



COMMUNITY DEVELOPMENT

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

Staff Report

Amendments to the Albany Development Code

DC-06-18

November 26, 2018

HEARING BODIES:	Planning Commission	City Council
HEARING DATES:	Monday, December 3, 2018	Wednesday, January 9, 2019
HEARING TIMES:	5:15 P.M.	7:15 P.M.
HEARING LOCATION:	City Council Chambers, Albany City Hall, 333 Broadalbin Street SW	

Application Information

Proposal:	Albany Development Code amendments related to the size of retail uses in older buildings within the NC and OP zones, development on steep hillsides, and the intent of the Cluster Development standards.	
Review Bodies:	Planning Commission and City Council (Type IV legislative land use process)	
Applicant:	City of Albany, Community Development Department	
Staff:	David Martineau, Planning Manager and Anne Catlin, Planner III	

Overview of Proposed Amendments

The Albany Development Code (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 DC-06-18 amendment package would:

- support redevelopment in buildings built before 2003 in the Neighborhood Commercial (NC) and Office Professional (OP) zones;
- streamline the review process for some development types in the Hillside Development overlay district; and
- clarify the purpose of Cluster Developments and the review criteria to be consistent with existing provisions and priorities for designating permanent natural areas.

In summary, the proposed amendments satisfy the goals and policies of the Comprehensive Plan and the purposes of the Development Code zoning districts while addressing issues that were considered an impediment to economic development.

Notice Information

Notice was provided to the Oregon Department of Land Conservation and Development (DLCD) on October 25, 2018, at least 35 days before the first evidentiary hearing, in accordance with Oregon Administrative Rule (OAR) 660-018-0020 and the Albany Development Code (ADC) 1.640.

Intergovernmental notice was provided to Linn and Benton County Planning Divisions on November 14, 2018.

Notice of the public hearing was published in the *Albany Democrat-Herald* on November 26, 2018. The staff report for the proposed ADC amendments was posted on the City's website on November 26, 2018, 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. 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.

Analysis of ADC Criteria

Albany Development Code (ADC) section 2.290, "Development Code Amendments" includes two review criteria that must be met for the proposed amendments to be approved. Analysis of the three different ADC amendments compliance with these criteria is provided below.

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.

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.

Findings of Fact

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 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 Consistent with the legislative hearing notice requirements of ADC 1.600 and the Comprehensive Plan, a public notice regarding the proposed amendments were placed in the Albany Democrat Herald on November 26, 2018, informing the public of the Planning Commission and City Council public hearings scheduled for the proposed amendments. These two hearings will 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.

1.3 The proposed ADC amendments to Hillside and Cluster development are a result of questions raised by some members of the Planning Commission following review of developments proposed in the Hillside Overlay and using the Cluster Development provisions.

- 1.4 Proposed amendments related to removing the business footprints for retail uses locating in buildings constructed before 2003 in the NC and OP zone are a result of concerns raised by the owner of a property zoned NC that is affected by existing ADC standards.
- 1.5 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

- 1.6 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.

- 1.7 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.
- 1.8 The ADC amendments are proposed in response to issues raised by residents and property owners. Therefore, the amendments are being responsive to community needs while remaining consistent with the City Comprehensive Plan policies related to economic development and environmental resources.

Goal 14: Urbanization

- 1.9 The following Comprehensive Plan goals and policies relating to Goal 14, Urbanization are applicable to all of the ADC amendments proposed in the DC-06-18 package:

Goal 14, Urbanization, Development Review, Policy 5: Ensure the City's land use planning process and its policy framework is workable and understandable for local officials, staff and the public. Ensure the degree of application and review is commensurate with the size and complexity of various development requests.

Goal 14, Urbanization, Development Review, Policy 7: Periodically review and update all City and County implementing ordinances to ensure continued coordination, consistency in procedure, and efficient processing of development applications within the Urban Growth Management Area.

- 1.10 Hillside Development Process Amendments. Currently land use proposals in the Hillside Development overlay district require a public hearing process even when the concurrent land use application is a staff-level review. The only additional decision criteria to consider is whether the applicant submitted the required geotechnical report. Staff proposes that development within the Hillside Development overlay district be processed at the same level as the concurrent land use application for the development; meaning a development would only require a public hearing through the Type III land use process if the concurrent application required the process. (See proposed amendments in Attachment B.)
- 1.11 The proposed amendments to streamline the process for some Hillside developments will ensure the degree of review is commensurate with the size and complexity of the development request and comply with the Comprehensive Plan policies.
- 1.12 Cluster Development Amendments. Some members of the Planning Commission have expressed concern that the Cluster Development provisions were unclear or not meeting their original intent, which changed when the City updated the Code to comply with Statewide Planning Goal 5, Natural Resources. The proposed

amendments would clarify the intent of the Cluster Development provisions is to allow density to transfer from natural resources or other special features of the site in exchange for protecting and/or restoring the resources.

- 1.13 The proposed amendments to the Cluster Development standards would clarify the purpose of the Cluster standards and improve consistency throughout.

Goal 9, Economy/Economic Development

- 1.14 Business Footprint in NC and OP. The proposed ADC amendments would remove the business footprint limits for allowed retail uses locating in buildings built prior to February 7, 2003 in the Neighborhood Commercial (NC) and Office Professional (OP) zoning districts. (See proposed amendments in Attachment A.) The amendments are intended to recognize several buildings built prior to February 7, 2003 in the NC and OP zones larger than 5,000 square feet when there was no limit on the business footprint for convenience-oriented retail and personal services-oriented retail uses. (For example, the vacant Mega Foods building in the NC district is over 5,000 square feet.) When these larger buildings are vacant for more than one year, retail uses over 5,000 square feet are not permitted in them, and building owners are challenged finding allowed uses or multiple retailers for the spaces.

- 1.15 The Albany Comprehensive Plan contains several relevant goals and policies under Plan Goal 9: Economy that recognize the need to evaluate the needs of the business community and consider amendments to implementing regulations when necessary.

Goal 4: Promote infill development and redevelopment throughout the City.

General Policy 3: Designate enough land in a variety of parcel sizes and locations to meet future employment and commercial needs.

Commercial Policy 2: Discourage future strip commercial development and promote clustered commercial opportunities and the infilling of existing commercial areas that will foster:

- a. Efficient and safe utilization of transportation facilities.*
- b. A variety of attractive and comfortable shopping opportunities that encourage shopping in several stores without auto use.*
- c. Compatibility between land uses, particularly adjacent residential neighborhoods.*
- d. Efficient extension of public facilities and services.*

Commercial Policy 5: Provide opportunities for small neighborhood commercial facilities to be located in neighborhoods and Village Centers close to the areas they are intended to serve. Neighborhood convenience and Village Center commercial uses must:

- a. Be located, designed, and operated so as to be compatible with surrounding residential uses.*
- b. Be oriented to provide for the common and frequently recurring shopping needs of the area they are intended to serve.*
- c. Be limited in number, size, and location. Generally, new Neighborhood Commercial sites will be less than an acre.*

- 1.16 The proposed amendments to remove the business footprint for retail uses locating in buildings built before February 7, 2003 in the NC and OP zones would promote infill and redevelopment within these zones.

- 1.17 Removing the business footprint limits for limited buildings in the NC and OP zones would allow for retail uses to be located near the residents intended to serve and allow for a variety of business sizes in locations to meet commercial needs.

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

- 1.18 Cluster Development Purpose. The Cluster Development standards were revised with a package of ADC amendments adopted to comply with Statewide Planning Goal 5, which created Albany's significant natural resource overlay districts. A primary goal of the Goal 5 revisions was to balance protection of natural resources with reasonable economic use of property. To achieve that goal, revisions to the Cluster Development standards broadened and prioritized natural resource protection areas to include protection of significant and non-significant resources and restoration of degraded or marginal quality significant natural resources to good

quality. At different points over the past year, some members of the Planning Commission have expressed concern that the Cluster Development provisions were unclear or not meeting their original intent.

1.19 The proposed amendments to the Cluster Development purpose and criteria are intended to clarify existing standards and priorities for resource protection that were adopted to comply with Statewide Planning Goal 5, Natural Resources. (See Attachment C.) The proposed amendments will remove confusion and create consistency between the Cluster Development purpose statement and the standards.

1.20 The proposed Cluster Development amendments support the following Comprehensive Plan goals and policies related to Statewide Planning Goal 5, Natural Resources:

Vegetation and Wildlife Habitat Goal 3: Balance compact development patterns with natural resource protection.

Vegetation and Wildlife Habitat Policy 6: Provide flexibility in development regulations to locate development away from and/or limit adverse impacts to significant vegetation and wildlife habitat areas.

Open Space & Riparian Resources Goal 1: Ensure the provision of open space and protection of natural and scenic resources.

Wetland Resources Goal: Protect wetlands to ensure their continued contribution as natural areas, open space, wildlife and vegetative habitat, and storm water retention and conveyance.

Wetland Resources Policy 1: Protect and enhance wetlands adopted as significant in the Local Wetland Inventory.

1.21 The proposed amendments to the Cluster Development purpose and criteria will clarify the intent of the standards to balance compact development patterns with natural resource protection.

1.22 The amendments would clarify the intent of the standards to provide flexibility in development regulations in exchange for setting aside open space for the protection and/or enhancement of natural resources such as wetlands, riparian corridors and wildlife habitat, as well as other special features of a development site.

Goal 10: Housing

1.23 The amendments to the Cluster and Hillside Development standards support Comprehensive Plan policies related to Goal 10, Housing that encourage conservation of natural resources and incorporates natural resources and other special features into residential developments.

Policy 4: Encourage residential development that conserves energy and water; uses renewable resources; and promotes the efficient use of land, conservation of natural resources, easy access to public transit, and easy access to parks and services.

Policy 5: Encourage the use of Cluster and Planned Unit Developments to:

- a. Promote architecturally appealing and functional land use design.*
- b. Allow flexibility in the placement and uses of buildings, recreation areas, open spaces, streets, utilities, and off-street parking areas.*
- c. Effectively utilize special site features including natural characteristics, location, view, topography, size or shape of parcels.*
- d. Maintain a development pattern that is compatible with the surrounding area as determined by the Comprehensive Plan designation.*

Policy 8: Encourage the development of great neighborhoods by: c. incorporating natural features and spaces into developments.

Criterion 1 Conclusions

1.1 The ADC amendments proposed in the DC-06-18 package were raised by residents or affected parties and were considered by the City to ensure the ADC remains current and responsive to community needs, while remaining consistent with the City's Comprehensive Plan goals and policies and state goals and laws.

1.2 The proposal to remove the business footprint for retail uses locating in older buildings in the NC and OP zones would enable retailers larger than 5,000 square feet to serve nearby residents, keep buildings occupied

and neighborhood commercial areas healthy. The proposed amendments better achieve the goals and policies of Comprehensive Plan Goal 9, Economy than the existing language.

- 1.3 The proposed amendments to the Hillside Development process would make the land use review process commensurate with the scope of development for Hillside Developments but would not change the criteria for development on steep slopes. The proposed amendments better achieve Comprehensive Plan Goal 14 Urbanization policies to be understandable and commensurate with the complexity of proposals than the existing language.
- 1.4 The proposed amendments to the Cluster Development standards will improve the consistency and clarity of the existing language and will better achieve the goals and policies of Goal 14, Urbanization than the existing regulatory language.
- 1.5 The proposed amendments to Cluster Development would modify the purpose statement to be clear and consistent with the standards and will better support the Goal 10 Housing policies that encourage natural resource protection and efficient use of land than the existing language.
- 1.6 The Cluster Development amendments will better achieve the Comprehensive Plan Goal 5, Natural Resources policies to balance development with the provision of open space and flexibility to locate development away from significant vegetation and habitat areas.
- 1.7 The proposed Development Code amendments support the goals and policies in the Comprehensive Plan related to citizen involvement, land use planning, urbanization, economic development, housing and the environment.
- 1.8 The proposed amendments better achieve the applicable goals and policies of the Comprehensive Plan than the existing language.
- 1.9 Review Criterion 2.290(1) is satisfied.

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.

Findings of Fact

- 2.1 Per Section 1.020, the general purpose of the Albany Development 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 (applicable listed):*
 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.*
 3. *Facilitate prompt review of development proposals and the application of clear and specific standards.*
 10. *Protect constitutional property rights, provide due process of law, and give consideration in all matters to affected property owner interests in making land use decisions.*
- 2.2 Business Footprint in NC and OP. Purpose statements for the Neighborhood Commercial and Office Professional zones are provided below.

ADC 4.020(1) OP – OFFICE PROFESSIONAL DISTRICT. The OP district is intended to provide a vertical or horizontal mix of professional offices, personal services, live-work, residential and limited related commercial uses in close proximity to residential and commercial districts. The limited uses allowed in this district are selected for their compatibility with residential

uses and the desired character of the neighborhood. OP is typically appropriate along arterial or collector streets as a transitional or buffer zone between residential and more intense commercial or industrial districts.

ADC 4.020(2) NC – NEIGHBORHOOD COMMERCIAL DISTRICT. The NC district is intended primarily for small areas of retail establishments serving nearby residents' frequent needs in convenient locations. The NC District is typically appropriate for small clusters or service centers located at intersections within residential neighborhoods. Businesses should fit into the residential pattern of development and not create land use, architectural or traffic conflicts. Generally, uses located within NC Districts should have as their primary market area the population within a one-half mile radius.

2.3 The proposed amendments to remove the business footprint for retail uses locating in buildings constructed before February 7, 2003 in the OP and NC zoning districts will allow occupancy of existing buildings in these districts to serve nearby residents consistent with the base zone purpose statements.

2.4 The amendments are consistent with the NC zone purpose to provide small areas of retail development to serve a primary market area within a one-half mile radius.

2.5 Hillside Development. The purpose statement for the Hillside Development overlay district is provided below.

ADC 6.170 Purpose. The Hillside Development overlay district (/HD) is intended to regulate the development of potentially hazardous terrain, minimize public and private losses due to earth movement hazards in specified areas, and minimize erosion and related environmental damage. It is not the intent of Hillside Development standards to transfer density within a development.

2.6 The proposed ADC amendment to streamline the review process of developments proposed in the Hillside Development overlay district is consistent with the purpose statement and will not change the criteria and standards nor exempt developments from the land use process or the /HD overlay district requirements.

2.7 Cluster Development. The proposed ADC amendments would clarify that the purposes of the Cluster Development standards are to protect and/or enhance natural or other special features located in significant natural resource districts in exchange for transferring allowable density to other areas of the site and more flexible development standards.

11.400 Purpose. Cluster development is intended to protect natural and other special features that either would not otherwise be protected, or otherwise restored to good quality, in the development of a site. In return, the more flexible standards found in this section may supersede other stricter standards of this Code. Cluster developments may provide greater flexibility, reduced and/or varied lot sizes, and more variety in permitted uses. It is not the intent of cluster development to increase the overall housing density of property above the density that would have been allowed in a standard subdivision. Developments must satisfy high-quality master planning and design requirements.

2.8 The proposed amendments to Cluster Development sections are consistent with and support the purpose and intent of Albany's Natural Resource Overlay Districts provided below, which are to protect and enhance the City's significant riparian corridors and wetlands while providing reasonable economic use of property.

6.270 Purpose and Intent. The intent of these supplemental Significant Natural Resource overlay districts is to protect significant natural resources within the City of Albany as designated under Statewide Planning Goal 5 and the provisions of the Goal 5 administrative rule (OAR 660, Division 23), while ensuring reasonable economic use of property. More specifically, the purpose and intent of each Significant Natural Resource overlay district is as follows:

A. Riparian Corridor overlay district (/RC): *To protect and enhance Albany's riparian areas, thereby protecting and restoring the hydrologic, ecological, and land conservation functions these areas provide. Significant riparian corridors support valuable fish and wildlife habitat; improve water quality by regulating stream temperatures, trapping sediment, and stabilizing streambanks; and reduce the effects of flooding. A healthy riparian corridor is comprised of a multi-storied forest of native*

species of trees, shrubs, and ground cover. Many riparian corridors in Albany have the potential to be restored to higher function and value.

- B. *Significant Wetland overlay district (/SW): To protect and enhance the integrity, function and value of Albany's significant wetlands and fish-bearing waterways. Wetlands and waterways provide hydrologic and ecologic functions; and reduce adverse effects of flooding. The vast majority of significant wetlands are in riparian areas. There are a small number of isolated significant wetlands. The higher quality isolated wetlands will be regulated locally (as identified in the Citywide ESEE Analysis); and the lower quality isolated wetlands will not be regulated locally but must comply with state and federal wetland regulations.*

Criteria 2 Conclusions

- 2.1 The proposed ADC amendments are consistent with ADC policies and purpose statements for the base zones, special purpose districts, and development regulations where amendments are proposed.
- 2.2 The proposed amendments satisfy the criterion in ADC 2.290(2).

Overall Conclusions and Recommendations

This staff analysis finds that the proposed amendments regarding the size of retail in NC and OP, revisions to how Hillside Development applications are processed, and clarifying amendments to the Cluster Development purposes satisfy the review criteria for Development Code amendments.

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, B and C of this staff report. Decision options and a suggested motion is provided below.

Decision Options

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

Motion (DC-06-18)

I move to recommend that the City Council approve the proposed Development Code amendments as identified in this report and planning file DC-06-18. 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 to Article 4, Business Footprint in NC and OP
- B. Proposed ADC Amendments to Article 6, Hillside Development
- C. Proposed ADC Amendments to Article 11, Cluster Developments

Acronyms

ADC	Albany Development Code
DC	Development Code Text Amendment File Designation
/HD	Hillside Development Overlay District
LUBA	Oregon Land Use Board of Appeals
NC	Neighborhood Commercial zoning district
OP	Office Professional zoning district