

ORDINANCE NO. \_\_\_\_\_

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

WHEREAS, on June 4, 2018, the Albany Planning Commission held a public hearing and deliberated on proposed text amendments to the Albany Development Code relating to the expedited review of qualifying land division and multi-family development applications (City of Albany Planning File DC-03-18); and

WHEREAS, on June 4, 2018, the Planning Commission recommended that the City Council approve the proposed text amendments as identified in the June 19, 2018, staff memorandum to City Council. This recommendation was based on evidence presented in the staff report and consideration of public testimony during the public hearing; and

WHEREAS, the Albany City Council held a public hearing on the proposal on June 27, 2018, and reviewed the findings of fact and conclusions included in the staff report and testimony presented at the public hearing and then deliberated; and

WHEREAS, the text amendments to the Albany Development Code considered by the Planning Commission and City Council are presented as an attachment to this Ordinance as Exhibit A.

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

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

Section 2: A copy of this Ordinance shall be filed in the Office of the City Clerk of the City of Albany and these changes shall be made in the official City of Albany Development Code.

Section 3: As applicable, a copy of this Ordinance shall be filed with the Linn and Benton County Assessors' Office within 90 days of the effective date of this Ordinance.

Passed by the Council: \_\_\_\_\_

Approved by the Mayor: \_\_\_\_\_

Effective Date: \_\_\_\_\_

\_\_\_\_\_  
Mayor

ATTEST:

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



## ARTICLE 1 ADMINISTRATION AND PROCEDURES

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

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

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

### GENERAL ADMINISTRATION

#### INTRODUCTION

1.010 Official Name. The official name of this Title is “Title 20, Development Code and Zoning Map.” It may be referred to as “Development Code” or “Code.”

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

- (1) Serve as the principal vehicle for implementation of the City’s Comprehensive Plan in a manner that protects the health, safety, and welfare of the citizens of Albany.
- (2) Satisfy relevant requirements of federal law, state law, statewide goals, and administrative rules.
- (3) Facilitate prompt review of development proposals and the application of clear and specific standards.
- (4) Provide for public information, review, and comment on development proposals that may have a significant impact on the community.
- (5) Guide public and private planning policies and actions to ensure provision of adequate water, sewage, transportation, drainage, parks, open space and other public facilities and services for each development.
- (6) Establish procedures and standards requiring that the design of site improvements and building improvements 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.

1.025 Legislative Intent. In addition to the purposes set forth above, subsequent amendments to this Code may be accompanied by staff reports and additional findings, which may be used to more accurately determine the purpose and legislative intent of specific provisions.

- 1.140 Code Enforcement. The Director or designee may enforce the provisions of this ordinance using the remedies provided in Sections 1.110 through 1.190 herein and in Title 18 of the Albany Municipal Code. The enactment of this ordinance shall not invalidate any prior, existing, or future prosecutions for violation of the Development Code regulations committed under a previous ordinance.  
[Ord. 5720, 8/12/09]
- 1.150 Legal Proceedings by City Attorney. In addition to the remedies prescribed herein, the City Attorney, upon request from the City Council or City Manager, shall cause to be instituted any civil action, suit, or other legal means considered appropriate to remedy violations of this ordinance.
- 1.160 Suits in Equity to Enjoin Violations. If any existing or proposed structure or use violates this Code, the City Attorney or any affected person may sue to enjoin the violation.
- 1.170 Enforcement by Chief of Police. The Chief of Police or his or her designee(s) shall have the power to help enforce the provisions of this ordinance.
- 1.180 Penalty. In addition to the remedies set forth above, the general penalties and procedures set forth in Chapter 1.04 of the Albany Municipal Code apply to any and all violations of this Development Code. The City may elect to pursue such procedure instead of or in addition to any remedy set forth above.
- 1.190 Violation of a Land Use Approval. Violation of any condition or requirement of any land use approval constitutes a civil infraction when that violation does not, in and of itself, constitute a separate violation of the Albany Municipal Code.

#### APPLICATION PROCEDURES

- 1.200 Land Use Application Procedures.
- (1) A land use application shall be processed under a Type I, I-L, II, III, or IV procedure, as described in this Article.
  - (2) When there is a question as to the appropriate type of procedure, the Director shall determine the type of procedure to be used based upon the most similar land use application procedure specified by this Code or other established policy.
  - (3) When a proposal involves more than one application for the same property, the applicant(s) may submit concurrent applications that shall be processed simultaneously in accordance with the highest numbered procedure specified. When concurrent applications are received and accepted as complete, the ~~120-day~~ requirements of Section 1.220(2) shall apply as if a single application had been made.
- 1.201 Coordination of Land Use Application Procedure. The Director shall be responsible for coordinating the land use application and decision-making procedure. The Director shall issue a land use approval for applications and proposed developments that comply with the provisions of this Code. Before issuing the approval, the Director shall be provided with the information required to determine full compliance with the requirements of this Code.
- 1.202 Pre-application Conference. The Director and the applicant or the applicant's authorized representative shall arrange a pre-application conference, unless the applicant and Director agree that the conference is not needed. The purpose of the conference is to acquaint the applicant with the substantive and procedural requirements of this Code, and to identify any constraints on the proposed development. Depending on the nature and size of the proposed development, a rough sketch conceptual plan may be required for review in the pre-application conference. Upon the applicant's request, the Director shall provide the applicant with a written summary of the conference including confirmation of the procedures to be used to process the application, a list of materials to be submitted, and the criteria and standards which may apply to the approval of the application.
- 1.203 Neighborhood Meeting. The purpose of a neighborhood meeting is to ensure that applicants pursue early and effective public participation in conjunction with their applications, giving them the opportunity to understand and try to mitigate any real or perceived impacts their application may have

- (3) The Director shall set public hearing dates for land use applications requiring them. When setting hearing dates, the Director may take into consideration the complexity of the development proposal, other scheduled agenda items, and adequate review and preparation time for the staff report.
- (4) All documents or evidence relied upon by the applicant shall be submitted to the Planning Division and made available to the public at least 20 days before the evidentiary public hearing (or 10 days before the first evidentiary public hearing if two or more evidentiary public hearings are allowed). Any staff report used at the hearing shall be available at least seven days prior to the hearing.  
If additional documents or evidence are provided by any party, the local government may allow a continuance or leave the record open to allow the parties a reasonable opportunity to respond.
- (5) Upon request, the application file shall be made available to the public for inspection at no cost, and copies provided at reasonable cost. [Ord. 5446, 5/10/00]

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

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

1.220 Land Use Decision for Quasi-Judicial Applications.

- (1) Within five days of final action on a land use application, the Director shall provide written notice of the decision to the applicant and any other parties entitled to notice. The notice shall state the effective date of the decision, describe the right of appeal, and summarize the reasons for the decision and any conditions of approval or indicate where such can be reviewed in detail.
- (2) The City shall take final action on all land use requests that are wholly within the authority and control of the City within 120 days from the date the application is deemed complete. 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. However, by agreement with the applicant, this deadline may be extended for any reasonable length of time, not to exceed the maximum allowed by state law. The 120-day period set out in Oregon Revised Statutes (ORS) 227.178, does not apply to an amendment to an acknowledged comprehensive plan or land use regulation or adoption of a new land use regulation that was forwarded to the Director of the Department of Land Conservation and Development under ORS 197.610 (for legislative amendments). [Ord. 5728, 1/27/10]
- (3) Development shall be completed as shown on the plans that were reviewed and approved through the land use process, subject to any modifications identified in the conditions of approval. Modifications to site plans and conditional uses may be made as described in ADC 1.226. [Ord. 5446, 5/10/00; Ord. 5475, 4/11/01]

1.225 Action on Resubmission of Denied Quasi-Judicial Application. An applicant may make appropriate alterations to a proposal that has previously been denied and resubmit it with a payment of any required fee. If a previously denied application is resubmitted within one year of the date denied,

## CLARIFICATION OF LAND USE DECISIONS

### ACTIONS INCLUDED AS LAND USE DECISIONS

- 1.230 Definition. A “land use decision” includes a final decision or determination made by the City that concerns the adoption, amendment, or application of:
- (1) The statewide planning goals.
  - (2) A Comprehensive Plan provision.
  - (3) An existing land use regulation.
  - (4) A new land use regulation.
- 1.240 Procedure. The procedure for applications that result in land use decisions is given in the provisions on the quasi-judicial and legislative processes, later in this Article.
- 1.250 Examples. Examples of applications that result in land use decisions include, but are not limited to – Comprehensive Plan amendments, conditional uses, development code amendments, site plans, subdivisions, modifications to non-conforming situations, vacations, variances, and zoning map amendments.

### ACTIONS NOT INCLUDED AS LAND USE DECISIONS

- 1.260 Definition. A “land use decision” does not include a decision of the City:
- (1) That is made under land use standards that do not require interpretation or the exercise of policy or legal judgment;
  - (2) That approves or denies a building permit under clear and objective land use standards; ~~or~~
  - ~~(3)~~ (3) That is a limited land use decision; ~~or~~
  - ~~(3)(4)~~ (3)(4) That is an expedited land division as described in ORS 197.360; or
  - ~~(4)(5)~~ (4)(5) That determines final engineering design, construction, operation, maintenance, repair or preservation of a transportation facility that is otherwise authorized by and consistent with the Comprehensive Plan and land use regulations.
- 1.270 Procedure. Land use applications that do not result in land use decisions are processed under the Type I Administrative procedure. The Director makes the decision based on the stated review criteria, without need for public hearing or notification.
- 1.280 Examples. Examples of applications that do not result in land use decisions include, but are not limited to: lot line adjustments, final subdivision plats, land use determination letters, and land use status letters.  
[Ord. 5475, 4/11/01; Ord. 5767, 12/7/11; Ord. 5832, 4/9/14]
- 1.290 *Section removed by Ord. 5728, adopted January 27, 2010.*

## ADMINISTRATIVE PROCESS

- 1.320 Type I Procedure.
- (1) The purpose of the Type I procedure is to provide for land use review based on standards specified in this Code that do not require interpretation or the exercise of policy or legal judgment. Approval of a Type I land use application is not a land use decision. (See Sections 1.230 and 1.260.)

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.
- (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]

### **PUBLIC HEARINGS**

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

- (1) Schedule and assign the matter for review and hearing;
- (2) Conduct the correspondence of the review body;

signatures of the decision maker; and (b) if written notice of the decision is required by law, when written notice of the decision is mailed to persons entitled to notice. [Ord. 5475, 4/11/01]

1.510 Notice of Decision.

- (1) Within five days of final action on a land use application, the Director shall provide written notice of the decision to the applicant and any other parties entitled to notice. The notice shall state the effective date of the decision, describe the right of appeal, and summarize the reasons for the decision and any conditions of approval, or indicate where such can be reviewed in detail.
- (2) The City shall take final action on all land use requests that are wholly within the authority and control of the City within 120 days from the date the application is deemed complete. However, by agreement with the applicant, this deadline may be extended as set out in ORS 227.178. The 120-day period set out in ORS 227.178 does not apply to an amendment to an acknowledged comprehensive plan or land use regulation or adoption of a new land use regulation that was forwarded to the Director of the Department of Land Conservation and Development under ORS 197.610 (for legislative changes). [Ord. 5446, 5/10/00]
- ~~(2)~~(3) 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.

## APPEALS

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]

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

- (1) Identification of the decision sought to be reviewed, including the date of the decision.
- (2) A statement of the interest of the person seeking review and that he/she was a party to the initial proceedings.
- (3) The specific policy or criteria relied upon for review.

## ARTICLE 11

### LAND DIVISIONS AND PLANNED DEVELOPMENTS

- 11.000 Overview. The most permanent feature of a community is the way land is divided into parcels. This article describes the process of converting raw land into building sites. The primary goals of this design review are to better ensure that natural features have been taken into account; that roads and utilities are properly designed and installed, and that adequate open space has been provided. This article establishes the standards and procedures for property line adjustments, partitions, subdivisions, planned developments, and condominiums.

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

- General Provisions
- Lot and Block Arrangement
- Property Line Adjustments
- Subdivisions and Partitions
- Planned Developments
- Condominiums
- Cluster Development

[Ord. 5668, 4/11/07]

#### GENERAL PROVISIONS

- 11.010 Relationship to State Law. Oregon Revised Statutes (ORS) Chapter 92 governs all land divisions. This chapter permits the City to develop its own procedures and review criteria. Because the state law particularly limits the City's discretion in these matters, users of this Code are encouraged to review ORS Chapter 92 at the same time. Because of the many state requirements in this area, this article cannot be relied upon to provide all of the regulations that are applicable to land divisions. At the time of adoption of this article in 1992, the following provisions of state law were identified as particularly applicable:

- ORS 92.025 - Prohibition of sales of lots or certain interests prior to recordation of plat.
- ORS 92.050 - Requirements of survey and plat of subdivisions and partitions.
- ORS 92.060 - Monument requirements for subdivisions, partitions and property line adjustments.
- ORS 92.090 - Requisites for approval of tentative subdivision or partition plat.
- ORS 92.120(5) - Disclosure of water rights information when dividing land.
- ORS 92.180 - Authority to review replats.
- ORS 92.205 - Policy on undeveloped subdivisions.

The foregoing is not intended to be an exclusive list of all of the provisions of state law, which must be considered by an applicant or staff in reviewing land division applications. By the same token, the provisions of state law, which are listed above, are not mandatory provisions of this Code. Rather they are merely intended to warn the reader of the need for careful contemporaneous review of state law.

- 11.020 Relationship to Public Improvements Article. All proposed developments governed by this article must meet the applicable design, and construction standards of Article 12 - Public Improvements.
- 11.030 Relationship to Other Local Regulations. All proposed development governed by this article must meet the underlying zoning district standards, applicable lot and block standards under this Section, the applicable on-site improvements of Article 9 (e.g., off-street parking, landscaping, buffering and screening), the applicable Natural Resource District Requirements of Article 6 (e.g., open space, floodplain, hillside development, significant wetlands, habitat assessment, riparian corridor, and Willamette River Greenway), and the post-construction stormwater quality requirements in Title 12 of the Albany Municipal Code.

[Ord. 5764, 12/01/11; Ord. 5842, 1/01/15, Ord. 5886, 1/6/17]

## EXPEDITED LAND DIVISIONS

11.145 An expedited land division, as defined by ORS 197.360(1), provides an alternative to the standard review procedures for land divisions set forth in this Article and Article 1 – Administration and Procedures of the Albany Development Code. When an applicant requests and qualifies for an expedited land division, the application shall be processed as provided in ORS 197.360 through 197.380.

## SUBDIVISIONS AND PARTITIONS

11.150 Difference Between Partitions and Subdivisions. A subdivision relates to the division of land into four or more lots within a calendar year. A partition relates to the division of land into two or three parcels within a calendar year. A partition does not include the three exclusions set forth in ORS 92.010 (7), including property line adjustments as described in Section 11.100 of this article.

11.160 Explanation of Process. Partitions and subdivisions are reviewed at two stages. A tentative plat is reviewed primarily for design aspects, such as connections to existing and future streets, preservation of natural features, drainage and floodplain considerations, and compliance with requirements of other portions of this Code. The tentative plat need not be prepared by a surveyor. The final plat is reviewed for conformance to the tentative plat as approved (with or without conditions) and applicable state or county laws or rules. The final plat must be prepared by a licensed land surveyor and is the instrument by which the land division is recorded.

11.170 Procedure. A tentative subdivision plat is reviewed through the Type III procedure for 20 or more lots or for all cluster development. All other tentative plats are reviewed through the Type I-L procedure. A final subdivision or partition plat is reviewed through the Type I procedure. [Ord. 5562, 10/10/03]

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

- (1) The proposal meets the development standards of the underlying zoning district, and applicable lot and block standards of this Section. [Ord. 5886, 1/6/17]
- (2) Development of any remainder of property under the same ownership can be accomplished in accordance with this Code.
- (3) Adjoining land can be developed or is provided access that will allow its development in accordance with this Code.
- (4) The proposed street plan affords the best economic, safe, and efficient circulation of traffic possible under the circumstances.
- (5) The location and design allow development to be conveniently served by various public utilities.
- (6) Activities and developments within special purpose districts must comply with the regulations described in Articles 4 (Airport Approach), 6 (Natural Resources), and 7 (Historic), as applicable. [Ord. 5764, 12/1/11]

11.190 Tentative Plat Conditions of Approval. The City may attach conditions of approval of a tentative subdivision or partition plat to ensure that the proposal will conform to the applicable review criteria.

11.200 Appeal of a Tentative Plat Decision. A decision to approve, approve with conditions, or deny a tentative subdivision or partition plat is a limited land use decision that may be appealed to the Land