densities sufficient to accommodate housing needs for the next 20 years without expansion of the urban growth boundary. A local government or metropolitan service district that takes this action shall *[monitor and record the level of development activity and development density by housing type following the date of the adoption of the new measures; or]* **adopt findings regarding the density expectations assumed to result from measures adopted under this paragraph based upon the factors listed in ORS 197.303 (2) and data in subsection (5)(a) of this section. The density expectations may not project an increase in residential capacity above achieved density by more than three percent without quantifiable validation of such departures. For a local government located outside of a metropolitan service district, a quantifiable vali-**

**dition must demonstrate that the assumed housing capacity has been achieved in areas that are zoned to allow no greater than the same authorized density level within the local jurisdiction or a jurisdiction in the same region. For a metropolitan service district, a quantifiable validation must demonstrate that the assumed housing capacity has been achieved in areas that are zoned to allow no greater than the same authorized density level within the metropolitan service district.**

*[(c) Adopt a combination of the actions described in paragraphs (a) and (b) of this subsection.]*

**(c) As used in this subsection, “authorized density level” has the meaning given that term in ORS 227.175.**

(7) Using the **housing need** analysis conducted under subsection (3)(b) of this section, the local government shall determine the overall average density and overall mix of housing types at which residential development of needed housing types must occur in order to meet housing needs over the next 20 years. If that density is greater than the actual density of development determined under subsection (5)(a)(A) of this section, or if that mix is different from the actual mix of housing types determined under subsection (5)(a)(A) of this section, the local government, as part of its periodic review, shall adopt measures that demonstrably increase the likelihood that residential development will occur at the housing types and density and at the mix of housing types required to meet housing needs over the next 20 years.

(8)(a) A local government outside a metropolitan service district that takes any actions under subsection (6) or (7) of this section shall demonstrate that the comprehensive plan and land use regulations comply with goals and rules adopted by the commission and implement ORS 197.295 to 197.314.

(b) *[The]* **A** local government shall determine the density and mix of housing types anticipated as a result of actions taken under subsections (6) and (7) of this section and monitor and record the actual density and mix of housing types achieved **following the adoption of these actions**. The local government shall compare actual and anticipated density and mix. The local government shall submit its comparison to the commission at the next periodic review or at the next legislative review of its urban growth boundary, whichever comes first.

(9) In establishing that actions and measures adopted under subsections (6) and (7) of this section demonstrably increase the likelihood of higher density residential development, the local government shall at a minimum ensure that land zoned for needed housing is in locations appropriate for the housing types identified under subsection (3) of this section, *[and]* is zoned at density ranges that are likely to be achieved by the housing market using the analysis in subsection (3) of this section **and is in areas where sufficient urban services are planned to enable the higher density development to occur over the 20-year period**. Actions or measures, or both, may include but are not limited to:

- (a) Increases in the permitted density on existing residential land;
- (b) Financial incentives for higher density housing;
- (c) Provisions permitting additional density beyond that generally allowed in the zoning district in exchange for amenities and features provided by the developer;
- (d) Removal or easing of approval standards or procedures;
- (e) Minimum density ranges;
- (f) Redevelopment and infill strategies;
- (g) Authorization of housing types not previously allowed by the plan or regulations;
- (h) Adoption of an average residential density standard; and
- (i) Rezoning or redesignation of nonresidential land.

(10)(a) The provisions of this subsection apply to local government comprehensive plans for lands within the urban growth boundary of a city that is located outside of a metropolitan service district and has a population of less than 25,000.

(b) At periodic review pursuant to ORS 197.628 to 197.651 or at any other legislative review of the comprehensive plan that requires the application of a statewide planning goal relating to buildable lands for residential use, a city shall, according to rules of the commission:

- (A) Determine the estimated housing needs within the jurisdiction for the next 20 years;
- (B) Inventory the supply of buildable lands available within the urban growth boundary to accommodate the estimated housing needs determined under this subsection; and
- (C) Adopt measures necessary to accommodate the estimated housing needs determined under this subsection.

(c) For the purpose of the inventory described in this subsection, “buildable lands” includes those lands described in subsection (4)(a) of this section.

**SECTION 6.** ORS 197.303 is amended to read:

197.303. (1) As used in ORS [197.307] **197.295 to 197.314**, “needed housing” means all housing on land zoned for residential use or mixed residential and commercial use that is determined to meet the need shown for housing within an urban growth boundary at price ranges and rent levels that are affordable to households within the county with a variety of incomes, including but not limited to households with low incomes, very low incomes and extremely low incomes, as those terms are defined by the United States Department of Housing and Urban Development under 42 U.S.C. 1437a. “Needed housing” includes the following housing types:

- (a) Attached and detached single-family housing and multiple family housing for both owner and renter occupancy;
- (b) Government assisted housing;
- (c) Mobile home or manufactured dwelling parks as provided in ORS 197.475 to 197.490;
- (d) Manufactured homes on individual lots planned and zoned for single-family residential use that are in addition to lots within designated manufactured dwelling subdivisions; and
- (e) Housing for farmworkers.

**(2) For the purpose of estimating housing needs, as described in ORS 197.296 (3)(b), a local government shall use the population projections prescribed by ORS 195.033 or 195.036 and shall consider and adopt findings related to changes in each of the following factors since the last periodic or legislative review or six years, whichever is greater, and the projected future changes in these factors over a 20-year planning period:**

- (a) Household sizes;**
- (b) Household demographics in terms of age, gender, race or other established demographic category;**
- (c) Household incomes;**
- (d) Vacancy rates; and**
- (e) Housing costs.**

**(3) A local government shall make the estimate described in subsection (2) of this section using a shorter time period than since the last periodic or legislative review or six years, whichever is greater, if the local government finds that the shorter time period will provide more accurate and reliable data related to housing need. The shorter time period may not be less than three years.**

**(4) A local government shall use data from a wider geographic area or use a time period longer than the time period described in subsection (2) of this section if the analysis of a wider geographic area or the use of a longer time period will provide more accurate, complete and reliable data relating to trends affecting housing need than an analysis performed pursuant to subsection (2) of this section. The local government must clearly describe the geographic area, time frame and source of data used in an estimate performed under this subsection.**

[(2)] **(5)** Subsection (1)(a) and (d) of this section does not apply to:

- (a) A city with a population of less than 2,500.
- (b) A county with a population of less than 15,000.

[(3)] **(6)** A local government may take an exception under ORS 197.732 to the definition of “needed housing” in subsection (1) of this section in the same manner that an exception may be taken under the goals.

**SECTION 7.** ORS 197.312, as amended by section 7, chapter 15, Oregon Laws 2018, is amended to read:

197.312. (1) A city or county may not by charter prohibit from all residential zones attached or detached single-family housing, multifamily housing for both owner and renter occupancy or manufactured homes. A city or county may not by charter prohibit government assisted housing or impose additional approval standards on government assisted housing that are not applied to similar but unassisted housing.

(2)(a) A single-family dwelling for a farmworker and the farmworker's immediate family is a permitted use in any residential or commercial zone that allows single-family dwellings as a permitted use.

(b) A city or county may not impose a zoning requirement on the establishment and maintenance of a single-family dwelling for a farmworker and the farmworker's immediate family in a residential or commercial zone described in paragraph (a) of this subsection that is more restrictive than a zoning requirement imposed on other single-family dwellings in the same zone.

(3)(a) Multifamily housing for farmworkers and farmworkers' immediate families is a permitted use in any residential or commercial zone that allows multifamily housing generally as a permitted use.

(b) A city or county may not impose a zoning requirement on the establishment and maintenance of multifamily housing for farmworkers and farmworkers' immediate families in a residential or commercial zone described in paragraph (a) of this subsection that is more restrictive than a zoning requirement imposed on other multifamily housing in the same zone.

(4) A city or county may not prohibit a property owner or developer from maintaining a real estate sales office in a subdivision or planned community containing more than 50 lots or dwelling units for the sale of lots or dwelling units that remain available for sale to the public.

(5)(a) A city with a population greater than 2,500 or a county with a population greater than 15,000 shall allow in areas within the urban growth boundary that are zoned for detached single-family dwellings the development of at least one accessory dwelling unit for each detached single-family dwelling, subject to reasonable local regulations relating to siting and design.

(b) As used in this subsection[,]:

(A) "Accessory dwelling unit" means an interior, attached or detached residential structure that is used in connection with or that is accessory to a single-family dwelling.

(B) "**Reasonable local regulations relating to siting and design**" does not include owner-occupancy requirements of either the primary or accessory structure or requirements to construct additional off-street parking.

(6) **Subsection (5) of this section does not prohibit local governments from regulating vacation occupancies, as defined in ORS 90.100, to require owner-occupancy or off-street parking.**

**SECTION 8.** Section 1, chapter 47, Oregon Laws 2018, is amended to read:

**Sec. 1.** (1) For purposes of this section:

(a) A household is severely rent burdened if the household spends more than 50 percent of the income of the household on gross rent for housing.

(b) A regulated affordable unit is a residential unit subject to a regulatory agreement that runs with the land and that requires affordability for an established income level for a defined period of time.

*[(c) A single-family unit may be rented or owned by a household and includes single-family homes, duplexes, townhomes, row homes and mobile homes.]*

(2)(a) The Housing and Community Services Department shall annually provide to the governing body of each city in this state with a population greater than 10,000 the most current data available from the United States Census Bureau, or any other source the department considers at least as reliable, showing the percentage of renter households in the city that are severely rent burdened.

(b) The Housing and Community Services Department, in collaboration with the Department of Land Conservation and Development, shall develop a survey form on which the governing body of

a city may provide specific information related to the affordability of housing within the city, including, but not limited to:

(A) The actions relating to land use and other related matters that the governing body has taken to increase the affordability of housing and reduce rent burdens for severely rent burdened households; and

(B) The additional actions the governing body intends to take to reduce rent burdens for severely rent burdened households.

(c) If the Housing and Community Services Department determines that at least 25 percent of the renter households in a city are severely rent burdened, the department shall provide the governing body of the city with the survey form developed pursuant to paragraph (b) of this subsection.

(d) The governing body of the city shall return the completed survey form to the Housing and Community Services Department and the Department of Land Conservation and Development within 60 days of receipt.

(3)(a) In any year in which the governing body of a city is informed under this section that at least 25 percent of the renter households in the city are severely rent burdened, the governing body shall hold at least one public meeting to discuss the causes and consequences of severe rent burdens within the city, the barriers to reducing rent burdens and possible solutions.

(b) The Housing and Community Services Department may adopt rules governing the conduct of the public meeting required under this subsection.

(4) No later than February 1 of each year, the governing body of each city in this state with a population greater than 10,000 shall submit to the Department of Land Conservation and Development a report for the immediately preceding calendar year setting forth separately for each of the following categories the total number of units that were permitted and the total number that were produced:

(a) Residential units.

(b) Regulated affordable residential units.

(c) Multifamily residential units.

(d) Regulated affordable multifamily residential units.

(e) Single-family *[units]* **homes**.

(f) Regulated affordable single-family *[units]* **homes**.

**(g) Accessory dwelling units.**

**(h) Regulated affordable accessory dwelling units.**

**(i) Units of middle housing, as defined in section 2 of this 2019 Act.**

**(j) Regulated affordable units of middle housing.**

**SECTION 9.** ORS 455.610 is amended to read:

455.610. (1) The Director of the Department of Consumer and Business Services shall adopt, and amend as necessary, a Low-Rise Residential Dwelling Code that contains all requirements, including structural design provisions, related to the construction of residential dwellings three stories or less above grade. The code provisions for plumbing and electrical requirements must be compatible with other specialty codes adopted by the director. The Electrical and Elevator Board, the Mechanical Board and the State Plumbing Board shall review, respectively, amendments to the electrical, mechanical or plumbing provisions of the code.

(2) Changes or amendments to the code adopted under subsection (1) of this section may be made when:

(a) Required by geographic or climatic conditions unique to Oregon;

(b) Necessary to be compatible with other statutory provisions;

(c) Changes to the national codes are adopted in Oregon; or

(d) Necessary to authorize the use of building materials and techniques that are consistent with nationally recognized standards and building practices.

(3) Notwithstanding ORS 455.030, 455.035, 455.110 and 455.112, the director may, at any time following appropriate consultation with the Mechanical Board or Building Codes Structures Board,

amend the mechanical specialty code or structural specialty code to ensure compatibility with the Low-Rise Residential Dwelling Code.

(4) The water conservation provisions for toilets, urinals, shower heads and interior faucets adopted in the Low-Rise Residential Dwelling Code shall be the same as those adopted under ORS 447.020 to meet the requirements of ORS 447.145.

(5) The Low-Rise Residential Dwelling Code shall be adopted and amended as provided by ORS 455.030 and 455.110.

(6) The director, by rule, shall establish uniform standards for a municipality to allow an alternate method of construction to the requirements for one and two family dwellings built to the Low-Rise Residential Dwelling Code in areas where the local jurisdiction determines that the fire apparatus means of approach to a property or water supply serving a property does not meet applicable fire code or state building code requirements. The alternate method of construction, which may include but is not limited to the installation of automatic fire sprinkler systems, must be approved in conjunction with the approval of an application under ORS 197.522.

(7) For lots of record existing before July 2, 2001, or property that receives any approval for partition, subdivision or construction under ORS 197.522 before July 2, 2001, a municipality allowing an alternate method of construction to the requirements for one and two family dwellings built to the Low-Rise Residential Dwelling Code may apply the uniform standards established by the director pursuant to subsection (6) of this section. For property that receives all approvals for partition, subdivision or construction under ORS 197.522 on or after July 2, 2001, a municipality allowing an alternate method of construction to the requirements for one and two family dwellings built to the Low-Rise Residential Dwelling Code must apply the uniform standards established by the director pursuant to subsection (6) of this section.

**(8) The director, by rule, shall establish uniform standards for a municipality to allow alternate approval of construction related to conversions of single-family dwellings into no more than four residential dwelling units built to the Low-Rise Residential Dwelling Code that received occupancy approval prior to January 1, 2020. The standards established under this subsection must include standards describing the information that must be submitted before an application for alternate approval will be deemed complete.**

**(9)(a) A building official described in ORS 455.148 or 455.150 must approve or deny an application for alternate approval under subsection (8) of this section no later than 15 business days after receiving a complete application.**

**(b) A building official who denies an application for alternate approval under this subsection shall provide to the applicant:**

**(A) A written explanation of the basis for the denial; and**

**(B) A statement that describes the applicant's appeal rights under subsection (10) of this section.**

**(10)(a) An appeal from a denial under subsection (9) of this section must be made through a municipal administrative process. A municipality shall provide an administrative process that:**

**(A) Is other than a judicial proceeding in a court of law; and**

**(B) Affords the party an opportunity to appeal the denial before an individual, department or body that is other than a plan reviewer, inspector or building official for the municipality.**

**(b) A decision in an administrative process under this subsection must be completed no later than 30 business days after the building official receives notice of the appeal.**

**(c) Notwithstanding ORS 455.690, a municipal administrative process required under this subsection is the exclusive means for appealing a denial under subsection (9) of this section.**

**(11) The costs incurred by a municipality under subsections (9) and (10) of this section are building inspection program administration and enforcement costs for the purpose of fee adoption under ORS 455.210.**

**SECTION 10.** (1) It is the policy of the State of Oregon to reduce to the extent practicable administrative and permitting costs and barriers to the construction of middle housing, as defined in section 2 of this 2019 Act, while maintaining safety, public health and the general welfare with respect to construction and occupancy.

(2) The Department of Consumer and Business Services shall submit a report describing rules and standards relating to low-rise residential dwellings proposed under ORS 455.610, as amended by section 9 of this 2019 Act, in the manner provided in ORS 192.245, to an interim committee of the Legislative Assembly related to housing no later than January 1, 2020.

**SECTION 11.** Section 12 of this 2019 Act is added to and made a part of ORS 94.550 to 94.783.

**SECTION 12.** A provision in a governing document that is adopted or amended on or after the effective date of this 2019 Act, is void and unenforceable to the extent that the provision would prohibit or have the effect of unreasonably restricting the development of housing that is otherwise allowable under the maximum density of the zoning for the land.

**SECTION 13.** A provision in a recorded instrument affecting real property is not enforceable if:

(1) The provision would allow the development of a single-family dwelling on the real property but would prohibit the development of:

- (a) Middle housing, as defined in section 2 of this 2019 Act; or
- (b) An accessory dwelling unit allowed under ORS 197.312 (5); and

(2) The instrument was executed on or after the effective date of this 2019 Act.

**SECTION 14.** (1) Sections 2, 12 and 13 of this 2019 Act and the amendments to ORS 197.296, 197.303, 197.312 and 455.610 and section 1, chapter 47, Oregon Laws 2018, by sections 5 to 9 of this 2019 Act become operative on January 1, 2020.

(2) The Land Conservation and Development Commission, the Department of Consumer and Business Services and the Residential and Manufactured Structures Board may take any actions before the operative date specified in subsection (1) of this section necessary to enable the commission, department or board to exercise, on or after the operative date specified in subsection (1) of this section, the duties required under sections 2, 3 and 10 of this 2019 Act and the amendments to ORS 455.610 by section 9 of this 2019 Act.

**SECTION 15.** In addition to and not in lieu of any other appropriation, there is appropriated to the Department of Land Conservation and Development, for the biennium beginning July 1, 2019, out of the General Fund, the amount of \$3,500,000 for the purpose of providing technical assistance to local governments in implementing section 3 (1) of this 2019 Act and to develop plans to improve water, sewer, storm drainage and transportation services as described in section 4 (2) of this 2019 Act. The department shall prioritize technical assistance to cities or counties with limited planning staff or that commit to implementation earlier than the date required under section 3 (1) of this 2019 Act.

**SECTION 16.** This 2019 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2019 Act takes effect on its passage.

**Passed by House June 20, 2019**

.....  
Timothy G. Sekerak, Chief Clerk of House

.....  
Tina Kotek, Speaker of House

**Passed by Senate June 30, 2019**

.....  
Peter Courtney, President of Senate

**Received by Governor:**

.....M.,....., 2019

**Approved:**

.....M.,....., 2019

.....  
Kate Brown, Governor

**Filed in Office of Secretary of State:**

.....M.,....., 2019

.....  
Bev Clarno, Secretary of State

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# Land Conservation and Development Department

## Chapter 660

### Division 23

#### PROCEDURES AND REQUIREMENTS FOR COMPLYING WITH GOAL 5

##### 660-023-0200

##### Historic Resources

(1) For purposes of this rule, the following definitions apply:

(a) "Demolition" means 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. This definition applies directly to local land use decisions regarding a National Register Resource. This definition applies directly to other local land use decisions regarding a historic resource unless the local comprehensive plan or land use regulations contain a different definition.

(b) "Designation" is a decision by a local government to include a significant resource on the resource list.

(c) "Historic context statement" is an element of a comprehensive plan that describes the important broad patterns of historical development in a community and its region during a specified time period. It also identifies historic resources that are representative of the important broad patterns of historical development.

(d) "Historic preservation plan" is an element of a comprehensive plan that contains the local government's goals and policies for historic resource preservation and the processes for creating and amending the program to achieve the goal.

(e) "Historic resources" are those buildings, structures, objects, sites, or districts that potentially have a significant relationship to events or conditions of the human past.

(f) "Locally significant historic resource" means a building, structure, object, site, or district deemed by a local government to be a significant resource according to the requirements of this division and criteria in the comprehensive plan.

(g) "National Register Resource" means buildings, 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).

(h) "Owner":

(A) Means the owner of fee title to the property as shown in the deed records of the county where the property is located; or

(B) Means the purchaser under a land sale contract, if there is a recorded land sale contract in force for the property; or

(C) Means, if the property is owned by the trustee of a revocable trust, the settlor of a revocable trust, except that when the trust becomes irrevocable only the trustee is the owner; and

(D) Does not include individuals, partnerships, corporations or public agencies holding easements or less than fee interests (including leaseholds) of any nature; or

(E) Means, for a locally significant historic resource with multiple owners, including a district, a simple majority of owners as defined in (A)-(D).

(F) Means, for National Register Resources, the same as defined in 36 CFR 60.3(k).

(i) "Protect" means to require local government review of applications for demolition, relocation, or major exterior alteration of a historic resource, or to delay approval of, or deny, permits for these actions in order to provide opportunities for continued preservation.

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(j) "Significant historic resource" means a locally significant historic resource or a National Register Resource.

(2) Relationship of Historic Resource Protection to the Standard Goal 5 Process.

(a) Local governments are not required to amend acknowledged plans or land use regulations in order to provide new or amended inventories, resource lists or programs regarding historic resources, except as specified in section (8). Local governments are encouraged to inventory and designate historic resources and must adopt historic preservation regulations to protect significant historic resources.

(b) The requirements of the standard Goal 5 process in OAR 660-023-0030 through 660-023-0050, in conjunction with the requirements of this rule, apply when local governments choose to amend acknowledged historic preservation plans and regulations.

(c) Local governments are not required to apply the ESEE process pursuant to OAR 660-023-0040 in order to determine a program to protect historic resources.

(3) Comprehensive Plan Contents. Local comprehensive plans should foster and encourage the preservation, management, and enhancement of significant historic resources within the jurisdiction in a manner conforming with, but not limited by, the provisions of ORS 358.605. In developing local historic preservation programs, local governments should follow the recommendations in the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation, produced by the National Park Service. Local governments should develop a local historic context statement and adopt a historic preservation plan and a historic preservation ordinance in conjunction with inventorying historic resources.

(4) Inventorying Historic Resources. When a local government chooses to inventory historic resources, it must do so pursuant to OAR 660-023-0030, this section, and sections (5) through (7). Local governments are encouraged to provide opportunities for community-wide participation as part of the inventory process. Local governments are encouraged to complete the inventory in a manner that satisfies the requirements for such studies published by the Oregon State Historic Preservation Office and provide the inventory to that office in a format compatible with the Oregon Historic Sites Database.

(5) Evaluating and Determining Significance. After a local government completes an inventory of historic resources, it should evaluate which resources on the inventory are significant pursuant to OAR 660-023-0030(4) and this section.

(a) The evaluation of significance should be based on the National Register Criteria for Evaluation, historic context statement and historic preservation plan. Criteria may include, but are not limited to, consideration of whether the resource has:

(A) Significant association with events that have made a significant contribution to the broad patterns of local, regional, state, or national history;

(B) Significant association with the lives of persons significant to local, regional, state, or national history;

(C) Distinctive characteristics of a type, period, or method of construction, or represents the work of a master, or possesses high artistic values, or represents a significant and distinguishable entity whose components may lack individual distinction;

(D) A high likelihood that, if preserved, would yield information important in prehistory or history; or

(E) Relevance within the local historic context and priorities described in the historic preservation plan.

(b) Local governments may delegate the determination of locally significant historic resources to a local planning commission or historic resources commission.

(6) Designating Locally Significant Historic Resources. After inventorying and evaluating the significance of historic resources, if a local government chooses to protect a historic resource, it must adopt or amend a resource list (i.e., "designate" such resources) pursuant to OAR 660-023-0030(5) and this section.

(a) The resource list must be adopted or amended as a land use decision.

(b) Local governments must allow owners of inventoried historic resources to refuse historic resource designation at any time during the designation process in subsection (a) and must not include a site on a resource list if the owner of the property objects to its designation on the public record. A local government is not required to remove a historic resource from an inventory because an owner refuses to consent to designation.

(7) Historic Resource Protection Ordinances. Local governments must adopt land use regulations to protect locally significant historic resources designated under section (6). This section replaces OAR 660-023-0050. Historic protection ordinances should be consistent with standards and guidelines recommended in the Standards and Guidelines for Archeology and Historic Preservation published by the U.S. Secretary of the Interior, produced by the National Park Service.

(8) National Register Resources are significant historic resources. For these resources, local governments are not required to follow the process described in OAR 660-023-0030 through 660-023-0050 or sections (4) through (6). Instead, a local government:

(a) Must protect National Register Resources, regardless of whether the resources are designated in the local plan or land use regulations, by review of demolition or relocation that includes, at minimum, a public hearing process that results in approval, approval with conditions, or denial 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 acknowledged comprehensive plan. Local jurisdictions may exclude accessory structures and non-contributing resources within a National Register nomination;

(b) May apply additional protection measures. For a National Register Resource listed in the National Register of Historic Places after the effective date of this rule, additional protection measures may be applied only upon considering, at a public hearing, the historic characteristics identified in the National Register nomination; the historic significance of the resource; the relationship to the historic context statement and historic preservation plan contained in the comprehensive plan, if they exist; the goals and policies in the comprehensive plan; and the effects of the additional protection measures on the ability of property owners to maintain and modify features of their property. Protection measures applied by a local government to a National Register resource listed before the effective date of this rule continue to apply until the local government amends or removes them; and

(c) Must amend its land use regulations to protect National Register Resources in conformity with subsections (a) and (b). Until such regulations are adopted, subsections (a) and (b) shall apply directly to National Register Resources.

(9) Removal of a historic resource from a resource list by a local government is a land use decision and is subject to this section.

(a) A local government must remove a property from the resource list if the designation was imposed on the property by the local government and the owner at the time of designation:

(A) Has retained ownership since the time of the designation, and

(B) Can demonstrate that the owner objected to the designation on the public record, or

(C) Was not provided an opportunity to object to the designation, and

(D) Requests that the local government remove the property from the resource list.

(b) Except as provided in subsection (a), a local government may only remove a resource from the resource list if the circumstances in paragraphs (A), (B), or (C) exist.

(A) The resource has lost the qualities for which it was originally recognized;

(B) Additional information shows that the resource no longer satisfies the criteria for recognition as a historic resource or did not satisfy the criteria for recognition as a historic resource at time of listing;

(C) The local building official declares that the resource poses a clear and immediate hazard to public safety and must be demolished to abate the unsafe condition.

(10) A local government shall not issue a permit for demolition or modification of a locally significant historic resource during the 120-day period following:

(a) The date of the property owner's refusal to consent to the historic resource designation, or

(b) The date of an application to demolish or modify the resource if the local government has not designated the locally significant resource under section (6).

(11) OAR 660-023-0200(1)(a) and (1)(h) are effective upon filing of the rule with the Secretary of State.

(12) OAR 660-023-0200(8) is effective upon filing of the rule with the Secretary of State and applies directly to local government permit decisions until the local government has amended its land use regulations as required by OAR 660-023-0200(8)(c).

(13) OAR 660-023-0200(9) is effective upon filing of the rule with the Secretary of State and applies directly to local government decisions until the local government has amended its land use regulations to conform with the rule.

(14) OAR 660-023-0200(10) is effective upon filing of the rule with the Secretary of State and applies directly to local government permit decisions.

**Statutory/Other Authority:** ORS 197.040

**Statutes/Other Implemented:** ORS 197.040, 197.225 - 197.245 & 197.772

**History:**

[LCDD 3-2018, amend filed 02/23/2018, effective 02/23/2018](#)

LCDD 1-2017, f. & cert. ef. 2-10-17  
LCDC 2-1996, f. 8-30-96, cert. ef. 9-1-96

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## ORDINANCE NO. 5928

AN ORDINANCE AMENDING THE SECTIONS OF ALBANY MUNICIPAL CODE TITLE 2, ADMINISTRATION AND PERSONNEL, THAT RELATE TO THE CITY'S BOARDS AND COMMISSIONS; MODIFYING THE RESIDENCY REQUIREMENT FOR MEMBERS TO SERVE; INCREASING MEMBERSHIP FOR SELECT BODIES; AND REASSIGNING APPOINTMENT DUTIES

WHEREAS, ordinances and resolutions of the City of Albany provide for the appointment of citizens to various boards, commissions, and committees by the Mayor and/or Councilors, subject to ratification by the City Council; and

WHEREAS, it is in the best interest of the City of Albany to ensure that membership on the various boards, commissions, and committees is representative of people in the community; and

WHEREAS, the City Council reviewed appointment criteria and procedures for City boards, commissions, and committees at the February 11, 2019, City Council meeting and requested that staff bring back modifying resolutions and ordinances; and

WHEREAS, the City Council desires to establish a city residency requirement and update appointment procedures, including the reassignment of certain appointment duties, for all future appointments to City boards, commissions, and committees.

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

Section 1: Albany Municipal Code (AMC) Chapter 2.20, Parks and Recreation Commission, Sections 2.20.010, Appointment, and 2.20.020, Compensation and records, are amended as follows:

**2.20.010 Term of office and compensation.**

The Parks and Recreation Commission shall consist of seven members, each having their principal place of residence within the jurisdictional limits of the city of Albany. Each Council member shall have one counterpart, with nominations to be ratified by the Council. The members shall be appointed for a term of three years with the exception of those terms of office newly established under this section, which shall begin January 1, 2020, and be staggered to provide for the expiration of the terms of office of two of the members each year except for each third year, when the terms of office of three members shall expire. Members appointed previously under the provisions of Chapter 2.20 shall continue in office until the expiration of their terms of office. Appointments made to replace those whose terms of office have expired or been vacated shall conform to the intent of Chapter 2.20 and current Council policy. . Commission members shall serve without compensation. Persons appointed to membership on the Parks and Recreation Commission shall serve at the pleasure of the Council and may be removed therefrom without cause by a majority vote of the Council.

**2.20.020 Records.**

The Commission shall annually select one of its members as chairperson. All records and proceedings shall remain in the office of the City Clerk as one of the public records of that office.

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Section 2: AMC Chapter 2.23, City Tree Commission, Sections 2.23.010, City Tree Commission established, and 2.23.030, Term and office and compensation, are amended as follows:

**2.23.010 City Tree Commission established.**

The City Tree Commission shall consist of seven members, each having their principal place of residence within the jurisdictional limits of the city of Albany. Each Council member shall have one counterpart, with nominations to be ratified by the Council. At least one member of the City Tree Commission shall be a representative from the field of arboriculture, landscape architecture, or otherwise have professional knowledge of trees and their care.

**2.23.030 Term of office and compensation.**

City Tree Commission members shall each serve a three-year term with the exception of newly established terms of office under Section 2.23.010, which shall begin January 1, 2020, and be staggered to provide for the expiration of the terms of office of two of the members each year except for each third year, when the terms of office of three members shall expire. Members appointed previously under the provisions of Chapter 2.23 shall continue in office until the expiration of their terms of office. Appointments made to replace those whose terms of office have expired or been vacated shall conform to the intent of Chapter 2.23 and current Council policy. Commission members shall serve without compensation. Persons appointed to membership on the City Tree Commission shall serve at the pleasure of the Council and may be removed therefrom without cause by a majority vote of the Council.

Section 3: AMC Chapter 2.26, Airport Advisory Commission, Section 2.26.060, Term of office, initial appointment, and compensation, is amended as follows:

**2.26.060 Term of office and compensation.**

The Airport Advisory Commission shall consist of seven members, each having their principal place of residence within the jurisdictional limits of the city of Albany. Each Council member shall have one counterpart, with nominations to be ratified by the Council. Commission members shall serve for a three-year term. Members appointed previously under the provisions of Chapter 2.26 shall continue in office until the expiration of their terms of office. Appointments made to replace those whose terms of office have expired or been vacated shall conform to the intent of Chapter 2.26 and current Council policy. Persons appointed to membership on the Airport Advisory Commission shall serve at the pleasure of the Council and may be removed therefrom without cause by a majority vote of the Council.

Members of the Commission shall serve without compensation and shall have no property interest in their appointment.

Section 4: AMC Chapter 2.32, Traffic Safety Commission, Section 2.32.010, Creation – Membership, is amended as follows:

**2.32.010 Term of office and compensation.**

The Traffic Safety Commission shall consist of seven members, each having their principal place of residence within the jurisdictional limits of the city of Albany. Each Council member shall have one counterpart, with nominations to be ratified by the Council. Commission members shall serve for a three-year term with the exception of those terms of office newly established under this section, which shall begin January 1, 2020, and be staggered to provide for the expiration of the terms of office of two of the members each year except for each third year, when the terms of office of three members shall expire. Members appointed previously under the provisions of Chapter 2.32 shall continue in office until the expiration of their terms of office. Appointments made to replace those whose terms of office have expired or been vacated shall conform to the intent of Chapter 2.32 and current Council policy. Commission members shall serve without compensation. Persons appointed to membership on the Traffic Safety Commission shall serve at the pleasure of the Council and may be removed therefrom without cause by a majority vote of the Council.

Section 5: AMC Chapter 2.50, Public Library Board, Section 2.50.020, Public Library Board appointments and terms, is amended as follows:

**2.50.020 Term of office and compensation.**

The Public Library Board shall consist of seven members, each of whom having their principal place of residence within the jurisdictional limits of the city of Albany. Each Council member shall have one counterpart, with nominations to be ratified by the Council. Members appointed previously under the provisions of Chapter 2.50 shall continue in office until the expiration of their terms of office. Appointments made to replace those whose terms of office have expired or been vacated shall conform to the intent of Chapter 2.50 and current Council policy. Appointments made under this chapter shall be for terms of four years from July 1 in the year of their appointment. Board members shall serve without compensation. Persons appointed to membership on the Public Library Board shall serve at the pleasure of the Council and may be removed therefrom without cause by a majority vote of the Council.

Section 6: AMC Chapter 2.76, Landmarks Advisory Commission, Section 2.76.020, Members – Appointment, is amended as follows:

**2.76.020 Term of office and compensation.**

The Landmarks Advisory Commission shall consist of seven members, each having their principal place of residence within the jurisdictional limits of the city of Albany. Each Council member shall have one counterpart, with nominations to be ratified by the Council. Members appointed previously under the provisions of Chapter 2.76 shall continue in office until the expiration of their terms of office. Appointments made to replace those whose terms of office have expired or been vacated shall conform to the intent of Chapter 2.76 and current Council policy. Each member shall have demonstrable knowledge, interest, or competence in historic preservation and additionally in one of the following fields: architecture, landscape architecture, history, art history, education, construction, real estate, development, urban planning, archaeology, law, finance, cultural geography, cultural anthropology, local history, or related disciplines. Commission members shall serve without compensation. Persons appointed to membership on the Landmarks Advisory Commission shall serve at the pleasure of the Council and may be removed therefrom without cause by a majority vote of the Council.

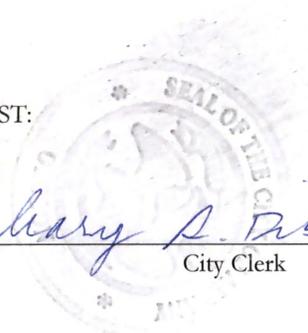
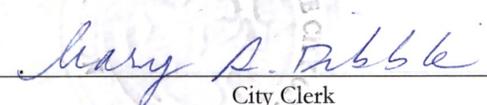
Passed by the Council: May 22, 2019

Approved by the Mayor: May 22, 2019

Effective Date: June 21, 2019

  
\_\_\_\_\_  
Mayor

ATTEST:

  
  
\_\_\_\_\_  
City Clerk



AN ORDINANCE AMENDING THE SECTIONS OF ALBANY MUNICIPAL CODE TITLE 2, ADMINISTRATION AND PERSONNEL, THAT RELATE TO THE CITY'S LANDMARKS ADVISORY COMMISSION, MODIFYING THE DECISION-MAKING AUTHORITY

WHEREAS, Section 2.76.050 of the Albany Municipal Code (AMC) states that the Landmarks Advisory Commission has the authority to do those things that are set forth in the ORS 358.315 (which refers to general authority of cities regarding public museums), and serve in an advisory capacity concerning historic districts, conservation districts, buildings, and sites to City Council and Albany Planning Commission; and

WHEREAS, Article 1 and Article 7 of the Albany Development Code (ADC) state that the Landmarks Advisory Commission is a decision-maker in quasi-judicial Type III land use applications, and an advisory body in Type IV applications requiring Historic Review permit decisions; and

WHEREAS, the City Council reviewed the conflicting language in the AMC and ADC regarding the decision-making authority of the Landmarks Advisory Commission in quasi-judicial decisions at the March 11, March 25, and June 24, 2019, City Council meetings; and

WHEREAS, the City Council desires the Landmarks Advisory Commission to act as a quasi-judicial decision-maker when reviewing quasi-judicial Type III land use applications, and as an advisory body in Type IV applications requiring Historic Review permit decisions.

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

Section 1: Albany Municipal Code (AMC) Chapter 2.76, Landmarks Advisory Commission, Sections 2.76.010, Created; 2.76.020, Members – Appointment; 2.76.030, Members – Terms; 2.76.040, Officers; and 2.76.050, Authority are amended as follows:

**2.76.010 Created.**

There is created the Albany Landmarks ~~Advisory~~ Commission.

(1) Purpose and Intent. It is declared a matter of public policy that the protection, enhancement, perpetuation and use of improvements of special character or special historical interest or value is a public necessity and is required in the interest of health, prosperity, safety and welfare of the people. The purpose of this section is to:

- (a) Effect and accomplish the protection, enhancement, and perpetuation of such improvements and districts which represent or reflect elements of the City's cultural, social, economic, political and architectural history;
- (b) Safeguard the City's historic and cultural heritage, as embodied and reflected in such landmarks and historic districts;
- (c) Stabilize and improve property values;
- (d) Foster civic pride in the beauty and noble accomplishments of the past;

- (e) Protect and enhance the City's attraction to residents, tourists, and visitors and serve as a support and stimulus to business and industry;
- (f) Strengthen the economy of the City;
- (g) Promote the use of historic districts ~~and~~ landmarks, ~~and museums~~ for the education, pleasure and welfare of the people of the City;
- (h) Work for the continuing education of the citizens of Albany concerning the historic heritage of this City and its landmarks, sites, and objects.

#### **2.76.020 Members – Appointment.**

The Landmarks ~~Advisory~~ Commission shall consist of seven members, each having their principal place of residence within the jurisdictional limits of the city of Albany. Each Council member shall have one counterpart, with nominations to be ratified by the Council. Members appointed previously under the provisions of Chapter 2.76 shall continue in office until the expiration of their terms of office. Appointments made to replace those whose terms of office have expired or been vacated shall conform to the intent of Chapter 2.76 and current Council policy. Each member shall have demonstrable knowledge, interest, or competence in historic preservation and additionally in one of the following fields: architecture, landscape architecture, history, art history, education, construction, real estate, development, urban planning, archaeology, law, finance, cultural geography, cultural anthropology, local history, or related disciplines. Commission members shall serve without compensation. Persons appointed to membership on the Landmarks ~~Advisory~~ <sup>Advisory</sup> Commission shall serve at the pleasure of the Council and may be removed therefrom without cause by a majority vote of the Council.

#### **2.76.030 Members – Terms.**

Two of the first members of the Landmarks ~~Advisory~~ Commission shall be appointed for one year, two members shall be appointed for two years and three members shall be appointed for three years. Except for the first members and appointments to fill vacancies, the terms of members of the Landmarks ~~Advisory~~ Commission shall be three years and until their successors are appointed and qualified.

#### **2.76.040 Officers.**

~~The Commission members shall elect a chairperson and a secretary until the next succeeding first Monday in January and until their successors are elected. The secretary shall be charged with keeping a permanent and complete record of the proceedings of the Commission. The Commission shall adopt rules governing the transaction of its business and shall prepare and submit an annual budget and an annual report to the City Council.~~

The Landmarks Commission shall, at its first meeting in January of each year, elect one of its members to serve as chairperson and another to serve as vice chairperson. The Community Development Director of the City, or his/her designee shall serve as secretary to the Landmarks Commission and shall keep accurate, permanent and complete records of all proceedings held before the Landmarks

Commission. The chairperson or the presiding officer of the Landmarks Commission shall be entitled to vote on all questions that are before the Commission. The Commission may adopt rules governing the transaction of its business which are consistent with the provisions of this chapter.

#### **2.76.050 Authority.**

~~The Commission shall, acting through the City Council, have the authority to do those things that are set forth in ORS 358.315, and, further, the Landmarks Advisory Commission shall serve in an advisory capacity and make recommendations concerning historic districts, conservation districts, buildings, and sites to the City Council, and Albany Planning Commission, and through the City Council to other public or private agencies on matters relating to the preservation of such districts, buildings, and sites. Their authority shall be as follows:~~

The Landmarks Commission shall have and may exercise the following duties, powers, and responsibilities:

1. The Landmarks Commission shall be a quasi-judicial decision-maker for matters that include the following:
  - a. Decisions regarding the application or removal of Historic Overlay District in cases where a public hearing is required by the Albany Development Code, Article 7;
  - b. Type III Historic Review Permit decisions; and
  - c. Appeals of Director-level Historic Review Permit decisions.
2. The Landmarks Commission shall advise and assist the Council, Planning Commission, and the Community Development Director in matters pertaining to historic and cultural resource preservation. Such matters shall include:
  - a. Recommendations concerning amendments to sections of the Albany Development Code pertaining to historic preservation.
  - b. Recommendations concerning the nominations of sites or structures for the National Register of Historic Places.
  - c. Recommendations concerning additional inventories and/or surveys of Albany's historic sites and structures.
  - d. Recommendations concerning the application for and expenditure of grant funds pertaining to historic preservation programs and activities.
  - e. Coordination of public information or educational programs pertaining to historic and cultural resources.
  - f. Coordination of historical preservation programs of the City, county, state, and federal governments as they relate to property within the City.

~~(1) The Commission may recommend for adoption such rules and regulations as it finds necessary or appropriate to carry out the intent of this article.~~

~~(2) The Commission shall compile and maintain a current list of all historic buildings and sites and objects which have been so designated pursuant to this article with a brief description of such building or site and the special reasons for its inclusion on such list.~~

~~(3) The Commission shall receive requests by any citizen, by owners of buildings or sites, or may on its own motion make recommendations concerning the designation of particular buildings and sites as historic buildings or historic sites.~~

~~(4) The Commission shall recommend removal from any list of designated historic buildings and sites such property as it finds no longer worthy of such designation.~~

~~(5) Conduct an educational program on historic properties within its jurisdiction.~~

~~(6) The Commission shall have authority to coordinate historical preservation programs of the City, county, state, and federal governments as they relate to property within the City.~~

~~(7) The Commission may recommend to the City Council or, if authorized by the City Council, to the Legislature of the State of Oregon any changes of law which it finds appropriate or needed.~~

~~(8) The Commission shall perform such other duties relating to historic landmarks and historical buildings, and sites as the City Council or the Mayor may request.~~

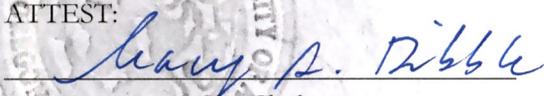
Passed by the Council: July 24, 2019

Approved by the Mayor: July 24, 2019

Effective Date: August 23, 2019

  
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Mayor

ATTEST:

  
  
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City Clerk