



ALBANY CITY COUNCIL

AGENDA

Wednesday, August 26, 2020

This meeting will be conducted virtually. At 7:15 p.m., join the meeting at:

<https://www.gotomeet.me/cityofalbany/ccm>

You can use your built-in microphone or dial in using your phone.

Call: [1-646-749-3129](tel:1-646-749-3129)

Access code: [491-970-829](tel:491-970-829)

Microphones will be muted and webcams will be turned off for presenters and members of the public unless called upon to speak.

Requests for information to be shared on screen must be submitted before noon on the day of the meeting.

If participant(s) disrupt the meeting, the participant(s) microphone and webcam will be turned off.

If disruption continues, the participant(s) will be removed from the meeting.

1. Call to order and pledge of allegiance

2. Roll call

3. Public hearings

Persons wanting to address the council during public hearings have two options.

1- *Email your comments to CDAAC@cityofalbany.net . Please include your name, address, and subject of the public hearing. Comments received before **5:00 p.m. Tuesday, August 25, 2020**, will be included in the record.*

2- *To testify virtually during the public hearing, register by emailing CDAAC@cityofalbany.net before **3:00 p.m. on the day of the meeting**. Include your name and whether you will be speaking for, against, or neutral. During public testimony, the mayor will call upon those who have registered to speak, and they will be unmuted at that time.*

a. Comprehensive plan and development code amendments, demolition review and title of landmarks commission (CP-01-20/DC-01-20). [Pages 3-42]

Action: _____ ORD NO. _____

b. Comprehensive plan amendments, facility plans (CP-03-20). [Pages 43-58]

Action: _____ ORD NO. _____

4. Business from the public

*Persons wanting to provide comment to the council during "business from the public" must send their written comments by email to cityclerk@cityofalbany.net before **5:00 p.m. the day before the meeting** in order to be included in the public record. Please limit comments to one page and include your name and address.*



5. Approval of agreements
 - a. ODOT agreements for 24th Avenue rehabilitation (ST-21-01) and Queen Avenue street improvements (ST-21-03). [Pages 59-96]
Action: _____

6. Adoption of consent calendar
 - a. Approval of minutes
 - 1) June 24, 2020, meeting. [Pages 97-103]
 - 2) July 6, 2020, work session. [Pages 104-107]
 - b. Recommendations to OLCC
 - 1) Approve limited on-premises liquor license application for Northwest Mobile Cuisine LLC, DBA N'Reener's/McCarthy's Tap Shack, 520 Pacific Boulevard SW. [Page 108]
 - c. Adoption of resolutions
 - 1) Accepting grant funds from Business Oregon. [Page 109] RES NO. _____
 - 2) Accepting CARES Act funding for airport. [Pages 110-111] RES NO. _____
 - d. Accepting charitable contribution from Country Financial. [Pages 112-113]Action: _____

7. Staff Report
 - a. Approval of the proposed council meeting schedule for November and December 2020. [Pages 114-115]

8. Business from the council

9. Recess to executive session to discuss litigation in accordance with ORS 192.660 (2)(h)

10. Reconvene

11. Next meeting dates
Wednesday, September 9, 2020; 7:15 p.m. regular meeting
Monday, September 21, 2020; 4 p.m. work session
Wednesday, September 23, 2020; 7:15 p.m. regular meeting

12. Adjournment

Due to Governor Brown's Executive Orders limiting public gatherings during the COVID-19 pandemic, this meeting is accessible to the public via phone and video connection.



MEMO

TO: Albany City Council

VIA: Peter Troedsson, City Manager *PT 8/20*
Jeff Blaine, P.E. Public Works Engineering and Community Development Director *JB*

FROM: David Martineau, Planning Manager *DM*

DATE: August 17, 2019, for the August 26, 2019, City Council Meeting

SUBJECT: Public Hearing Regarding Albany Comprehensive Plan and Development Code (ADC) Amendments (Planning File No. CP-01-20 and DC-01-20)

Relates to Strategic Plan theme: Effective Government

Action Requested:

Staff recommends that City Council hold a public hearing, deliberate, and make a decision regarding the proposed legislative text amendments to the Albany Comprehensive Plan and Development Code (ADC or Code) as presented in the staff report, dated July 6, 2020. If council decides to approve the amendments, staff also recommends that they adopt the attached ordinance (Attachment A), that would amend sections of the comprehensive plan and development code related to protection of National Register resources, and remove the word "advisory" from all title references to the Landmarks Commission (LC).

Discussion:

On August 26, 2020, the city council will hold a public hearing on the proposed text amendment package. As described in detail in the attached staff report to the planning commission (Attachment B), the following amendments are proposed:

- 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).
- 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.
- Amend Chapter 2 and Appendices I, IIA, and IV of the comprehensive plan 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.
- Add ADC section 7.370 to rectify a discrepancy in the timing of the issuance of a demolition permit after demolition review. Proposed amendments align the timing of the issuance of a permit for demolition with the land use demolition review appeal period.



The proposed amendments represent a package of compliance and general housekeeping items. The ADC is currently not consistent with state law for considering demolition of historic structures. While staff is currently processing applications consistent with state laws, the ADC should be updated to reflect current requirements. If updates are not made, errors in processing applications should be anticipated over time. Additionally, Albany residents who attempt to understand their development options by reading the ADC may be misled by the outdated language. In this way, only those residents who are familiar with state law or have the wherewithal to inquire further with staff may receive any benefits afforded through state law. Adopting the proposed amendments would avoid these unintended negative consequences.

The applications have been processed through the Type IV application review process in accordance with ADC 1.590. This process is required for legislative changes to the ADC that affect a large number of persons, properties, or situations and includes review and a recommendation by the planning commission prior to a final local decision made by city council.

On July 13, 2020, the planning commission held a duly advertised public hearing and unanimously recommended that the city council approve the proposed amendments.

Options for the City Council:

City council has three options with respect to the proposed comprehensive plan and development code amendments:

- Option 1: Approve the proposed text amendments; or
- Option 2: Approve the proposed text amendments with changes; or
- Option 3: Deny the proposed text amendments.

Based on the analysis provided in the report, staff recommends city council approve the proposed amendments to the Albany Comprehensive Plan and Development Code. If city council accepts this recommendation the following motion is suggested:

Motion to Adopt

I MOVE that the city council ADOPT the ordinance to amend the Albany Comprehensive Plan and Development Code as identified in the staff report, dated July 6, 2020 and referenced under planning files CP-01-20 and DC-01-20. This motion is based on the findings and conclusions in the staff report, dated July 6, 2020 to the planning commission and city council, and findings in support of the decision made by city council during deliberations on this matter.

Budget Impact:

None

DM:ss

Attachments:

- A. Ordinance
- B. Staff Report, dated July 6, 2020



ORDINANCE NO. _____

AN ORDINANCE AMENDING ORDINANCE NO. 4836, WHICH ADOPTED THE CITY OF ALBANY COMPREHENSIVE PLAN AND AMENDING ORDINANCE NO. 4441, WHICH ADOPTED THE CITY OF ALBANY DEVELOPMENT CODE, BY AMENDING THE ALBANY COMPREHENSIVE PLAN AND THE ALBANY DEVELOPMENT CODE TEXT AND ADOPTING FINDINGS

WHEREAS, on July 13, 2020, the Albany Planning Commission held a public hearing and deliberated on proposed text amendments to the Albany Comprehensive Plan and Development Code relating to protection of National Register resources, and removing the word "advisory" from all title references to the Albany Landmarks Commission (planning file no. CP-01-20 and DC-01-20); and

WHEREAS, on July 13, 2020, the planning commission recommended that the Albany City Council approve the proposed text amendments. This recommendation was based on evidence presented in the staff report and consideration of public testimony during the public hearing; and

WHEREAS, the city council held a public hearing on the proposal on August 26, 2020, and reviewed the findings of fact and conclusions included in the July 6, 2020 staff report and testimony presented at the public hearing and then deliberated; and

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

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

Section 1: The text of the Albany Comprehensive Plan and Development Code is hereby amended as shown in Exhibits A and B of this ordinance.

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

Passed by the Council: _____

Approved by the Mayor: _____

Effective Date: _____

Mayor

ATTEST:

City Clerk

GOAL 5: OPEN SPACES, SCENIC & HISTORIC AREAS, & NATURAL RESOURCES

HISTORIC AND ARCHAEOLOGICAL RESOURCES BACKGROUND SUMMARY

No less intangible but far less renewable than most natural resources, Albany's historic resources are an important asset to the citizens of Albany and Oregon. The historic cityscape, which Albany's citizens encounter everyday, is valuable because it gives people a sense of permanence and continuity - a sense of place.

A community's image of itself is important in sustaining both its economic health and the well-being of its citizens. A poor image will not attract new industries or commercial businesses nor stimulate civic pride. By emphasizing its historic landscape, Albany can enhance its image and offer an attractive tourist setting.

Albany's historic landscape represents a vital, irreplaceable heritage of traditions. It is a unique collection of structures representing every stage of Albany's growth and mirroring Oregon's distinctive cultural history. Some 379 primary historic buildings built prior to 1900, plus 360 secondary buildings built after 1900 but before 1915, exist within one commercial and two residential historic districts in a 190-block core area along the waterfront. An additional 100 historic structures of equal quality are scattered throughout the city.

The Monteith, Hackleman, and Downtown Historic Districts have achieved national recognition by being placed on the National Register of Historic Places, the nation's official list of cultural resources worthy of preservation. A number of individual buildings within the city are also on the Historic Register. Together, these historic districts provide a visual span of Albany's history from 1848 to 1915; from the time of its first settlement through its years of growth as a river port and commercial trade center. More significant than the number of buildings, however, is the architectural quality of the structures in Albany representing virtually every style and type of house ever built in the Northwest. The commercial district contains every major commercial style of the Victorian era and claims one of the finest cast-iron facades (Blain Building).

Albany's citizens have shown an interest and commitment to historic preservation. The City recognizes that a preservation program can recycle older structures to preserve their quality craftsmanship, make residential and commercial property more valuable, create an attractive tourist setting, and reduce energy needs. Because of their lack of insulation, historic structures offer the greatest potential for reducing energy use within the city. It has been estimated that by weatherizing these homes to the 1980 Building Code standards, 70 percent of their annual heating costs can be saved.

The City funded and completed an historic building survey and compiled material for nomination of the three districts to the National Historic Register. Altogether, the combined data of architectural and historic descriptions, mapping, and photography, create the only complete street-by-street house inventory in Oregon.

Citizen groups have been energetically involved in the process of establishing the historic districts, and they have developed a number of support projects including historic home tours, fund raising for restoration of the Monteith House (the original home of Albany's founders), and the establishment of a Preservation Resource Center. In addition, a Landmarks Commission (previously known as the Historic Advisory and Museum Commission and Landmarks Advisory Commission) was created, whose functions include the development of educational and funding programs to protect the city's historic resources.

There has been no intensive archaeological site survey within the Albany Urban Growth Boundary, although the potential exists for an abundant concentration of prehistoric sites. Archaeologists believe the Albany area was a central camp site for a band of Kalapuyan Indians because of its easy access to major waterways for transportation and fishing and to the prairie land for small game and camas roots.

APPENDIX 1

AGENCY INVOLVEMENT PROGRAM

The City of Albany recognizes its responsibility to implement an agency involvement and coordination program to assure an effective working relationship with those local, state, and federal agencies which may have an interest in Albany and its surrounding area. The City's implementation program provides:

1. Agencies with status reports of current planning efforts, work schedules, and regular meeting dates of the City Planning Commission and the City Council.
2. On request, copies of studies, plans, and ordinances related to the City's planning program.
3. Notice of other public hearings and/or meetings when applicable.

The City coordinates all land-use activities with governmental agencies and private utilities, often utilizing plans or studies prepared by other agencies or direct assistance in the development of a plan or study. The following agencies received and had the opportunity to review background material, and/or goals and policies of the Comprehensive Plan.

LOCAL AGENCIES

Albany Area Chamber of Commerce
Albany Downtown Association
Albany-Lebanon Sanitation Company
Albany-Millersburg Economic Development Corporation
Albany Parks and Recreation Commission
Albany Planning Commission
Benton County Board of Commissioners
Benton County Planning Commission
City of Corvallis
City of Millersburg
Community Services Consortium
Friends of Historic Albany
Greater Albany Public School District 8J
Landmarks Commission
Linn-Benton Community College
Linn-Benton Housing Authority
Linn County Board of Commissioners
Linn County Planning Commission
Northwest Natural Gas
Oregon District 4 Council of Governments
Pacific Power and Light
Senior and Disabled Services
Southern Willamette Research Corridor
U.S. West Communications

APPENDIX IV

ACRONYMS

- AC of E:** Army Corps of Engineers
- ACDP:** Air Contaminant Discharge Permit
- ACVC:** Albany Convention and Visitors Commission
- ADA:** Albany Downtown Association
- AMEDC:** Albany-Millersburg Economic Development Corporation. Serves as Albany's and Millersburg's central point of contact for businesses interested in locating/expanding in the area and/or needing business development assistance.
- ARA:** Albany Redevelopment Agency. This agency was formed by the City of Albany to provide public works improvements (water, sewer, sidewalk, traffic control, lighting, drainage) in the Albany Economic Development District.
- ATS:** Albany Transportation System
- BTU:** British Thermal Unit. A unit of heat, the quantity needed to raise the temperature of 1 pound of water 1 degree Fahrenheit.
- C-1:** Neighborhood Commercial Zoning District
- C-2:** Community Commercial Zoning District
- C-3:** Central Business Zoning District
- CBD:** Central Business District
- CH:** Heavy Commercial Zoning District
- CIC:** Citizen Involvement Committee. During the Comprehensive Plan update process this was a three-member subcommittee of the CPRC which developed and reviewed the citizen involvement portions of the Plan. After the periodic review process, the CIC will become a five-member committee composed of City Council appointees chosen as follows: one member from each of the Albany's three wards, one member at-large, and one from the North Albany portion of the UGB.
- CIP:** Capital Improvement Program
- CPRC:** Comprehensive Plan Review Committee. This committee was created to review and provide input regarding the Comprehensive Plan update. It is composed of 27 members, including the Albany Planning Commission, eight citizens appointed by the Planning Commission, seven citizens appointed by the City Council, two members from the North Albany Citizen's Advisory Committee and one City Council liaison member.
- DEQ:** Department of Environmental Quality, State of Oregon

**ACRONYMS
(CONTINUED)**

- DOE:** Department of Energy, State of Oregon
- DLCD:** Department of Land Conservation and Development, State of Oregon
- DSL:** Division of State Lands, State of Oregon
- EDD:** Economic Development Department, State of Oregon
- EPA:** Environmental Protection Agency
- FEMA:** Federal Emergency Management Agency
- GAPS:** Greater Albany Public Schools, District 8J
- HAMC:** Historic Advisory and Museum Commission. Now known as the Landmarks Commission (LC).



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

Files: CP-01-20 & DC-01-20

August 26, 2020

AMENDING THE SECTIONS OF ALBANY DEVELOPMENT CODE THAT RELATED TO 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

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.

- (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 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:

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

- (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]

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

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

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.



COMMUNITY DEVELOPMENT

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

Staff Report

Comprehensive Plan and Albany Development Code Text Amendments

Files: CP-01-20 & DC-01-20

July 6, 2020

HEARING BODIES:	Planning Commission	City Council
HEARING DATES:	Monday, July 13, 2020	Wednesday, August 26, 2020
HEARING TIMES:	5:15 p.m.	7:15 p.m.
HEARING LOCATION:	Due to Governor Brown's Executive Orders limiting public gatherings during the COVID-19 pandemic, this meeting is accessible to the public via phone and video connection.	
	At 5:15 p.m., join with the GoToMeeting app on your computer, tablet, or smartphone (using your device's microphone and speakers):	
	https://www.gotomeet.me/CommunityDevelopmentCityofAlbany/pc	
	If you wish to dial in using your phone:	
	Call 1-571-317-3122 and when prompted enter access code 498-239-709	

Application Information

Proposal:	Comprehensive Plan Amendment regarding the title of the Landmarks Commission; Albany Development Code Amendment (IV-Legislative) regarding historic review of demolitions and title of the Landmarks Commission.
Review Bodies:	Planning Commission and City Council (Type IV - Legislative review process)
Applicant:	City of Albany, Community Development Department, 333 Broadalbin Street SW, Albany, OR 97321.
Address/Location:	Not applicable; the code amendment is not site specific
Staff Report Prepared by:	Laura LaRoque, Project Planner

Overview

Sections 2.210 and 2.280 of the Albany Development Code (ADC) allows for the Community Development director to initiate legislative amendments to the Albany Comprehensive Plan (Plan) and ADC. The City has implemented a process to periodically evaluate and adopt changes to the Plan and ADC to include both clarifying and policy edits. The proposed amendment package (planning files CP-01-20 & DC-01-20) would:

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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 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 600-023-0200(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.

Proposed Amendments

Proposed amendments as they would appear in the Plan and ADC are included as attachments (Attachments A and B). 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 Attachments C and D. Both the strike-out and clean versions of the amended sections of the Plan and 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 Plan and ADC.

Notice Information

Public notice was issued in accordance with legislative amendment requirements. A notice was issued to the Oregon Department of Land Conservation and Development (DLCD) on June 8, 2020, at least 35 days before the first evidentiary hearing, in accordance with OAR 660-018-0020 and ADC 1.640. A Notice of Public Hearing was mailed on June 29, 2020, to Linn and Benton County Planning Divisions, City of Millersburg, and Oregon State Historic Preservation Office. A Notice of Public Hearing was provided for publication to the *Albany Democrat-Herald* on July 3, 2020. The staff report for the proposed development code and comprehensive plan amendments was posted on the City’s website on July 6, 2020, 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 Plan and 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.

Analysis of Development Code Criteria

Comprehensive Plan Text Amendment (file no. CP-01-20)

Section 2.220(1)(2) of the ADC includes the following review criteria that must be met for this legislative text amendment to be approved. Code criteria are written in ***bold italics*** and are followed by findings and conclusions.

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.

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.**
- 1.8 In 2018, the Land Conservation and Development Commission (LCDC) adopted new administrative rules governing how Oregon jurisdictions identify, designate, and protect historic resources. See findings 2.2 and 2.3, incorporated herein by reference.
 - 1.9 On June 21, 2019, Ordinance No. 5928 amending section 2.76.020 of the AMC from Mayor to Council appointment of Landmarks Commissioners became effective. On August 23, 2019 Ordinance No. 5931, became effective. 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 Proposed text amendments to the Plan and ADC are reflective of recent changes in the AMC in terms of the title, decision-making authority, and appointment of the Landmarks Commission.
 - 1.10 A discussion of proposed legislative amendments to the ADC related to amendments to OAR 660-018-0020 and AMC 2.76 under planning file no. DC-02-19 occurred during separate, duly advertised public meetings of the Planning Commission, landmarks commission, and City Council on October 28, November 6, and December 4, 2019, respectively. The City Council did not approve ADC text amendments (planning file no DC-02-19) 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.
 - 1.11 A notice of the proposed text amendments (planning files CP-01-20 and DC-02-20) was issued to the Oregon Department of Land Conservation and Development (DLCD) on June 8, 2020, at least 35 days before the first evidentiary hearing, in accordance with OAR 660-018-0020 and ADC 1.640.
 - 1.12 A Notice of Public Hearing (planning files CP-01-20 and DC-02-20) was mailed on June 29, 2020, to Linn and Benton County Planning Divisions, City of Millersburg, and Oregon State Historic Preservation Office. A Notice of Public Hearing was provided for published in the Albany Democrat-Herald on July 3, 2020. These notices informed the public that the amendments would be considered during the July 13 Planning Commission and August 26, 2020 City Council public hearings, consistent with the legislative hearing notice requirements of ADC 1.600.

- 1.18 Proposed ADC text amendments include the addition of section 7.370 to rectify a discrepancy in the timing of the issuance of a demolition permit after demolition review. Proposed amendments align the timing of the issuance of a permit for demolition with the land use demolition review appeal period.

Statewide Planning Goal 14: To provide for an orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment inside urban growth boundaries, to ensure efficient use of land, and to provide for livable communities.

Albany Comprehensive Plan – Urbanization (Chapter 8)

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

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.

- 1.19 “Relevant area plans” as used here means land use plans. For example, the City has relevant area plans for areas such as North Albany and South Albany.
- 1.20 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 historic resources designated on the National Register of Historic Places 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.

Comprehensive Plan Amendment - Review Criterion 2.220(2)

A legislative amendment is needed to meeting changing conditions or new laws.

Findings of Fact

- 2.1 In 2018, the LCDC adopted new administrative rules governing how Oregon jurisdictions identify, designate, and protect historic resources.
- 2.2 The rule (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.

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 findings 1.1 through 1.20, incorporated herein by reference, proposed amendments are consistent with applicable Plan goals, policies, and implementation methods. 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 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.
- 2.3 Proposed amendments comply with state law and are consistent with the Plan. Thus, they are consistent with the provisions in ADC 1.050 – Consistency with Plan and Laws.

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.

GOAL 5: OPEN SPACES, SCENIC & HISTORIC AREAS, & NATURAL RESOURCES

HISTORIC AND ARCHAEOLOGICAL RESOURCES BACKGROUND SUMMARY

No less intangible but far less renewable than most natural resources, Albany's historic resources are an important asset to the citizens of Albany and Oregon. The historic cityscape, which Albany's citizens encounter everyday, is valuable because it gives people a sense of permanence and continuity - a sense of place.

A community's image of itself is important in sustaining both its economic health and the well-being of its citizens. A poor image will not attract new industries or commercial businesses nor stimulate civic pride. By emphasizing its historic landscape, Albany can enhance its image and offer an attractive tourist setting.

Albany's historic landscape represents a vital, irreplaceable heritage of traditions. It is a unique collection of structures representing every stage of Albany's growth and mirroring Oregon's distinctive cultural history. Some 379 primary historic buildings built prior to 1900, plus 360 secondary buildings built after 1900 but before 1915, exist within one commercial and two residential historic districts in a 190-block core area along the waterfront. An additional 100 historic structures of equal quality are scattered throughout the city.

The Monteith, Hackleman, and Downtown Historic Districts have achieved national recognition by being placed on the National Register of Historic Places, the nation's official list of cultural resources worthy of preservation. A number of individual buildings within the city are also on the Historic Register. Together, these historic districts provide a visual span of Albany's history from 1848 to 1915; from the time of its first settlement through its years of growth as a river port and commercial trade center. More significant than the number of buildings, however, is the architectural quality of the structures in Albany representing virtually every style and type of house ever built in the Northwest. The commercial district contains every major commercial style of the Victorian era and claims one of the finest cast-iron facades (Blain Building).

Albany's citizens have shown an interest and commitment to historic preservation. The City recognizes that a preservation program can recycle older structures to preserve their quality craftsmanship, make residential and commercial property more valuable, create an attractive tourist setting, and reduce energy needs. Because of their lack of insulation, historic structures offer the greatest potential for reducing energy use within the city. It has been estimated that by weatherizing these homes to the 1980 Building Code standards, 70 percent of their annual heating costs can be saved.

The City funded and completed an historic building survey and compiled material for nomination of the three districts to the National Historic Register. Altogether, the combined data of architectural and historic descriptions, mapping, and photography, create the only complete street-by-street house inventory in Oregon.

Citizen groups have been energetically involved in the process of establishing the historic districts, and they have developed a number of support projects including historic home tours, fund raising for restoration of the Monteith House (the original home of Albany's founders), and the establishment of a Preservation Resource Center. In addition, a Landmarks ~~Advisory~~ Commission (previously known as the Historic Advisory and Museum Commission and Landmarks Advisory Commission) was created, whose functions include the development of educational and funding programs to protect the city's historic resources.

There has been no intensive archaeological site survey within the Albany Urban Growth Boundary, although the potential exists for an abundant concentration of prehistoric sites. Archaeologists believe the Albany area was a central camp site for a band of Kalapuyan Indians because of its easy access to major waterways for transportation and fishing and to the prairie land for small game and camas roots.

APPENDIX 1

AGENCY INVOLVEMENT PROGRAM

The City of Albany recognizes its responsibility to implement an agency involvement and coordination program to assure an effective working relationship with those local, state, and federal agencies which may have an interest in Albany and its surrounding area. The City's implementation program provides:

1. Agencies with status reports of current planning efforts, work schedules, and regular meeting dates of the City Planning Commission and the City Council.
2. On request, copies of studies, plans, and ordinances related to the City's planning program.
3. Notice of other public hearings and/or meetings when applicable.

The City coordinates all land-use activities with governmental agencies and private utilities, often utilizing plans or studies prepared by other agencies or direct assistance in the development of a plan or study. The following agencies received and had the opportunity to review background material, and/or goals and policies of the Comprehensive Plan.

LOCAL AGENCIES

Albany Area Chamber of Commerce
Albany Downtown Association
Albany-Lebanon Sanitation Company
Albany-Millersburg Economic Development Corporation
Albany Parks and Recreation Commission
Albany Planning Commission
Benton County Board of Commissioners
Benton County Planning Commission
City of Corvallis
City of Millersburg
Community Services Consortium
Friends of Historic Albany
Greater Albany Public School District 8J
Landmarks ~~Advisory~~ Commission
Linn-Benton Community College
Linn-Benton Housing Authority
Linn County Board of Commissioners
Linn County Planning Commission
Northwest Natural Gas
Oregon District 4 Council of Governments
Pacific Power and Light
Senior and Disabled Services
Southern Willamette Research Corridor
U.S. West Communications

APPENDIX IV

ACRONYMS

- AC of E:** Army Corps of Engineers
- ACDP:** Air Contaminant Discharge Permit
- ACVC:** Albany Convention and Visitors Commission
- ADA:** Albany Downtown Association
- AMEDC:** Albany-Millersburg Economic Development Corporation. Serves as Albany's and Millersburg's central point of contact for businesses interested in locating/expanding in the area and/or needing business development assistance.
- ARA:** Albany Redevelopment Agency. This agency was formed by the City of Albany to provide public works improvements (water, sewer, sidewalk, traffic control, lighting, drainage) in the Albany Economic Development District.
- ATS:** Albany Transportation System
- BTU:** British Thermal Unit. A unit of heat, the quantity needed to raise the temperature of 1 pound of water 1 degree Fahrenheit.
- C-1:** Neighborhood Commercial Zoning District
- C-2:** Community Commercial Zoning District
- C-3:** Central Business Zoning District
- CBD:** Central Business District
- CH:** Heavy Commercial Zoning District
- CIC:** Citizen Involvement Committee. During the Comprehensive Plan update process this was a three-member subcommittee of the CPRC which developed and reviewed the citizen involvement portions of the Plan. After the periodic review process, the CIC will become a five-member committee composed of City Council appointees chosen as follows: one member from each of the Albany's three wards, one member at-large, and one from the North Albany portion of the UGB.
- CIP:** Capital Improvement Program
- CPRC:** Comprehensive Plan Review Committee. This committee was created to review and provide input regarding the Comprehensive Plan update. It is composed of 27 members, including the Albany Planning Commission, eight citizens appointed by the Planning Commission, seven citizens appointed by the City Council, two members from the North Albany Citizen's Advisory Committee and one City Council liaison member.
- DEQ:** Department of Environmental Quality, State of Oregon

ACRONYMS (CONTINUED)

- DOE:** Department of Energy, State of Oregon
- DLCD:** Department of Land Conservation and Development, State of Oregon
- DSL:** Division of State Lands, State of Oregon
- EDD:** Economic Development Department, State of Oregon
- EPA:** Environmental Protection Agency
- FEMA:** Federal Emergency Management Agency
- GAPS:** Greater Albany Public Schools, District 8J
- HAMC:** Historic Advisory and Museum Commission. Now known as the Landmarks Advisory Commission (LAC).



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

Files: CP-01-20 & DC-01-20

April 27, 2020

AMENDING THE SECTIONS OF ALBANY DEVELOPMENT CODE THAT RELATED TO 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

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

- (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 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

Atch B - ADC strike out

~~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.

7.060 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

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 4: 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.

Atch B - ADC strike out

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

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

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.

IMPLEMENTATION METHODS

1. Encourage the Albany Regional Museum to:
 - a. House and display artifacts related to the Albany area's history.
 - b. Sponsor city, county, and Mid-Willamette Valley history tours.
 - c. Conduct historical seminars and workshops.
 - d. Serve as a local archives depository and conduct research.
 - e. Provide information and assistance to individuals and community groups interested in the enhancement and preservation of Albany's historic resources.
2. Develop an education program (including public workshops, printed matter, tours, and exhibits) for Albany residents which would:
 - a. Demonstrate the economic and energy assets of preserving Albany's older structures.
 - b. Advise property owners on proper restoration techniques.
 - c. Emphasize the relationship of the Willamette River to Albany's historic character.
 - d. Work with the Greater Albany Public School District and other learning institutions in developing education programs which utilize Albany's historic areas as learning resources.
3. Include in the Capital Improvement Program specific projects for the improvement of historic areas. Possible projects include:
 - a. Beautification of the Santiam Canal and its branches.
 - b. Historic-theme street lighting in the downtown.
4. Within historic districts, encourage the development of landscapes and the planting and retention of trees associated with the applicable historic periods.
5. Maintain information and directional signage for Albany's Historic Districts.
6. Support the efforts of the Albany Historic Tours Committee and other community groups to maintain the Historic Information Gazebo and Victorian Garden as a focus of visitor information about Albany's Historic Districts.
7. Stabilize and improve property values in existing and proposed historic districts. Methods might include:
 - a. Emphasizing the importance of owner-occupied housing through methods such as encouraging loan programs for the acquisition and renovation of historic structures.
 - b. Discouraging heavy truck route traffic on streets which run through or adjacent to residential neighborhood districts.
 - c. Ensuring that Development Code regulations enhance the preservation and renovation of historic structures.
8. Develop review criteria which would discourage those zone changes resulting in increased pressure to replace historic structures with more intense land uses.
9. Encourage property owners within the three National Register Districts or with recognized historic property to discuss proposed exterior changes to their property with the City staff and/or Landmarks Commission (LC) prior to applying for a historic review permit.

APPENDIX IIA
CITIZEN COMMITTEES

The following citizen advisory committees were responsible for reviewing background reports, for providing input into development of Comprehensive Plan goals and policies, and for assisting the Comprehensive Plan Review Committee with developing the Comprehensive Plan:

- Albany City Council
- Albany Chamber of Commerce
- Albany Citizen Involvement Sub-Committee
- Albany Comprehensive Plan Review Committee
- Albany Downtown Association
- Albany Hearings Board
- Albany Landmarks Commission
- Albany Parks and Recreation Commission
- Albany Planning Commission
- Albany Public Works Committee
- Benton County Board of Commissioners
- Benton County Planning Commission
- Linn County Board of Commissioners
- Linn County Planning Commission

HUD: U.S. Department of Housing and Urban Development

I-5: Interstate Highway 5

I/I: Infiltration/inflow

ISCP: Indirect Source Construction Permit

LC: Landmarks Commission. This commission was appointed by the Albany City Council for the purpose of protecting, enhancing, and perpetuating Albany's historic resources.

LBCC: Linn-Benton Community College

LCDC: Land Conservation and Development Commission

MGD: Million Gallons Per Day

MH: Heavy Industrial Zoning District

ML: Light Industrial Zoning District

MP: Industrial Park Zoning District

NC: Notice of Construction

OAR: Oregon Administrative Rule

ODOT: Department of Transportation, State of Oregon

OD4COG: Oregon District 4 Council of Governments

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.

- (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.

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

- (1) To properties in the Downtown, Hackleman, Monteith or Albany Municipal Airport National Register Historic Districts as identified in Figure 7-1 and 7-2.
- (2) To all other structures and sites listed on the City's adopted Local Historic Inventory, including National Register Historic Resources listed prior to February 23, 2018.
- (3) All National Register Resources are subject to Sections 7.300 – 7.370.

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

[Ord. 5720, 08/12/2009]

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

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

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

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

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

7.035 Initiation. The process for designating or removing a landmark or historic district may be initiated by the City Council, the Landmarks Commission, or by any other interested person. Initiations by the Landmarks Commission are made without prejudice towards the outcome. At the time of initiation, the Community Development Director shall provide the property owner and applicant with information regarding the benefits and obligations of designation. No historic resource shall be designated as a landmark without the written consent of the owner, or in the case of multiple ownership, a majority of the owners. Removal of properties from the National Register of Historic Places requires review and approval by the State Historic Preservation Office and State

determined from an early photograph, original building plans, or other evidence of original building features.

- c) The proposed alteration is not visible from the street.
- (2) For all other requests, the Landmarks Commission will review and process the alteration proposal. The applicant and adjoining property owners within 100 feet will receive notification of the Landmarks Commission public hearing on the proposal. The Landmarks Commission will accept written and verbal testimony on the proposal. For buildings on the Special Assessment of Historic Property Program, the Landmarks Commission decision will be forwarded to the State Historic Preservation Office.

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

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

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

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

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

[Ord. 5463, 9/13/00]

7.220 Conditions of Approval. In approving an alteration request, the Landmarks Commission may attach conditions that are appropriate for the promotion and/or preservation of the historic or architectural integrity of the district, building or site. All conditions must relate to a review criterion.

[Ord. 5463, 9/13/00]

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

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

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

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

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

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

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 4: 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 5: 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:



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.

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

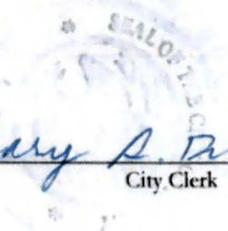
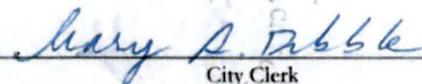
Approved by the Mayor: May 22, 2019

Effective Date: June 21, 2019



Mayor

ATTEST:

City Clerk

- (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~~ 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

(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



ATTEST:

Mary A. Ribble
City Clerk

[Signature]
Mayor



MEMO

TO: Albany City Council *JS 8/20*

VIA: Peter Troedsson, City Manager *JS*
 Jeff Blaine, P.E. Public Works Engineering and Community Development Director

FROM: David Martineau, Planning Manager *DM*
 Rob Emmons, Engineering Mgr./Assistant City Engineer *RE*

DATE: August 17, 2019, for the August 26, 2019, City Council Meeting

SUBJECT: Public Hearing regarding Albany Comprehensive Plan Amendments (Planning File No. CP-03-20)
 Relates to Strategic Plan theme: Effective Government

Action Requested:

Staff recommends that City Council hold a public hearing, deliberate, and make a decision regarding the proposed legislative amendments to the Albany Comprehensive Plan as presented in the staff report, dated July 13, 2020. If council decides to approve the amendments, staff also recommends that they adopt the attached ordinance (Attachment A), that would amend Appendices VI Public Facility Plans: Albany and Millersburg Water System Facility Plan and Albany Transportation Facility Plan of the Albany Comprehensive Plan.

Discussion:

On August 26, 2020, the city council will hold a public hearing on the proposed amendment package. As described in detail in the attached staff report to the planning commission (Attachment B), the following amendments are proposed:

- **Appendix VI: Albany and Millersburg Water System Facility Plan** – Proposed amendments would add language that states the 2004 Water Facility Plan may be amended in accordance with OAR 660-011-0045.
- **Appendix VI: Albany Wastewater Plan** - Proposed amendments would add language that states the 2000 Wastewater Facility Plan Summary may be amended in accordance with OAR 660-011-0045.
- **Appendix VI: Transportation Facility Plan** – Proposed amendments would a) strike the short- and long-term priority projects source of funding language from the appendix title, b) add a reference to the 2011 Albany Public Transit Plan, as adopted by Ordinance No. 5753 effective May 11, 2011, c) add the date of the Albany Transportation System Plan, and d) state that the 2011 Albany Public Transit Plan, 2010 Albany Transportation System Plan, and North Albany Local Street System Plan may be amended in accordance with OAR 660-011-0045.

Public facility plans are an important part of the Comprehensive Plan. The fundamental goal of public facility plans (transportation system plan, water, wastewater and stormwater facility plans) are to establish and maintain a timely view of where, when and how these city-owned utilities will be provided to support planned growth in the Albany Urban Growth Boundary.



The actual public facility plans remain separate plans; however, they provide an interconnecting link of technical information in the Comprehensive Plan. Within each of the public facility plans, there is a complete inventory and condition assessment, listing anticipated short- and long-range projects, project descriptions, project timing, cost estimates, and funding mechanisms. Historically, Appendix VI of the Comprehensive Plan provided a list of projects and their timing for each of the required public facilities (water, wastewater, stormwater, and transportation).

As the public facility plans have been updated over the years, the project lists in Appendix VI have been replaced by references listing the public facility plans as supporting documents to the Comprehensive Plan. To date, all the facility plans, except for the 1988 Stormwater Facility Plan and 2011 Public Transit Plan, are referenced as supporting documents in Appendix VI. This amendment to the Comprehensive Plan updates Appendix VI by adding the 2011 Public Transit Plan as a supporting document and makes text changes allowing updated projects lists from public facility plans, amended in accordance with OAR 660-011-0045, to be included as supporting documents.

The applications have been processed through the Type IV application review process in accordance with ADC 1.590. This process is required for legislative changes to the ADC that affect a large number of persons, properties, or situations and includes review and a recommendation by the planning commission prior to a final local decision made by city council.

On July 13, 2020, the planning commission held a duly advertised public hearing and unanimously recommended that the city council approve the proposed amendments.

Options for the City Council:

City council has three options with respect to the proposed comprehensive plan amendments:

- Option 1: Approve the proposed amendments; or
- Option 2: Approve the proposed amendments with changes; or
- Option 3: Deny the proposed amendments.

Based on the analysis provided in the report, staff recommends city council approve the proposed amendments to the Albany Comprehensive Plan. If city council accepts this recommendation the following motion is suggested:

Motion to Adopt

I MOVE that the city council ADOPT the ordinance to amend the Albany Comprehensive Plan as identified in the staff report, dated July 13, 2020, and referenced under planning file CP-03-20. This motion is based on the findings and conclusions in the staff report, dated July 13, 2020 to the planning commission and city council, and findings in support of the decision made by city council during deliberations on this matter.

Budget Impact:

None

RE:ss

Attachments:

- A. Ordinance
- B. Staff Report, dated July 13, 2020



ORDINANCE NO. _____

AN ORDINANCE AMENDING ORDINANCE NO. 4836, WHICH ADOPTED THE CITY OF ALBANY COMPREHENSIVE PLAN, BY AMENDING THE ALBANY COMPREHENSIVE PLAN TEXT AND ADOPTING FINDINGS

WHEREAS, on July 13, 2020, the Albany Planning Commission held a public hearing and deliberated on proposed amendments of Appendices VI Public Facility Plans: Albany and Millersburg Water System Facility Plan and Albany Transportation Facility Plan of the Albany Comprehensive Plan, which will allow future amendment of these plans by council resolution (planning file no. CP-03-20); and

WHEREAS, on July 13, 2020, the planning commission recommended that the Albany City Council approve the proposed amendments. This recommendation was based on evidence presented in the staff report and consideration of public testimony during the public hearing; and

WHEREAS, the city council held a public hearing on the proposal on August 26, 2020, and reviewed the findings of fact and conclusions included in the staff report, dated July 13, 2020, and testimony presented at the public hearing and then deliberated; and

WHEREAS, the amendments to the comprehensive plan 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 Comprehensive Plan is hereby amended as shown in Exhibit A of this ordinance.

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

Passed by the Council: _____

Approved by the Mayor: _____

Effective Date: _____

Mayor

ATTEST:

City Clerk

Exhibit A

**ALBANY AND MILLERSBURG
WATER SYSTEM FACILITY PLAN**

Tables VI-1 to VI-6 removed. [Ord 5579; 8/11/04]

| The 2004 Water Facility Plan, as may be amended according to OAR 660-011-0045, is adopted by reference as a supporting document to the Comprehensive Plan. [ORD. 5579, 8/11/04]

GOAL 11: PUBLIC FACILITIES AND SERVICES

WASTEWATER SYSTEM POLICIES AND IMPLEMENTATION METHODS

GOAL

Provide and maintain wastewater facilities and services in an orderly and efficient manner that reflects the community's environmental stewardship responsibilities and meets regulatory requirements.

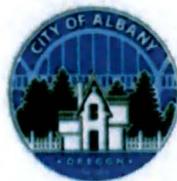
POLICIES

It shall be the policy of the City of Albany that:

1. The ~~1998-2000~~ *Wastewater Facility Plan Summary (Summary)* shall be the primary document for planning the community's wastewater system improvements.
2. The basic concept of the wastewater system is a gravity system. Pump stations and force mains will be minimized and will not be allowed unless approved by the Public Works Director (PWD).
3. Review and regulate development proposals to ensure adequate wastewater service improvements will be provided to the development and to future developments and ensure that adequate assurances have been secured for participation in the public system when these services become available.
4. Capital improvements to the wastewater systems will be prioritized based on the following criteria:
 - a. Projects needed to meet regulatory requirements for improving water quality;
 - b. Projects needed to maintain capacity and reliability of critical system components, such as pump stations and structural integrity of sewer lines;
 - c. Projects related to street improvements;
 - d. Projects needed to eliminate or reduce basement flooding;
 - e. Projects needed to reduce inflow and infiltration; and
 - f. Projects related to other issues such as alleviating health hazards.

These criteria are not necessarily ranked in order of priority.

5. Extensions of service shall be based on findings that provision of service to low priority areas will not impair the City's ability to accommodate higher priority wastewater system needs including recognition of the City's contractual service obligations.
6. Annexation is required to receive sewer service in unincorporated areas within the Urban Growth Boundary. Consequently, sewer service shall not be provided outside Albany's city limits, except as provided by specific contracts with the City of Millersburg, Oak Grove elementary school, Spring Hill Country Club or as authorized by the Albany City Council.
7. Development or expansion of "stand alone" wastewater treatment plant systems shall not be allowed within the Urban Growth Boundary that are not planned as part of the City's facility.
8. Developments extending wastewater collection facilities pay an equitable share of the costs. This may include:
 - a. A systems development charge (SDC) based on the number of residential units constructed or some other equivalent for commercial or industrial developments;



COMMUNITY DEVELOPMENT

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

Revised Staff Report

Comprehensive Plan Amendments

File: CP-03-20

July 13, 2020

HEARING BODIES:	Planning Commission	City Council
HEARING DATES:	Monday, July 13, 2020	Wednesday, August 26, 2020
HEARING TIMES:	5:15 p.m.	7:15 p.m.
HEARING LOCATION:	<p>Due to Governor Brown's Executive Orders limiting public gatherings during the COVID-19 pandemic, this meeting is accessible to the public via phone and video connection.</p> <p>At 5:15 p.m., join with the GoToMeeting app on your computer, tablet, or smartphone (using your device's microphone and speakers):</p> <p>https://www.gotomeet.me/CommunityDevelopmentCityofAlbany/pc</p> <p>If you wish to dial in using your phone:</p> <p>Call 1-571-317-3122 and when prompted enter access code 498-239-709</p>	

Application Information

Proposal:	Proposed text amendments of Appendices VI Public Facility Plans: Albany and Millersburg Water System Facility Plan and Albany Transportation Facility Plan of the Albany Comprehensive Plan to be amended in accordance with OAR 660-011-0045.
Review Bodies:	Planning Commission and City Council (Type IV - Legislative review process)
Applicant:	City of Albany, Community Development Department, 333 Broadalbin Street SW, Albany, OR 97321.
Staff:	Laura LaRoque, Project Planner; and Rob Emmons, Engineering Mgr./Assistant City Engineer
Address/Location:	Not applicable; the code amendment is not site specific

Overview

Public Facility Plans are an important part of the Comprehensive Plan. The fundamental goal of Public Facility Plans (Transportation System Plan, Water, Wastewater and Stormwater Facility Plans) are to establish and maintain a timely

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view of where, when and how these City owned utilities will be provided to support planned growth in the Albany Urban Growth Boundary.

The actual public facility plans remain separate plans; however, they provide an interconnecting link of technical information in the Comprehensive Plan. Within each of the public facility plans, there is a complete inventory and condition assessment, listing anticipated short- and long-range projects, project descriptions, project timing, cost estimates, and funding mechanisms. Historically, Appendix VI of the Comprehensive Plan provided a list of projects and their timing for each of the required public facilities (water, wastewater, stormwater, and transportation).

As the public facility plans have been updated over the years, the project lists in Appendix VI have been replaced by references listing the public facility plans as supporting documents to the Comprehensive Plan. To date, all the facility plans, except for the 1988 Stormwater Facility Plan and 2011 Public Transit Plan, are referenced as supporting documents in Appendix VI. This amendment to the Comprehensive Plan updates Appendix VI by adding the 2011 Public Transit Plan as a supporting document and makes text changes allowing updated projects lists from public facility plans, amended in accordance with OAR 660-011-0045, to be included as supporting documents.

Legislative Amendments to the Albany Comprehensive Plan

Sections 2.210 and 2.280 of the Albany Development Code (ADC) allows for the Community Development director to initiate legislative amendments to the Albany Comprehensive Plan (Plan) and ADC. The City has implemented a process to periodically evaluate and adopt changes to the Plan and ADC to include both clarifying and policy edits. The proposed amendment package (planning file CP-03-20) would:

- **Appendix VI: Albany and Millersburg Water System Facility Plan** – Proposed amendments would add language that states the 2004 Water Facility Plan may be amended in accordance with OAR 660-011-0045.
- **Appendix VI: Albany Wastewater Plan** - Proposed amendments would add language that states the 2000 Wastewater Facility Plan Summary may be amended in accordance with OAR 660-011-0045. .
- **Appendix VI: Transportation Facility Plan** – Proposed amendments would a) strike the short- and long-term priority projects source of funding language from the appendix title, b) add a reference to the 2011 Albany Public Transit Plan, as adopted by Ordinance No. 5753 effective May 11, 2011, c) add the date of the Albany Transportation System Plan, and d) state that the 2011 Albany Public Transit Plan, 2010 Albany Transportation System Plan, and North Albany Local Street System Plan may be amended in accordance with OAR 660-011-0045.

Notice Information

Public notice was issued in accordance with legislative amendment requirements. A notice was issued to the Oregon Department of Land Conservation and Development (DLCD) on June 8, 2020, at least 35 days before the first evidentiary hearing, in accordance with OAR 660-018-0020 and ADC 1.640. A Notice of Public Hearing was mailed on June 29, 2020, to Linn and Benton County Planning Divisions, City of Millersburg, and other interested parties. A Notice of Public Hearing was provided for publication to the *Albany Democrat-Herald* on July 3, 2020. The staff report for the proposed comprehensive plan amendments was posted on the City's website on July 6, 2020, at least seven days before the first evidentiary public hearing.

As of the date of this report, one comment was received from the Department of Land Conservation and Development. Comments provided outlined the ordinance vs. resolution adoption process provided in OAR 660-011-0045. Suggested modifications included addition of a decision process for modifications to public facility plans that included evaluation of compliance with the provisions of OAR 660-011-0045 to ensure all modifications are consistent with these requirements.

Review Process and Appeals

Amendments to the Plan and 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.

Analysis of Development Code Criteria

Comprehensive Plan Text Amendment (file no. CP-03-20)

Section 2.220(1)(2) of the Albany Development Code (ADC) includes the following review criteria that must be met for this legislative text amendment to be approved. Code criteria are written in ***bold italics*** and are followed by findings and conclusions.

Comprehensive Plan Amendment - Review Criterion 2.220(1)

A legislative amendment is consistent with the goals and policies of the Comprehensive Plan, the statewide planning goals, and any relevant area plan adopted by the City Council.

Findings of Fact

- 1.1 **Goal 1: Citizen Involvement.** Public involvement is a requirement of land use planning in Oregon. Applicable goals and policies are provided below.

Albany Comprehensive Plan Chapter 9, Citizen Involvement

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 3: Involve the general public in the use, evaluation, and periodic review and update of the Albany Comprehensive Plan.

- 1.2 A notice of the proposed text amendments planning file no. CP-03-20 was issued to the Oregon Department of Land Conservation and Development (DLCD) on June 8, 2020, at least 35 days before the first evidentiary hearing, in accordance with OAR 660-018-0020 and ADC 1.640.
- 1.3 A Notice of Public Hearing planning file no. CP-03-20 was mailed on June 29, 2020, to Linn and Benton County Planning Divisions and City of Millersburg. A Notice of Public Hearing was provided for publication

in the Albany Democrat-Herald on July 3, 2020. These notices informed the public that the amendments would be considered during the July 13, 2020, planning commission and August 26, 2020 city council public hearings, consistent with the legislative hearing notice requirements of ADC 1.600.

- 1.4 A staff report concerning the proposed text amendments was posted on the City's website on July 6, 2020, at least seven days before the first evidentiary public hearing.
- 1.5 Through the notification and public hearing process, all interested parties are afforded the opportunity for the to review proposed text amendments, comment on the proposal, attend the public hearings, and for decisionmakers to consider testimony as they recommend or decide on the final amendments.
- 1.6 Goal 2, Land Use Planning. The following goals and policies are relevant for the proposed Plan amendments.

Albany Comprehensive Plan Chapter 3 (Goal 9), Economic Development: Public Infrastructure

Goal 2: Provide a safe, diversified, economical and efficient transportation system (auto, transit, bicycles, pedestrian, rail and air) that protects and enhances Albany's economy, environment, neighborhood quality, and cultural and scenic values.

Policy 6: Review infrastructure master plans as part of the refinement planning and map amendment processes for consistency with proposed changes in land use, and proposed changes to the land use and/or the infrastructure plans to maintain consistency.

Implementation Method 4: Update City water, sewer, stormwater, and transportation facility plans and adopt implementation strategies to ensure available capacity to accommodate targeted economic development.

Albany Comprehensive Plan Chapter 4 (Goal 12), Transportation:

Goals

1. **Provide an efficient transportation system that provides for the local and regional movement of people and goods.**
2. **Provide a safe transportation system.**
3. **Provide a diversified transportation system that ensures mobility for all members of the community and provides alternatives to automobile travel.**
4. **Provide a transportation system that balances financial resources with community livability and economic vitality.**

Policies

1. **Develop a transportation system with improved connectivity where "barriers" such as I-5, railroad, waterways, or neighborhoods reduce transportation system efficiency in terms of travel time and travel distance.**
2. **Maintain acceptable roadway and intersection operations where feasible considering environmental, land use, and topographical factors.**
3. **Identify and remedy unsafe intersection and roadway locations with known safety issues and ensure the multi-modal transportation system is structurally and operationally safe.**
4. **Minimize conflicts along high volume and/or high speed corridors.**
5. **Encourage development design that emphasizes safety and does not create unnecessary conflicts.**
6. **Improve the quality of available transit service as measured by coverage, hours of service and frequency.**

7. Develop bicycle and pedestrian facilities that encourage non-vehicular travel to/from home, school, work, and other activity centers.
8. Provide direct off-roadway pedestrian and bicycle routes and connections.
9. Maintain and support the Albany airport as a regional facility.
10. Maintain and support the Albany Station as a regional facility.
11. Preserve and protect corridors of local and regional significance that are identified for vehicular and non-vehicular routes
12. Establish priorities and define the incremental steps needed for investment of ODOT and Federal revenues to address safety and major capacity problems on the State and Interstate transportation system.

Albany Comprehensive Plan Chapter 6 (Goal 11), Public Facilities and Services

Water Policies and Implementation Methods

Policy 2: Maintain high standards of water quality and service levels for the community water system. Consideration shall be given to:

- a. Long-range public facility planning as well as implementation of a five-year capital improvement program.
- b. The adequacy and reliability of the water supply.
- c. Maintenance of water quality in conformance with state and federal requirements.
- d. The adequacy of the distribution system.
- e. Construction and operational standards.
- f. Ensuring protection of and accessibility to water lines, water supply, and other facilities.

Policy 6: Develop and periodically review and adjust funding mechanisms and rate structures to ensure adequate revenues for operation, maintenance, and expansion of the system.

Policy 8: Rely on the Water Facility Plan and Capital Improvement Plan to assist in prioritizing extension of water service lines and correction of system deficiencies to ensure that the provision of water services is occurring in an equitable and logical fashion.

Policy 11: Regularly update the Water Facility Plan as part of the Public Facilities Plan. The Water Facility Plan shall be used as the primary guide for setting of priorities for the expansion, improvement, or modification of the water system.

Implementation Method 5: Utilize the Capital Improvement Program to identify short-term water system improvements and commensurate funding sources.

Albany Comprehensive Plan Chapter 6 (Goal 11), Public Facilities and Services

Wastewater System Policies and Implementation Methods

Goal: Provide and maintain wastewater facilities and services in an orderly and efficient manner that reflects the community's environmental stewardship responsibilities and meets regulatory requirements.

Policy 10: The City will continue to develop specific plans and funding mechanisms for expansion of the wastewater treatment plant.

- 1.7 The Albany Public Transit Plan prepared by the City of Albany and consultants Kittelson and Associates, Inc., dated January 2011, is adopted in its entirety as a supporting document to the Comprehensive Plan (Ordinance 5729 and as amended by Ordinance 5753).
- 1.8 The Albany Transportation System Plan prepared by the City of Albany and consultants Kittelson and Associates, Inc., dated February 2010, is adopted in its entirety as a supporting document to the Comprehensive Plan (Ordinance 5729 and as amended by Ordinance 5753).
- 1.9 The North Albany Local Street System Plan prepared by the City of Albany and consultants Kimley-Horn and Associates, dated June 30, 1995, was adopted in its entirety as a supporting document to the Comprehensive Plan August 13, 1997 (Ordinance 5307).
- 1.10 The Albany Water Facility Plan prepared by the City of Albany and consultants Montgomery Watson Harza, dated August 2004, was adopted in its entirety as a supporting document to the Comprehensive Plan August 11, 2004 (Ordinance 5579).
- 1.11 The Albany Wastewater Facility Plan Summary prepared by the City of Albany and consultants CH2MHill, dated August 2000, was adopted in its entirety as a supporting document to the Comprehensive Plan September 27, 2000 (Ordinance 5465).
- 1.12 The proposed amendments provide a timely process for reviewing and approving project list for aforementioned public facility plans.

OAR 660-011-0045 - Adoption and Amendment Procedures for Public Facility Plans

- 1.13 OAR 660-011-0045 provides the adoption and amendment procedures for public facility plans. Specifically, this OAR clarifies when modifications to public facility plans may occur through an administrative process or pursuant to the administrative procedures and review and appeal provision accorded "land use decisions" in ORS Chapter 197 and those forth in OAR Chapter 660 division 18.
- 1.14 The proposed amendments state that amendments will be processed in accordance OAR 660-011-0045.

Comprehensive Plan Amendment - Review Criterion 2.220(2)

A legislative amendment is needed to meet changing conditions or new laws.

Findings of Fact

- 2.1 This amendment to the Comprehensive Plan updates Appendix VI by adding the 2011 Public Transit Plan as a supporting document and makes text changes allowing updated projects lists from public facility plans, amended in accordance with OAR 660-011-0045, to be included as supporting documents.
- 2.2 Historically, Appendix VI of the Comprehensive Plan provided a list of projects and their timing for each of the required public facilities (water, wastewater, stormwater, and transportation). As the public facility plans have been updated over the years, the project lists in Appendix VI have been replaced by references listing the public facility plans as supporting documents to the Comprehensive Plan.

Overall Conclusion

Based on the analysis in this report, the proposed Comprehensive Plan text amendments meets all of the applicable review criteria as outlined in this report.

The Planning Commission has three options with respect to the proposed Comprehensive Plan amendments:

Option 1: Recommend that the City Council approve the amendment request; or

Option 2: Recommend the City Council approve the proposed amendments as modified by the Planning Commission;
or

Option 3: Deny the amendment request. The City Council will only consider the proposal on appeal by the applicants.

Staff Recommendation

Based on the staff recommendation, the following motion is suggested:

I move that the Planning Commission recommend that the City Council approve the proposed Comprehensive Plan and Development Code text amendments under planning file CP-03-20. This motion is based on the findings and conclusions in the July 13, 2020, staff report, and the findings in support of the application made by the Planning Commission during deliberations on this matter.

Attachments

The proposed changes are attached to this staff report as exhibits:

- A. Albany Comprehensive Plan, Appendix VI: Albany and Millersburg Water System Facility Plan
- B. Albany Comprehensive Plan, Appendix VI: Wastewater Facility Plan
- C. Albany Comprehensive Plan, Chapter 6, Page 6-9
- D. Albany Comprehensive Plan, Appendix VI: Transportation Facility Plan

Acronyms

ACP	Albany Comprehensive Plan
ADC	Albany Development Code
AMC	Albany Municipal Code
CP	Comprehensive Plan Text Amendment File Designation
DLCD	Oregon Department of Land Conservation and Development
LUBA	Oregon Land Use Board of Appeals
OAR	Oregon Administrative Rule
ORS	Oregon Revised Statutes

ALBANY AND MILLERSBURG WATER SYSTEM FACILITY PLAN

Tables VI-1 to VI-6 removed. [Ord 5579; 8/11/04]

The 2004 Water Facility Plan, as may be amended according to OAR 660-011-0045, is adopted by reference as a supporting document to the Comprehensive Plan. [ORD. 5579, 8/11/04]

WASTEWATER FACILITY PLAN

Tables VI-11 to VI-16 removed. [Ord 5465; 9/27/00]

The 2000 Albany Wastewater Facility Plan Summary, as may be amended according to OAR 660-011-0045, -is adopted in its entirety as a supporting document to the Albany Comprehensive Plan. [Ord. 5465, 9/27/00]

GOAL 11: PUBLIC FACILITIES AND SERVICES

WASTEWATER SYSTEM POLICIES AND IMPLEMENTATION METHODS

GOAL

Provide and maintain wastewater facilities and services in an orderly and efficient manner that reflects the community's environmental stewardship responsibilities and meets regulatory requirements.

POLICIES

It shall be the policy of the City of Albany that:

1. The ~~1998-2000~~ *Wastewater Facility Plan Summary (Summary)* shall be the primary document for planning the community's wastewater system improvements.
2. The basic concept of the wastewater system is a gravity system. Pump stations and force mains will be minimized and will not be allowed unless approved by the Public Works Director (PWD).
3. Review and regulate development proposals to ensure adequate wastewater service improvements will be provided to the development and to future developments and ensure that adequate assurances have been secured for participation in the public system when these services become available.
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 - a. Projects needed to meet regulatory requirements for improving water quality;
 - b. Projects needed to maintain capacity and reliability of critical system components, such as pump stations and structural integrity of sewer lines;
 - c. Projects related to street improvements;
 - d. Projects needed to eliminate or reduce basement flooding;
 - e. Projects needed to reduce inflow and infiltration; and
 - f. Projects related to other issues such as alleviating health hazards.

These criteria are not necessarily ranked in order of priority.

5. Extensions of service shall be based on findings that provision of service to low priority areas will not impair the City's ability to accommodate higher priority wastewater system needs including recognition of the City's contractual service obligations.
6. Annexation is required to receive sewer service in unincorporated areas within the Urban Growth Boundary. Consequently, sewer service shall not be provided outside Albany's city limits, except as provided by specific contracts with the City of Millersburg, Oak Grove elementary school, Spring Hill Country Club or as authorized by the Albany City Council.
7. Development or expansion of "stand alone" wastewater treatment plant systems shall not be allowed within the Urban Growth Boundary that are not planned as part of the City's facility.
8. Developments extending wastewater collection facilities pay an equitable share of the costs. This may include:
 - a. A systems development charge (SDC) based on the number of residential units constructed or some other equivalent for commercial or industrial developments;

ALBANY TRANSPORTATION FACILITY PLAN
~~SHORT-AND-LONG-TERM PRIORITY PROJECTS~~
SOURCE OF FUNDING

Tables VI-17 removed. [Ord 5729; 2/24/2010]

The 2011 Albany Public Transit Plan, as may be amended according to OAR 660-011-0045, is adopted in its entirety as a supporting document to the Albany Comprehensive Plan. [Ord. 5753; 5/11/2011]

The 2010 Albany Transportation System Plan, as may be amended according to OAR 660-011-0045, is adopted in its entirety as a supporting document to the Albany Comprehensive Plan. [~~Ord. 5037; 8/13/1997~~ Ord. 5729; 2/24/2010 and as amended by Ord. 5753; 5/11/2011]

The 1995 North Albany Local Street System Plan, as may be amended according to OAR 660-011-0045, is adopted in its entirety as a supporting document to the Comprehensive Plan. [Ord. 5307; 8/13/1997]



MEMO

TO: Albany City Council

VIA: Peter Troedsson, City Manager *PT 8/20*
 Jeff Blaine, P.E., Public Works Engineering and Community Development Director *JB*

FROM: Staci Belcastro, P.E., City Engineer *SB*

DATE: August 12, 2020, for the August 26, 2020, City Council Meeting

SUBJECT: ST-20-01, 24th Avenue Rehabilitation and ST-20-03, Queen Avenue Street Improvement Surface Transportation Program Fund Exchange

Relates to Strategic Plan theme: A Safe City, An Effective Government

Action Requested:

Staff recommends Council authorize the city manager to execute two intergovernmental agreements with the Oregon Department of Transportation (ODOT) to exchange federal Surface Transportation Program (STP) funds for state funds.

Discussion:

The Albany Area Metropolitan Planning Organization (AAMPO) has been allocated a percentage of federal transportation funds received by the State of Oregon. These funds are used to pay for projects in AAMPO's Transportation Improvement Program (TIP), approved by the AAMPO Policy Board. The 24th Avenue Rehabilitation project and the Queen Avenue Street Improvement project are both identified in the TIP and the City's current Capital Improvement Program. Design is underway on the 24th Avenue Rehabilitation project, and construction is anticipated to take place during the summer of 2021. Construction of the Queen Avenue Street Improvement project will take place during fiscal year 2022 in order to coordinate with planned improvements by ODOT Rail and Union Pacific Railroad at the Queen Avenue railroad crossing. Furthermore, the Queen Avenue Street Improvement project will be eligible for an additional 1.4 million dollars in STP funds once they become available in federal fiscal years 2020-2022.

ODOT facilitates a fund exchange program in which cities can choose to exchange federal transportation funds for state funds. Exchange of the funds allows qualifying street work to be completed using state funding instead of federal funding. Projects do not have to meet all of the federal requirements, greatly simplifying the administrative process and reducing project costs for local governments. The exchange rate for the program is 94 percent. The two agreements included as Attachments A and B outline terms of the fund exchange. The following table summarizes the funds the City will receive under these two intergovernmental agreements.

Project	Federal Fiscal Year	Federal Funds	Exchange Rate	State Funds
24th Avenue Rehabilitation	2019	\$94,000	94%	\$88,360.00
Queen Avenue Street Improvement	2019	\$328,008.00	94%	\$308,327.52

The STP fund exchange program is a reimbursement program. The City will send documentation to ODOT with a request for reimbursement according to the agreement. The Street Capital and Restoration fund will be used to fund the project in the interim and receive the reimbursement.

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Budget Impact:

The 24th Avenue Rehabilitation and Queen Avenue Street Improvement projects are both fully funded in the current biennial budget and receiving these STP funds was also anticipated. Consequently, executing these two agreements will have no net impact on the Street Capital and Restoration Fund (25040250). The Street Capital and Restoration fund will be used to expend the project costs up to the eligible reimbursement amount and will receive an equal amount back from ODOT reimbursement.

SLB:kc

Attachments (2)

c: Jeff Babbitt, Public Works and Community Development Business Manager (via email)

G001-T041620

**GRANT AGREEMENT
OREGON DEPARTMENT OF TRANSPORTATION
2020 FUND EXCHANGE PROGRAM**

Project Name: 24th Avenue Rehabilitation Project

This Grant Agreement ("Agreement") is made and entered into by and between the **State of Oregon**, acting by and through its Department of Transportation ("ODOT"), and **City of Albany**, acting by and through its Governing Body, ("Recipient"), both referred to individually or collectively as "Party" or "Parties."

1. **Effective Date.** This Agreement shall become effective on the date this Agreement is fully executed and approved as required by applicable law (the "Effective Date"). The availability of Grant Funds (as defined in Section 3) shall end two (2) years after the Effective Date (the "Availability Termination Date").
2. **Agreement Documents.** This Agreement consists of this document and the following documents:
 - a. Exhibit A: **Project Description**
 - b. Exhibit B: **Recipient Requirements**
 - c. Exhibit C: **Subagreement Insurance Requirements**
 - d. Exhibit D: **Documentation provided by Recipient prior to execution of the Agreement (i.e. application, Part 1 of the Project Prospectus)**

Exhibits A, B and C are attached to this Agreement. Exhibit D is incorporated by reference. In the event of a conflict between two or more of the documents comprising this Agreement, the language in the document with the highest precedence shall control. The precedence of each of the documents comprising this Agreement is as follows, listed from highest precedence to lowest precedence: this Agreement without Exhibits; Exhibit A; Exhibit B; Exhibit C; Exhibit D.

3. **Project Cost; Grant Funds.** To assist in funding the Project, Recipient has requested ODOT to exchange 2020 federal funds, which have been allocated to Recipient, for state funds based on the ratio of \$94 state for \$100 federal.

Based on this ratio, Recipient wishes to exchange \$94,000.00 federal funds for \$88,360.00 state funds (the "Grant Funds").

4. **Project.**
 - a. **Use of Grant Funds.** The Grant Funds shall be used solely for the Project described in Exhibit A (the "Project") and shall not be used for any other purpose. No Grant Funds will be disbursed for any changes to the Project unless ODOT approves such changes by amendment pursuant to Section 4(c).

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- b. Eligible Costs.** Recipient may seek reimbursement for its actual costs to develop the Project, consistent with the terms of this Agreement (“Eligible Costs”).
- i.** Eligible Costs are actual costs of Recipient to the extent those costs are:
- A.** reasonable, necessary and directly used for the Project;
 - B.** purchase or production of Aggregate. Recipient shall ensure the purchase or production of aggregate is highway related and exclusively used for highway work;
 - C.** purchase of Equipment. Purchased equipment shall be used exclusively for highway purposes for the useful life of the equipment. Recipient shall clearly describe how it has used or plans to use said equipment on highways, and shall demonstrate the equipment will only be used for highway purposes. In the event that the equipment is not used for highway purposes, Recipient shall pay to ODOT the fair market rental value for Recipients non-highway use of the equipment. The useful life and the fair market rental value of the equipment shall be determined by ODOT, based on the type and condition of equipment;
 - D.** permitted by generally accepted accounting principles established by the Governmental Accounting Standards Board, as reasonably interpreted by the State, to be capitalized to an asset that is part of the Project; and
 - E.** eligible or permitted uses of the Grant Funds under the Oregon Constitution, the statutes and laws of the state of Oregon, and this Agreement.
- ii.** Eligible Costs do NOT include:
- A.** operating and working capital or operating expenditures charged to the Project by Recipient;
 - B.** loans or grants to be made to third parties;
 - C.** any expenditures incurred before the Effective Date or after the Availability Termination Date; or
 - D.** costs associated with the Project that substantially deviate from Exhibit A, Project Description, unless such changes are approved by ODOT by amendment of this Agreement;
 - E.** right of way costs; or
 - F.** costs to adjust, reconstruct or relocate utilities.
- c. Project Change Procedures.**
- i.** If Recipient anticipates a change in scope or Availability Termination Date, Recipient shall submit a written request to their ODOT Contact. The request for change must be submitted before the change occurs.

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- ii. Recipient shall not proceed with any changes to scope or Availability Termination Date before the execution of an amendment to this Agreement executed in response to ODOT's approval of a Recipient's request for change. A request for change may be rejected at the sole discretion of ODOT.

5. Reimbursement Process.

- a. ODOT shall reimburse Recipient for 94% of Eligible Costs up to the Grant Fund amount provided in Section 3. ODOT shall reimburse Eligible Costs within forty-five (45) days of ODOT's receipt and approval of a request for reimbursement from Recipient. Recipient must pay its contractors, consultants and vendors before submitting a request for reimbursement to ODOT for reimbursement.
- b. Each reimbursement request shall be submitted on letterhead to the ODOT Contact and include the Agreement number, the start and end date of the billing period, and itemize all expenses for which reimbursement is claimed. Recipient shall provide to ODOT proof of payment and backup documentation supporting Recipient's reimbursement requests.
- c. ODOT's obligation to disburse Grant Funds to Recipient is subject to the satisfaction, with respect to each disbursement, of each of the following conditions precedent:
 - i. ODOT has received funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow ODOT, in the exercise of its reasonable administrative discretion, to make the disbursement;
 - ii. Recipient is in compliance with the terms of this Agreement; and
 - iii. Recipient's representations and warranties set forth in Section 6 are true and correct on the date of disbursement with the same effect as though made on the date of disbursement.

6. Representations and Warranties of Recipient. Recipient represents and warrants to ODOT as follows:

- a. **Organization and Authority.** Recipient is duly organized and validly existing under the laws of the State of Oregon and is eligible to receive the Grant Funds. Recipient has full power, authority and legal right to make this Agreement and to incur and perform its obligations hereunder, and the making and performance by Recipient of this Agreement (1) have been duly authorized by all necessary action of Recipient and (2) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency or any provision of Recipient's Articles of Incorporation or Bylaws, if applicable, (3) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which Recipient is a party or by which Recipient or any of its properties may be bound or affected. No authorization, consent, license, approval of, filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by Recipient of this Agreement.
- b. **Binding Obligation.** This Agreement has been duly executed and delivered by Recipient and constitutes a legal, valid and binding obligation of Recipient, enforceable in accordance with its

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terms subject to the laws of bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights generally.

- c. **No Solicitation.** Recipient's officers, employees, and agents shall neither solicit nor accept gratuities, favors, or any item of monetary value from contractors, potential contractors, or parties to subagreements. No member or delegate to the Congress of the United States or State of Oregon employee shall be admitted to any share or part of this Agreement or any benefit arising therefrom.
- d. **No Debarment.** Neither Recipient nor its principals is presently debarred, suspended, or voluntarily excluded from any federally-assisted transaction, or proposed for debarment, declared ineligible or voluntarily excluded from participating in this Agreement by any state or federal agency. Recipient agrees to notify ODOT immediately if it is debarred, suspended or otherwise excluded from any federally assisted transaction for any reason or if circumstances change that may affect this status, including without limitation upon any relevant indictments or convictions of crimes.
- e. **Compliance with Oregon Taxes, Fees and Assessments.** Recipient is, to the best of the undersigned(s) knowledge, and for the useful life of the Project will remain, current on all applicable state and local taxes, fees and assessments.

7. Records Maintenance and Access; Audit.

- a. **Records, Access to Records and Facilities.** Recipient shall make and retain proper and complete books of record and account and maintain all fiscal records related to this Agreement and the Project in accordance with all applicable generally accepted accounting principles, generally accepted governmental auditing standards and state minimum standards for audits of municipal corporations. Recipient shall ensure that each of its subrecipients and subcontractors complies with these requirements. ODOT, the Secretary of State of the State of Oregon (the "Secretary") and their duly authorized representatives shall have access to the books, documents, papers and records of Recipient that are directly related to this Agreement, the Grant Funds, or the Project for the purpose of making audits and examinations. In addition, ODOT, the Secretary and their duly authorized representatives may make and retain excerpts, copies, and transcriptions of the foregoing books, documents, papers, and records. Recipient shall permit authorized representatives of ODOT and the Secretary to perform site reviews of the Project, and to inspect all vehicles, real property, facilities and equipment purchased by Recipient as part of the Project, and any transportation services rendered by Recipient.
- b. **Retention of Records.** Recipient shall retain and keep accessible all books, documents, papers, and records that are directly related to this Agreement, the Grant Funds or the Project for a period of six (6) years after final payment. If there are unresolved audit questions at the end of the period described in this section, Recipient shall retain the records until the questions are resolved.
- c. **Expenditure Records.** Recipient shall document the expenditure of all Grant Funds disbursed by ODOT under this Agreement. Recipient shall create and maintain all expenditure records in accordance with generally accepted accounting principles and in sufficient detail to permit ODOT to verify how the Grant Funds were expended.

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This Section 7 shall survive any expiration or termination of this Agreement.

8. Recipient Subagreements and Procurements.

- a. **Subagreements.** Recipient may enter into agreements with sub-recipients, contractors or subcontractors (collectively, "subagreements") for performance of the Project.
- i. All subagreements must be in writing, executed by Recipient and must incorporate and pass through all of the applicable requirements of this Agreement to the other party or parties to the subagreement(s). Use of a subagreement does not relieve Recipient of its responsibilities under this Agreement.
 - ii. Recipient shall require all of its contractors performing work under this Agreement to name ODOT as a third party beneficiary of Recipient's subagreement with the contractor and to name ODOT as an additional or "dual" obligee on contractors' payment and performance bonds.
 - iii. Recipient shall provide ODOT with a copy of any signed subagreement, as well as any other purchasing or contracting documentation, upon ODOT's request at any time. Recipient must report to ODOT any material breach of a term or condition of a subagreement within ten (10) days of Recipient discovering the breach.
- b. **Subagreement indemnity; insurance.**

Recipient's subagreement(s) shall require the other party to such subagreements(s) that is not a unit of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless State of Oregon, the Oregon Transportation Commission and its members, the Department of Transportation, their officers, agents and employees from and against any and all claims, actions, liabilities, damages, losses, or expenses, including attorneys' fees, arising from a tort, as now or hereafter defined in ORS 30.260, caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of the other party to Recipient's subagreement or any of such party's officers, agents, employees or subcontractors ("Claims"). It is the specific intention of the Parties that ODOT shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of ODOT, be indemnified by the other party to Recipient's subagreement(s) from and against any and all Claims.

- i. Any such indemnification shall also provide that neither Recipient's subrecipient(s), contractor(s) nor subcontractor(s), nor any attorney engaged by Recipient's subrecipient(s), contractor(s) nor subcontractor(s) shall defend any claim in the name of ODOT or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State may, at any time at its election, assume its own defense and settlement in the event that it determines that Recipient's subrecipient is prohibited from defending the State, or that Recipient's subrecipient is not adequately defending the State's interests, or that an important governmental principle is at issue or that it is in the best interests of the State to do so. The State reserves all rights to pursue claims it may have against Recipient's subrecipient if the State of Oregon elects to assume its own defense.

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- ii. If the Project or Project work is on or along a state highway, Recipient shall require its contractor(s) to meet the minimum insurance requirements provided in Exhibit C. Recipient may specify insurance requirements of its contractor(s) above the minimum insurance requirements specified in Exhibit C. Recipient shall verify its contractor(s) meet the insurance requirements in Exhibit C.
 - iii. Recipient shall determine insurance requirements, insurance types and amounts, as deemed appropriate based on the risk of the work outlined within the subagreement. Recipient shall specify insurance requirements and require its contractor(s) meet the insurance requirements. Recipient shall obtain proof of the required insurance coverages, as applicable, from any contractor providing services related to the subagreement.
 - iv. Recipient shall require its contractor(s) to require and verify that all subcontractors carry insurance coverage that the contractor(s) deems appropriate based on the risks of the subcontracted work.
- c. **Procurements.** Recipient shall make purchases of any equipment, materials, or services for the Project under procedures that comply with Oregon law, including all applicable provisions of the Oregon Public Contracting Code, Oregon Revised Statute (ORS) 279 A, B, and C, and rules, ensuring that:
- i. All applicable clauses required by federal statute, executive orders and their implementing regulations are included in each competitive procurement; and
 - ii. All procurement transactions are conducted in a manner providing full and open competition.
- d. **Conflicts of Interest.** Recipient's public officials shall comply with Oregon's government ethics laws, ORS 244.010 *et seq.*, as those laws may be subsequently amended.

9. Termination.

- a. **Mutual Termination.** This Agreement may be terminated by mutual written consent of the Parties.
- b. **Termination by ODOT.** ODOT may terminate this Agreement effective upon delivery of written notice of termination to Recipient, or at such later date as may be established by ODOT in such written notice, under any of the following circumstances:
 - i. If Recipient fails to perform the Project within the time specified in this Agreement, or any extension of such performance period;
 - ii. If Recipient takes any action pertaining to this Agreement without the approval of ODOT and which under the provisions of this Agreement would have required ODOT's approval;
 - iii. If Recipient fails to perform any of its other obligations under this Agreement, and that failure continues for a period of ten (10) calendar days after the date ODOT delivers Recipient written notice specifying such failure. ODOT may agree in writing to an extension of time if it determines Recipient instituted and has diligently pursued corrective action;

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- iv. If ODOT fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow ODOT, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement;
 - v. If Federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that the Project is no longer allowable or no longer eligible for funding under this Agreement; or
 - vi. If the Project would not produce results commensurate with the further expenditure of funds.
- c. Termination by Either Party.** Either Party may terminate this Grant Agreement upon at least ten (10) days' notice to the other Party and failure of the other Party to cure within the period provided in the notice, if the other Party fails to comply with any of the terms of this Grant Agreement.
- d. Rights upon Termination; Remedies.** Any termination of this Grant Agreement shall not prejudice any rights or obligations accrued before termination. The remedies set forth in this Grant Agreement are cumulative and are in addition to any other rights or remedies available at law or in equity.

10. GENERAL PROVISIONS

a. Contribution.

- i. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against ODOT or Recipient with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.
- ii. With respect to a Third Party Claim for which ODOT is jointly liable with Recipient (or would be if joined in the Third Party Claim), ODOT shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Recipient in such proportion as is appropriate to reflect the relative fault of ODOT on the one hand and of the Recipient on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of ODOT on the one hand and of Recipient on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. ODOT's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including

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the Oregon Tort Claims Act, ORS 30.260 to 30.300, if ODOT had sole liability in the proceeding.

- iii. With respect to a Third Party Claim for which Recipient is jointly liable with ODOT (or would be if joined in the Third Party Claim), Recipient shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by ODOT in such proportion as is appropriate to reflect the relative fault of Recipient on the one hand and of ODOT on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Recipient on the one hand and of ODOT on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Recipient's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.
- b. **Dispute Resolution.** The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.
- c. **Amendments.** This Agreement may be amended or extended only by a written instrument signed by both Parties and approved as required by applicable law.
- d. **Duplicate Payment.** Recipient is not entitled to compensation or any other form of duplicate, overlapping or multiple payments for the same work performed under this Agreement from any agency of the State of Oregon or the United States of America or any other party, organization or individual.
- e. **No Third Party Beneficiaries.** ODOT and Recipient are the only Parties to this Agreement and are the only Parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly or indirectly, to a third person unless such a third person is individually identified by name herein and expressly described as an intended beneficiary of the terms of this Agreement.
- f. **Notices.** Except as otherwise expressly provided in this Agreement, any communications between the Parties hereto or notices to be given hereunder shall be given in writing by personal delivery, email or mailing the same, postage prepaid, to Recipient Contact or ODOT Contact at the address or number set forth on the signature page of this Agreement, or to such other addresses or numbers as either Party may hereafter indicate pursuant to this Section 10(g). Any communication or notice personally delivered shall be deemed to be given when actually delivered. Any communication or notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine, and to be effective against ODOT, such facsimile transmission must be confirmed by telephone notice to ODOT Contact. Any communication by email shall be deemed to be given when the recipient of the email acknowledges receipt of the email. Any communication or notice mailed shall be deemed to be given when received.

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- g. Governing Law, Consent to Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between ODOT (or any other agency or department of the State of Oregon) and Recipient that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County in the State of Oregon. In no event shall this section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. Each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.
- h. Compliance with Law.** Recipient shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Agreement or to the implementation of the Project, including without limitation as described in Exhibit B. Without limiting the generality of the foregoing, Recipient expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. Recipient agrees to comply with the requirements of ORS 366.514, Use of Highway Fund for footpaths and bicycle trails.
- i. Insurance; Workers' Compensation.** All employers, including Recipient, that employ subject workers who provide services in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Employer's liability insurance with coverage limits of not less than \$500,000 must be included. Recipient shall ensure that each of its subrecipient(s), contractor(s), and subcontractor(s) complies with these requirements.
- j. Independent Contractor.** Recipient shall perform the Project as an independent contractor and not as an agent or employee of ODOT. Recipient has no right or authority to incur or create any obligation for or legally bind ODOT in any way. ODOT cannot and will not control the means or manner by which Recipient performs the Project, except as specifically set forth in this Agreement. Recipient is responsible for determining the appropriate means and manner of performing the Project. Recipient acknowledges and agrees that Recipient is not an "officer", "employee", or "agent" of ODOT, as those terms are used in ORS 30.265, and shall not make representations to third parties to the contrary.
- k. Severability.** If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if this Agreement did not contain the particular term or provision held to be invalid.
- l. Counterparts.** This Agreement may be executed in two or more counterparts, each of which is an original and all of which together are deemed one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart.

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m. Integration and Waiver. This Agreement, including all Exhibits, constitutes the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. The delay or failure of either party to enforce any provision of this Agreement shall not constitute a waiver by that party of that or any other provision. Recipient, by the signature below of its authorized representative, acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

SIGNATURE PAGE TO FOLLOW

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THE PARTIES, by execution of this Agreement, acknowledge that their signing representatives have read this Agreement, understand it, and agree to be bound by its terms and conditions.

The Program and Funding Services Manager approved the Fund Exchange on June 23, 2020.

CITY OF ALBANY, by and through its elected officials

STATE OF OREGON, by and through its Department of Transportation

By _____
(Legally designated representative)

By _____
Region 2 Manager

Name _____
(printed)

Name _____
(printed)

Date _____

Date _____

By _____

APPROVAL RECOMMENDED

Name _____
(printed)

By _____
State Traffic-Roadway Engineer

Date _____

Name _____
(printed)

**LEGAL REVIEW APPROVAL
(If required in Recipient's process)**

Date _____

By _____
Recipient's Legal Counsel

ODOT Contact:

Date _____

Shelly White-Robinson
Special Program Coordinator
ODOT, Region 2
455 Airport Road SE, Building B
Salem, Oregon 97301
(503) 986-6925
shelly.white-robinson@odot.state.or.us

Recipient Contact:
Staci Belcastro, P.E.
City of Albany
333 Broadalbin Street SW
P.O. Box
Albany, Oregon 97321
(541) 917-7645
staci.belcastro@cityofalbany.net

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EXHIBIT A

Project Description

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Project Name: 24th Avenue Rehabilitation Project

A. PROJECT DESCRIPTION

24th Avenue from approximately Hill Street to Geary Street.

Funds will be used to rehabilitate a 2,000 foot long segment of 24th Avenue between Hill Street and Geary Street. This corridor, under the jurisdiction of the City of Albany, is classified as a collector street and has a higher than average crash rate. In addition to pavement rehabilitation, this project will include infill sidewalk, bike boulevard treatments, and curb ramps meeting current ADA requirements. Improvements will be made to address safety issues and tie into pedestrian improvements that were completed in 2018.

Recipient acknowledges that such Project improvements funded under this Agreement may trigger other Recipient responsibilities under the Americans with Disabilities Act. Recipient agrees that it is solely responsible for ensuring Americans with Disabilities Act compliance pursuant to Exhibit B, Recipient Requirements, Section 5.

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EXHIBIT B

Recipient Requirements

1. Recipient shall comply with all applicable provisions of ORS 279C.800 to 279C.870 pertaining to prevailing wage rates and including, without limitation, that workers on the Project shall be paid not less than rates in accordance with ORS 279C.838 and 279C.840 pertaining to wage rates and ORS 279C.836 pertaining to having a public works bond filed with the Construction Contractors' Board.
2. Recipient shall notify ODOT's Contact in writing when any contact information changes during the Agreement.
3. Recipient shall maintain insurance policies with responsible insurers or self-insurance programs, insuring against liability and risk of direct physical loss, damage or destruction of the Project, at least to the extent that similar insurance is customarily carried by governmental units constructing, operating and maintaining similar facilities. If the Project or any portion is destroyed, insurance proceeds will be paid to ODOT, unless Recipient has informed ODOT in writing that the insurance proceeds will be used to rebuild the Project.
4. **Americans with Disabilities Act Compliance.**
 - a. **State Highway:** For portions of the Project located on or along the State Highway System or a State-owned facility ("state highway"):
 - i. Prior to the commencement of work, Recipient shall obtain, or require its contractor to obtain, permission from the appropriate ODOT District Office to work on or along the state highway. This Agreement does not provide permission to work on or along the state highway.
 - ii. Recipient shall utilize ODOT standards to assess and ensure Project compliance with Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 as amended (together, "ADA"), including ensuring that all sidewalks, curb ramps, pedestrian-activated signals meet current ODOT Highway Design Manual standards;
 - iii. Recipient shall follow ODOT's processes for design, construction, or alteration of sidewalks, curb ramps, and pedestrian-activated signals, including using the ODOT Highway Design Manual, ODOT Design Exception process, ODOT Standard Drawings, ODOT Construction Specifications, providing a temporary pedestrian accessible route plan and current ODOT Curb Ramp Inspection form;
 - iv. At Project completion, Recipient shall send a completed ODOT Curb Ramp Inspection Form 734-5020 to the address on the form and to State's Project Manager for each curb ramp constructed or altered as part of the Project. The completed form is the documentation required to show that each curb ramp meets ODOT standards and is ADA compliant. ODOT's fillable Curb Ramp Inspection Form and instructions are available at the following address:

<https://www.oregon.gov/ODOT/Engineering/Pages/Accessibility.aspx>

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- v. Recipient shall promptly notify ODOT of Project completion and allow ODOT to inspect Project sidewalks, curb ramps, and pedestrian-activated signals located on or along a state highway before acceptance of Project by Recipient and before release of any Recipient contractor.
 - vi. Recipient shall ensure that temporary pedestrian routes are provided through or around any Project work zone. Any such temporary pedestrian route shall include directional and informational signs, comply with ODOT standards, and include accessibility features equal to or better than the features present in the existing pedestrian facility. Recipient shall also ensure that advance notice of any temporary pedestrian route is provided in accessible format to the public, people with disabilities, disability organizations, and ODOT at least 10 days before the start of construction.
- b. Local Roads:** For portions of the Project located on Recipient roads or facilities that are not on or along a state highway:
- i. Recipient shall ensure that the Project, including all sidewalks, curb ramps, and pedestrian-activated signals, is designed, constructed and maintained in compliance with the ADA.
 - ii. Recipient may follow its own processes or may use ODOT's processes for design, construction, or alteration of Project sidewalks, curb ramps, and pedestrian-activated signals, including using the ODOT Highway Design Manual, ODOT Design Exception process, ODOT Standard Drawings, ODOT Construction Specifications, providing a temporary pedestrian accessible route plan and current Curb Ramp Inspection form, available at:

<https://www.oregon.gov/ODOT/Engineering/Pages/Accessibility.aspx>;

Additional ODOT resources are available at the above-identified link. ODOT has made its forms, processes, and resources available for Recipient's use and convenience.
 - iii. Recipient assumes sole responsibility for ensuring that the Project complies with the ADA, including when Recipient uses ODOT forms and processes. Recipient acknowledges and agrees that ODOT is under no obligation to review or approve Project plans or inspect the completed Project to confirm ADA compliance.
 - iv. Recipient shall ensure that temporary pedestrian routes are provided through or around any Project work zone. Any such temporary pedestrian route shall include directional and informational signs and include accessibility features equal to or better than the features present in the existing pedestrian route. Recipient shall also ensure that advance notice of any temporary pedestrian route is provided in accessible format to the public, people with disabilities, and disability organizations prior to the start of construction.
- c.** Recipient shall ensure that any portions of the Project under Recipient's maintenance jurisdiction are maintained in compliance with the ADA throughout the useful life of the Project. This includes, but is not limited to, Recipient ensuring that:
- i. Pedestrian access is maintained as required by the ADA,

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- ii. Any complaints received by Recipient identifying sidewalk, curb ramp, or pedestrian-activated signal safety or access issues are promptly evaluated and addressed,
 - iii. Recipient, or abutting property owner, pursuant to local code provisions, performs any repair or removal of obstructions needed to maintain the Project in compliance with the ADA requirements that were in effect at the time the Project was constructed or altered,
 - iv. Any future alteration work on Project or Project features during the useful life of the Project complies with the ADA requirements in effect at the time the future alteration work is performed, and
 - v. Applicable permitting and regulatory actions are consistent with ADA requirements.
- d. Maintenance obligations in this Section 5 shall survive termination of this Agreement.

5. Work Performed within ODOT's Right of Way.

- a. Prior to the commencement of work, Recipient shall obtain, or require its contractor to obtain, permission from the appropriate ODOT District Office to work on or along the state highway. This Agreement does not provide permission to work on or along the state highway.
- b. If the Project includes traffic control devices (see ODOT's Traffic Manual, Chapter 5, for a description of traffic control devices) on or along a state highway, Recipient shall, pursuant to Oregon Administrative Rule (OAR) 734-020-0430, obtain the approval of the State Traffic Engineer prior to design or construction of any traffic control device being installed.
- c. Recipient shall enter into a separate traffic signal agreement with ODOT to cover obligations for any traffic signal being installed on a state highway.
- d. Recipient shall ensure that its electrical inspectors possess a current State Certified Traffic Signal Inspector certificate before the inspectors inspect electrical installations on state highways. The ODOT's District Office shall verify compliance with this requirement before construction. The permit fee should also cover the State electrician's supplemental inspection.

6. GENERAL STANDARDS.

The Project shall be completed within industry standards and best practices to ensure that the functionality and serviceability of the Program's investment meets the intent of the application and the Program.

EXHIBIT C Subagreement Insurance Requirements

1. GENERAL.

- a. If the Project is on or along a state highway, Recipient shall require in its first tier subagreements with entities that are not units of local government as defined in ORS 190.003, if any, to: i) obtain insurance specified under TYPES AND AMOUNTS and meeting the requirements under ADDITIONAL INSURED, "TAIL" COVERAGE, NOTICE OF CANCELLATION OR CHANGE, and CERTIFICATES OF INSURANCE before performance under the subagreement commences, and ii) maintain the insurance in full force throughout the duration of the subagreement. The insurance must be provided by insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to ODOT. Recipient shall not authorize work to begin under subagreements until the insurance is in full force. Thereafter, Recipient shall monitor continued compliance with the insurance requirements on an annual or more frequent basis. Recipient shall incorporate appropriate provisions in the subagreement permitting it to enforce compliance with the insurance requirements and shall take all reasonable steps to enforce such compliance. In no event shall Recipient permit work under a subagreement when Recipient is aware that the contractor is not in compliance with the insurance requirements. As used in this section, "first tier" means a subagreement in which the Recipient is a Party.
- b. The insurance specified below is a minimum requirement that the contractor within the subagreement shall meet. Recipient may determine insurance types and amounts in excess to the minimum requirement as deemed appropriate based on the risks of the work outlined within the subagreement.
- c. Recipient shall require the contractor(s) to require that all of its subcontractors carry insurance coverage that the contractor deems appropriate based on the risks of the subcontracted work. Contractor shall obtain proof of the required insurance coverages, as applicable, from any subcontractor providing Services related to the Contract.

2. TYPES AND AMOUNTS.

a. WORKERS COMPENSATION.

All employers, including Contractor, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and shall provide Workers' Compensation Insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). The coverage shall include Employer's Liability Insurance with limits not less than \$500,000 each accident. **Contractor shall require compliance with these requirements in each of its subcontractor contracts.**

b. COMMERCIAL GENERAL LIABILITY.

Commercial General Liability Insurance shall be issued on an occurrence basis covering bodily injury and property damage and shall include personal and advertising injury liability, products and completed operations, and contractual liability coverage. When work to be performed includes operations or activity within fifty (50) feet of any railroad property, bridge, trestle, track,

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roadbed, tunnel, underpass or crossing, the Contractor shall provide the Contractual Liability – Railroads CG 24 17 endorsement, or equivalent, on the Commercial General Liability policy. Amounts below are a minimum requirement as determined by ODOT:

Coverage shall be written on an occurrence basis in an amount of not less than \$1,000,000 per occurrence. Annual aggregate limit shall not be less than \$2,000,000.

c. AUTOMOBILE LIABILITY.

Automobile Liability Insurance covering Contractor's business-related automobile use covering all owned, non-owned, or hired vehicles for bodily injury and property. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for Commercial General Liability and Automobile Liability). Amount below is a minimum requirement as determined by ODOT:

Coverage shall be written with a combined single limit of not less than \$1,000,000.

d. ADDITIONAL INSURED.

The Commercial General Liability Insurance and Automobile Liability Insurance must include the "State of Oregon, the Oregon Transportation Commission and the Department of Transportation, and their respective officers, members, agents and employees" as an **endorsed** Additional Insured but only with respect to the contractor's activities to be performed under the Subcontract. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

Additional Insured Endorsements on the Commercial General Liability shall be written on ISO Form CG 20 10 07 04, or equivalent, with respect to liability arising out of ongoing operations and ISO Form CG 20 37 07 04, or equivalent, with respect to liability arising out of completed operations. Additional Insured Endorsements shall be submitted with the Certificate(s) of Insurance and must be acceptable to the Recipient.

e. "TAIL" COVERAGE.

If any of the required insurance policies is on a "claims made" basis, such as professional liability insurance or pollution liability insurance, the contractor shall maintain either "tail" coverage or continuous "claims made" liability coverage, provided the effective date of the continuous "claims made" coverage is on or before the effective date of the Subcontract, for a minimum of twenty-four (24) months following the later of : (i) the contractor's completion and Recipient's acceptance of all Services required under the Subcontract or, (ii) the expiration of all warranty periods provided under the Subcontract. Notwithstanding the foregoing twenty-four (24) month requirement, if the contractor elects to maintain "tail" coverage and if the maximum time period "tail" coverage reasonably available in the marketplace is less than the twenty-four (24) month period described above, then the contractor may request and ODOT may grant approval of the maximum "tail" coverage period reasonably available in the marketplace. If ODOT approval is granted, the contractor shall maintain "tail" coverage for the maximum time period that "tail" coverage is reasonably available in the marketplace.

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f. NOTICE OF CANCELLATION OR CHANGE.

The contractor or its insurer must provide thirty (30) days written notice to Recipient before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

g. CERTIFICATE(S) OF INSURANCE.

Recipient shall obtain from the contractor a certificate(s) of insurance for all required insurance before the contractor performs under the Subcontract. The certificate(s) or an attached endorsement must specify: i) "State of Oregon, the Oregon Transportation Commission and the Department of Transportation, and their respective officers, members, agents and employees" as an endorsed Additional Insured in regards to the Commercial General Liability and Automobile Liability policies and ii) that all liability insurance coverages shall be primary and non-contributory with any other insurance and self-insurance, with exception of Workers' Compensation.

The Recipient shall immediately notify ODOT of any change in insurance coverage.

G001-T041620

**GRANT AGREEMENT
OREGON DEPARTMENT OF TRANSPORTATION
2020 FUND EXCHANGE PROGRAM**

Project Name: Queen Avenue Street Improvement Project

This Grant Agreement ("Agreement") is made and entered into by and between the **State of Oregon**, acting by and through its Department of Transportation ("ODOT"), and **City of Albany**, acting by and through its Governing Body, ("Recipient"), both referred to individually or collectively as "Party" or "Parties."

1. **Effective Date.** This Agreement shall become effective on the date this Agreement is fully executed and approved as required by applicable law (the "Effective Date"). The availability of Grant Funds (as defined in Section 3) shall end two (2) years after the Effective Date (the "Availability Termination Date").
2. **Agreement Documents.** This Agreement consists of this document and the following documents:
 - a. Exhibit A: **Project Description**
 - b. Exhibit B: **Recipient Requirements**
 - c. Exhibit C: **Subagreement Insurance Requirements**
 - d. Exhibit D: **Documentation provided by Recipient prior to execution of the Agreement (i.e. application, Part 1 of the Project Prospectus)**

Exhibits A, B and C are attached to this Agreement. Exhibit D is incorporated by reference. In the event of a conflict between two or more of the documents comprising this Agreement, the language in the document with the highest precedence shall control. The precedence of each of the documents comprising this Agreement is as follows, listed from highest precedence to lowest precedence: this Agreement without Exhibits; Exhibit A; Exhibit B; Exhibit C; Exhibit D.

3. **Project Cost; Grant Funds.** To assist in funding the Project, Recipient has requested ODOT to exchange 2020 federal funds, which have been allocated to Recipient, for state funds based on the ratio of \$94 state for \$100 federal.

Based on this ratio, Recipient wishes to exchange \$328,008.00 federal funds for \$308,327.52.00 state funds (the "Grant Funds").

4. **Project.**
 - a. **Use of Grant Funds.** The Grant Funds shall be used solely for the Project described in Exhibit A (the "Project") and shall not be used for any other purpose. No Grant Funds will be disbursed for any changes to the Project unless ODOT approves such changes by amendment pursuant to Section 4(c).

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- b. Eligible Costs.** Recipient may seek reimbursement for its actual costs to develop the Project, consistent with the terms of this Agreement (“Eligible Costs”).
- i.** Eligible Costs are actual costs of Recipient to the extent those costs are:
- A.** reasonable, necessary and directly used for the Project;
 - B.** purchase or production of Aggregate. Recipient shall ensure the purchase or production of aggregate is highway related and exclusively used for highway work;
 - C.** purchase of Equipment. Purchased equipment shall be used exclusively for highway purposes for the useful life of the equipment. Recipient shall clearly describe how it has used or plans to use said equipment on highways, and shall demonstrate the equipment will only be used for highway purposes. In the event that the equipment is not used for highway purposes, Recipient shall pay to ODOT the fair market rental value for Recipients non-highway use of the equipment. The useful life and the fair market rental value of the equipment shall be determined by ODOT, based on the type and condition of equipment;
 - D.** permitted by generally accepted accounting principles established by the Governmental Accounting Standards Board, as reasonably interpreted by the State, to be capitalized to an asset that is part of the Project; and
 - E.** eligible or permitted uses of the Grant Funds under the Oregon Constitution, the statutes and laws of the state of Oregon, and this Agreement.
- ii.** Eligible Costs do NOT include:
- A.** operating and working capital or operating expenditures charged to the Project by Recipient;
 - B.** loans or grants to be made to third parties;
 - C.** any expenditures incurred before the Effective Date or after the Availability Termination Date; or
 - D.** costs associated with the Project that substantially deviate from Exhibit A, Project Description, unless such changes are approved by ODOT by amendment of this Agreement;
 - E.** right of way costs; or
 - F.** costs to adjust, reconstruct or relocate utilities.
- c. Project Change Procedures.**
- i.** If Recipient anticipates a change in scope or Availability Termination Date, Recipient shall submit a written request to their ODOT Contact. The request for change must be submitted before the change occurs.

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- ii. Recipient shall not proceed with any changes to scope or Availability Termination Date before the execution of an amendment to this Agreement executed in response to ODOT's approval of a Recipient's request for change. A request for change may be rejected at the sole discretion of ODOT.

5. Reimbursement Process.

- a. ODOT shall reimburse Recipient for 94% of Eligible Costs up to the Grant Fund amount provided in Section 3. ODOT shall reimburse Eligible Costs within forty-five (45) days of ODOT's receipt and approval of a request for reimbursement from Recipient. Recipient must pay its contractors, consultants and vendors before submitting a request for reimbursement to ODOT for reimbursement.
- b. Each reimbursement request shall be submitted on letterhead to the ODOT Contact and include the Agreement number, the start and end date of the billing period, and itemize all expenses for which reimbursement is claimed. Recipient shall provide to ODOT proof of payment and backup documentation supporting Recipient's reimbursement requests.
- c. ODOT's obligation to disburse Grant Funds to Recipient is subject to the satisfaction, with respect to each disbursement, of each of the following conditions precedent:
 - i. ODOT has received funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow ODOT, in the exercise of its reasonable administrative discretion, to make the disbursement;
 - ii. Recipient is in compliance with the terms of this Agreement; and
 - iii. Recipient's representations and warranties set forth in Section 6 are true and correct on the date of disbursement with the same effect as though made on the date of disbursement.

6. Representations and Warranties of Recipient. Recipient represents and warrants to ODOT as follows:

- a. **Organization and Authority.** Recipient is duly organized and validly existing under the laws of the State of Oregon and is eligible to receive the Grant Funds. Recipient has full power, authority and legal right to make this Agreement and to incur and perform its obligations hereunder, and the making and performance by Recipient of this Agreement (1) have been duly authorized by all necessary action of Recipient and (2) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency or any provision of Recipient's Articles of Incorporation or Bylaws, if applicable, (3) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which Recipient is a party or by which Recipient or any of its properties may be bound or affected. No authorization, consent, license, approval of, filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by Recipient of this Agreement.
- b. **Binding Obligation.** This Agreement has been duly executed and delivered by Recipient and constitutes a legal, valid and binding obligation of Recipient, enforceable in accordance with its

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terms subject to the laws of bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights generally.

- c. **No Solicitation.** Recipient's officers, employees, and agents shall neither solicit nor accept gratuities, favors, or any item of monetary value from contractors, potential contractors, or parties to subagreements. No member or delegate to the Congress of the United States or State of Oregon employee shall be admitted to any share or part of this Agreement or any benefit arising therefrom.
- d. **No Debarment.** Neither Recipient nor its principals is presently debarred, suspended, or voluntarily excluded from any federally-assisted transaction, or proposed for debarment, declared ineligible or voluntarily excluded from participating in this Agreement by any state or federal agency. Recipient agrees to notify ODOT immediately if it is debarred, suspended or otherwise excluded from any federally assisted transaction for any reason or if circumstances change that may affect this status, including without limitation upon any relevant indictments or convictions of crimes.
- e. **Compliance with Oregon Taxes, Fees and Assessments.** Recipient is, to the best of the undersigned(s) knowledge, and for the useful life of the Project will remain, current on all applicable state and local taxes, fees and assessments.

7. Records Maintenance and Access; Audit.

- a. **Records, Access to Records and Facilities.** Recipient shall make and retain proper and complete books of record and account and maintain all fiscal records related to this Agreement and the Project in accordance with all applicable generally accepted accounting principles, generally accepted governmental auditing standards and state minimum standards for audits of municipal corporations. Recipient shall ensure that each of its subrecipients and subcontractors complies with these requirements. ODOT, the Secretary of State of the State of Oregon (the "Secretary") and their duly authorized representatives shall have access to the books, documents, papers and records of Recipient that are directly related to this Agreement, the Grant Funds, or the Project for the purpose of making audits and examinations. In addition, ODOT, the Secretary and their duly authorized representatives may make and retain excerpts, copies, and transcriptions of the foregoing books, documents, papers, and records. Recipient shall permit authorized representatives of ODOT and the Secretary to perform site reviews of the Project, and to inspect all vehicles, real property, facilities and equipment purchased by Recipient as part of the Project, and any transportation services rendered by Recipient.
- b. **Retention of Records.** Recipient shall retain and keep accessible all books, documents, papers, and records that are directly related to this Agreement, the Grant Funds or the Project for a period of six (6) years after final payment. If there are unresolved audit questions at the end of the period described in this section, Recipient shall retain the records until the questions are resolved.
- c. **Expenditure Records.** Recipient shall document the expenditure of all Grant Funds disbursed by ODOT under this Agreement. Recipient shall create and maintain all expenditure records in accordance with generally accepted accounting principles and in sufficient detail to permit ODOT to verify how the Grant Funds were expended.

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This Section 7 shall survive any expiration or termination of this Agreement.

8. Recipient Subagreements and Procurements.

- a. **Subagreements.** Recipient may enter into agreements with sub-recipients, contractors or subcontractors (collectively, "subagreements") for performance of the Project.
- i. All subagreements must be in writing, executed by Recipient and must incorporate and pass through all of the applicable requirements of this Agreement to the other party or parties to the subagreement(s). Use of a subagreement does not relieve Recipient of its responsibilities under this Agreement.
 - ii. Recipient shall require all of its contractors performing work under this Agreement to name ODOT as a third party beneficiary of Recipient's subagreement with the contractor and to name ODOT as an additional or "dual" obligee on contractors' payment and performance bonds.
 - iii. Recipient shall provide ODOT with a copy of any signed subagreement, as well as any other purchasing or contracting documentation, upon ODOT's request at any time. Recipient must report to ODOT any material breach of a term or condition of a subagreement within ten (10) days of Recipient discovering the breach.
- b. **Subagreement indemnity; insurance.**

Recipient's subagreement(s) shall require the other party to such subagreements(s) that is not a unit of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless State of Oregon, the Oregon Transportation Commission and its members, the Department of Transportation, their officers, agents and employees from and against any and all claims, actions, liabilities, damages, losses, or expenses, including attorneys' fees, arising from a tort, as now or hereafter defined in ORS 30.260, caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of the other party to Recipient's subagreement or any of such party's officers, agents, employees or subcontractors ("Claims"). It is the specific intention of the Parties that ODOT shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of ODOT, be indemnified by the other party to Recipient's subagreement(s) from and against any and all Claims.

- i. Any such indemnification shall also provide that neither Recipient's subrecipient(s), contractor(s) nor subcontractor(s), nor any attorney engaged by Recipient's subrecipient(s), contractor(s) nor subcontractor(s) shall defend any claim in the name of ODOT or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State may, at any time at its election, assume its own defense and settlement in the event that it determines that Recipient's subrecipient is prohibited from defending the State, or that Recipient's subrecipient is not adequately defending the State's interests, or that an important governmental principle is at issue or that it is in the best interests of the State to do so. The State reserves all rights to pursue claims it may have against Recipient's subrecipient if the State of Oregon elects to assume its own defense.

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- ii. If the Project or Project work is on or along a state highway, Recipient shall require its contractor(s) to meet the minimum insurance requirements provided in Exhibit C. Recipient may specify insurance requirements of its contractor(s) above the minimum insurance requirements specified in Exhibit C. Recipient shall verify its contractor(s) meet the insurance requirements in Exhibit C.
 - iii. Recipient shall determine insurance requirements, insurance types and amounts, as deemed appropriate based on the risk of the work outlined within the subagreement. Recipient shall specify insurance requirements and require its contractor(s) meet the insurance requirements. Recipient shall obtain proof of the required insurance coverages, as applicable, from any contractor providing services related to the subagreement.
 - iv. Recipient shall require its contractor(s) to require and verify that all subcontractors carry insurance coverage that the contractor(s) deems appropriate based on the risks of the subcontracted work.
- c. **Procurements.** Recipient shall make purchases of any equipment, materials, or services for the Project under procedures that comply with Oregon law, including all applicable provisions of the Oregon Public Contracting Code, Oregon Revised Statute (ORS) 279 A, B, and C, and rules, ensuring that:
- i. All applicable clauses required by federal statute, executive orders and their implementing regulations are included in each competitive procurement; and
 - ii. All procurement transactions are conducted in a manner providing full and open competition.
- d. **Conflicts of Interest.** Recipient's public officials shall comply with Oregon's government ethics laws, ORS 244.010 *et seq.*, as those laws may be subsequently amended.

9. **Termination.**

- a. **Mutual Termination.** This Agreement may be terminated by mutual written consent of the Parties.
- b. **Termination by ODOT.** ODOT may terminate this Agreement effective upon delivery of written notice of termination to Recipient, or at such later date as may be established by ODOT in such written notice, under any of the following circumstances:
 - i. If Recipient fails to perform the Project within the time specified in this Agreement, or any extension of such performance period;
 - ii. If Recipient takes any action pertaining to this Agreement without the approval of ODOT and which under the provisions of this Agreement would have required ODOT's approval;
 - iii. If Recipient fails to perform any of its other obligations under this Agreement, and that failure continues for a period of ten (10) calendar days after the date ODOT delivers Recipient written notice specifying such failure. ODOT may agree in writing to an extension of time if it determines Recipient instituted and has diligently pursued corrective action;

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- iv. If ODOT fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow ODOT, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement;
 - v. If Federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that the Project is no longer allowable or no longer eligible for funding under this Agreement; or
 - vi. If the Project would not produce results commensurate with the further expenditure of funds.
- c. Termination by Either Party.** Either Party may terminate this Grant Agreement upon at least ten (10) days notice to the other Party and failure of the other Party to cure within the period provided in the notice, if the other Party fails to comply with any of the terms of this Grant Agreement.
- d. Rights upon Termination; Remedies.** Any termination of this Grant Agreement shall not prejudice any rights or obligations accrued before termination. The remedies set forth in this Grant Agreement are cumulative and are in addition to any other rights or remedies available at law or in equity.

10. GENERAL PROVISIONS

a. Contribution.

- i. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against ODOT or Recipient with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.
- ii. With respect to a Third Party Claim for which ODOT is jointly liable with Recipient (or would be if joined in the Third Party Claim), ODOT shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Recipient in such proportion as is appropriate to reflect the relative fault of ODOT on the one hand and of the Recipient on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of ODOT on the one hand and of Recipient on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. ODOT's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including

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the Oregon Tort Claims Act, ORS 30.260 to 30.300, if ODOT had sole liability in the proceeding.

- iii. With respect to a Third Party Claim for which Recipient is jointly liable with ODOT (or would be if joined in the Third Party Claim), Recipient shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by ODOT in such proportion as is appropriate to reflect the relative fault of Recipient on the one hand and of ODOT on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Recipient on the one hand and of ODOT on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Recipient's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.
- b. **Dispute Resolution.** The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.
- c. **Amendments.** This Agreement may be amended or extended only by a written instrument signed by both Parties and approved as required by applicable law.
- d. **Duplicate Payment.** Recipient is not entitled to compensation or any other form of duplicate, overlapping or multiple payments for the same work performed under this Agreement from any agency of the State of Oregon or the United States of America or any other party, organization or individual.
- e. **No Third Party Beneficiaries.** ODOT and Recipient are the only Parties to this Agreement and are the only Parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly or indirectly, to a third person unless such a third person is individually identified by name herein and expressly described as an intended beneficiary of the terms of this Agreement.
- f. **Notices.** Except as otherwise expressly provided in this Agreement, any communications between the Parties hereto or notices to be given hereunder shall be given in writing by personal delivery, email or mailing the same, postage prepaid, to Recipient Contact or ODOT Contact at the address or number set forth on the signature page of this Agreement, or to such other addresses or numbers as either Party may hereafter indicate pursuant to this Section 10(g). Any communication or notice personally delivered shall be deemed to be given when actually delivered. Any communication or notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine, and to be effective against ODOT, such facsimile transmission must be confirmed by telephone notice to ODOT Contact. Any communication by email shall be deemed to be given when the recipient of the email acknowledges receipt of the email. Any communication or notice mailed shall be deemed to be given when received.

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- g. Governing Law, Consent to Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between ODOT (or any other agency or department of the State of Oregon) and Recipient that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County in the State of Oregon. In no event shall this section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. Each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.
- h. Compliance with Law.** Recipient shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Agreement or to the implementation of the Project, including without limitation as described in Exhibit B. Without limiting the generality of the foregoing, Recipient expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. Recipient agrees to comply with the requirements of ORS 366.514, Use of Highway Fund for footpaths and bicycle trails.
- i. Insurance; Workers' Compensation.** All employers, including Recipient, that employ subject workers who provide services in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Employer's liability insurance with coverage limits of not less than \$500,000 must be included. Recipient shall ensure that each of its subrecipient(s), contractor(s), and subcontractor(s) complies with these requirements.
- j. Independent Contractor.** Recipient shall perform the Project as an independent contractor and not as an agent or employee of ODOT. Recipient has no right or authority to incur or create any obligation for or legally bind ODOT in any way. ODOT cannot and will not control the means or manner by which Recipient performs the Project, except as specifically set forth in this Agreement. Recipient is responsible for determining the appropriate means and manner of performing the Project. Recipient acknowledges and agrees that Recipient is not an "officer", "employee", or "agent" of ODOT, as those terms are used in ORS 30.265, and shall not make representations to third parties to the contrary.
- k. Severability.** If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if this Agreement did not contain the particular term or provision held to be invalid.
- l. Counterparts.** This Agreement may be executed in two or more counterparts, each of which is an original and all of which together are deemed one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart.

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m. Integration and Waiver. This Agreement, including all Exhibits, constitutes the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. The delay or failure of either party to enforce any provision of this Agreement shall not constitute a waiver by that party of that or any other provision. Recipient, by the signature below of its authorized representative, acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

SIGNATURE PAGE TO FOLLOW

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THE PARTIES, by execution of this Agreement, acknowledge that their signing representatives have read this Agreement, understand it, and agree to be bound by its terms and conditions.

The Program and Funding Services Manager approved the Fund Exchange on July 14, 2020.

Recipient Name, by and through its elected officials

STATE OF OREGON, by and through its Department of Transportation

By _____
(Legally designated representative)

By _____
Region 2 Manager

Name _____
(printed)

Name _____
(printed)

Date _____

Date _____

By _____

APPROVAL RECOMMENDED

Name _____
(printed)

By _____
State Traffic-Roadway Engineer

Date _____

Name _____
(printed)

**LEGAL REVIEW APPROVAL
(If required in Recipient's process)**

Date _____

By _____
Recipient's Legal Counsel

APPROVED AS TO LEGAL SUFFICIENCY

Date _____

By _____
Assistant Attorney General

Date _____

Recipient Contact:
Staci Belcastro, P.E.
333 Broadalbin St. SW
PO Box 490
Albany, Oregon 97321
(541) 917-7645
staci.belcastro@cityofalbany.net

ODOT Contact:
Shelly White-Robinson
Special Program Coordinator
ODOT, Region 2
455 Airport Road SE, Building B
Salem, Oregon 97301
(503) 986-6925
shelly.white-robinson@odot.state.or.us

ODOT / City of Albany
Agreement No. 34371

EXHIBIT A

Project Description

Agreement No. 34371

Project Name: Queen Avenue Street Improvement Project

A. PROJECT DESCRIPTION

Queen Avenue from approximately OR 99E to Marion Street.

This project includes rehabilitating heavily-deteriorated pavement on Queen Avenue from Highway 99E east approximately 3,000 feet to Marion Street. In addition to street construction, bike lanes, curb ramps, and sidewalk improvements will be constructed to meet current Americans with Disabilities Act (ADA) requirements. Queen Avenue is classified as an arterial street under the jurisdiction of the City of Albany; the corridor includes a railroad crossing owned by Union Pacific Railroad (UPRR) located just east of Highway 99E. The City anticipates that construction of the Queen Avenue Street Improvement project will take place during FFY 2022, in order to coordinate with planned improvements ODOT Rail and UPRR will be making at the Queen Avenue railroad crossing.

Recipient acknowledges that such Project improvements funded under this Agreement may trigger other Recipient responsibilities under the Americans with Disabilities Act. Recipient agrees that it is solely responsible for ensuring Americans with Disabilities Act compliance pursuant to Exhibit B, Recipient Requirements, Section 4.

EXHIBIT B

Recipient Requirements

1. Recipient shall comply with all applicable provisions of ORS 279C.800 to 279C.870 pertaining to prevailing wage rates and including, without limitation, that workers on the Project shall be paid not less than rates in accordance with ORS 279C.838 and 279C.840 pertaining to wage rates and ORS 279C.836 pertaining to having a public works bond filed with the Construction Contractors' Board.
2. Recipient shall notify ODOT's Contact in writing when any contact information changes during the Agreement.
3. Recipient shall maintain insurance policies with responsible insurers or self-insurance programs, insuring against liability and risk of direct physical loss, damage or destruction of the Project, at least to the extent that similar insurance is customarily carried by governmental units constructing, operating and maintaining similar facilities. If the Project or any portion is destroyed, insurance proceeds will be paid to ODOT, unless Recipient has informed ODOT in writing that the insurance proceeds will be used to rebuild the Project.
4. **Americans with Disabilities Act Compliance.**
 - a. **State Highway:** For portions of the Project located on or along the State Highway System or a State-owned facility ("state highway"):
 - i. Prior to the commencement of work, Recipient shall obtain, or require its contractor to obtain, permission from the appropriate ODOT District Office to work on or along the state highway. This Agreement does not provide permission to work on or along the state highway.
 - ii. Recipient shall utilize ODOT standards to assess and ensure Project compliance with Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 as amended (together, "ADA"), including ensuring that all sidewalks, curb ramps, pedestrian-activated signals meet current ODOT Highway Design Manual standards;
 - iii. Recipient shall follow ODOT's processes for design, construction, or alteration of sidewalks, curb ramps, and pedestrian-activated signals, including using the ODOT Highway Design Manual, ODOT Design Exception process, ODOT Standard Drawings, ODOT Construction Specifications, providing a temporary pedestrian accessible route plan and current ODOT Curb Ramp Inspection form;
 - iv. At Project completion, Recipient shall send a completed ODOT Curb Ramp Inspection Form 734-5020 to the address on the form and to State's Project Manager for each curb ramp constructed or altered as part of the Project. The completed form is the documentation required to show that each curb ramp meets ODOT standards and is ADA compliant. ODOT's fillable Curb Ramp Inspection Form and instructions are available at the following address:

<https://www.oregon.gov/ODOT/Engineering/Pages/Accessibility.aspx>

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- v. Recipient shall promptly notify ODOT of Project completion and allow ODOT to inspect Project sidewalks, curb ramps, and pedestrian-activated signals located on or along a state highway before acceptance of Project by Recipient and before release of any Recipient contractor.
 - vi. Recipient shall ensure that temporary pedestrian routes are provided through or around any Project work zone. Any such temporary pedestrian route shall include directional and informational signs, comply with ODOT standards, and include accessibility features equal to or better than the features present in the existing pedestrian facility. Recipient shall also ensure that advance notice of any temporary pedestrian route is provided in accessible format to the public, people with disabilities, disability organizations, and ODOT at least 10 days before the start of construction.
- b. **Local Roads:** For portions of the Project located on Recipient roads or facilities that are not on or along a state highway:
- i. Recipient shall ensure that the Project, including all sidewalks, curb ramps, and pedestrian-activated signals, is designed, constructed and maintained in compliance with the ADA.
 - ii. Recipient may follow its own processes or may use ODOT's processes for design, construction, or alteration of Project sidewalks, curb ramps, and pedestrian-activated signals, including using the ODOT Highway Design Manual, ODOT Design Exception process, ODOT Standard Drawings, ODOT Construction Specifications, providing a temporary pedestrian accessible route plan and current Curb Ramp Inspection form, available at:

<https://www.oregon.gov/ODOT/Engineering/Pages/Accessibility.aspx>;

Additional ODOT resources are available at the above-identified link. ODOT has made its forms, processes, and resources available for Recipient's use and convenience.
 - iii. Recipient assumes sole responsibility for ensuring that the Project complies with the ADA, including when Recipient uses ODOT forms and processes. Recipient acknowledges and agrees that ODOT is under no obligation to review or approve Project plans or inspect the completed Project to confirm ADA compliance.
 - iv. Recipient shall ensure that temporary pedestrian routes are provided through or around any Project work zone. Any such temporary pedestrian route shall include directional and informational signs and include accessibility features equal to or better than the features present in the existing pedestrian route. Recipient shall also ensure that advance notice of any temporary pedestrian route is provided in accessible format to the public, people with disabilities, and disability organizations prior to the start of construction.
- c. Recipient shall ensure that any portions of the Project under Recipient's maintenance jurisdiction are maintained in compliance with the ADA throughout the useful life of the Project. This includes, but is not limited to, Recipient ensuring that:
- i. Pedestrian access is maintained as required by the ADA,

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- ii. Any complaints received by Recipient identifying sidewalk, curb ramp, or pedestrian-activated signal safety or access issues are promptly evaluated and addressed,
 - iii. Recipient, or abutting property owner, pursuant to local code provisions, performs any repair or removal of obstructions needed to maintain the Project in compliance with the ADA requirements that were in effect at the time the Project was constructed or altered,
 - iv. Any future alteration work on Project or Project features during the useful life of the Project complies with the ADA requirements in effect at the time the future alteration work is performed, and
 - v. Applicable permitting and regulatory actions are consistent with ADA requirements.
- d. Maintenance obligations in this Section 5 shall survive termination of this Agreement.

5. Work Performed within ODOT's Right of Way.

- a. Prior to the commencement of work, Recipient shall obtain, or require its contractor to obtain, permission from the appropriate ODOT District Office to work on or along the state highway. This Agreement does not provide permission to work on or along the state highway.
- b. If the Project includes traffic control devices (see ODOT's Traffic Manual, Chapter 5, for a description of traffic control devices) on or along a state highway, Recipient shall, pursuant to Oregon Administrative Rule (OAR) 734-020-0430, obtain the approval of the State Traffic Engineer prior to design or construction of any traffic control device being installed.
- c. Recipient shall enter into a separate traffic signal agreement with ODOT to cover obligations for any traffic signal being installed on a state highway.
- d. Recipient shall ensure that its electrical inspectors possess a current State Certified Traffic Signal Inspector certificate before the inspectors inspect electrical installations on state highways. The ODOT's District Office shall verify compliance with this requirement before construction. The permit fee should also cover the State electrician's supplemental inspection.

6. GENERAL STANDARDS.

The Project shall be completed within industry standards and best practices to ensure that the functionality and serviceability of the Program's investment meets the intent of the application and the Program.

EXHIBIT C

Subagreement Insurance Requirements

1. GENERAL.

- a. If the Project is on or along a state highway, Recipient shall require in its first tier subagreements with entities that are not units of local government as defined in ORS 190.003, if any, to: i) obtain insurance specified under TYPES AND AMOUNTS and meeting the requirements under ADDITIONAL INSURED, "TAIL" COVERAGE, NOTICE OF CANCELLATION OR CHANGE, and CERTIFICATES OF INSURANCE before performance under the subagreement commences, and ii) maintain the insurance in full force throughout the duration of the subagreement. The insurance must be provided by insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to ODOT. Recipient shall not authorize work to begin under subagreements until the insurance is in full force. Thereafter, Recipient shall monitor continued compliance with the insurance requirements on an annual or more frequent basis. Recipient shall incorporate appropriate provisions in the subagreement permitting it to enforce compliance with the insurance requirements and shall take all reasonable steps to enforce such compliance. In no event shall Recipient permit work under a subagreement when Recipient is aware that the contractor is not in compliance with the insurance requirements. As used in this section, "first tier" means a subagreement in which the Recipient is a Party.
- b. The insurance specified below is a minimum requirement that the contractor within the subagreement shall meet. Recipient may determine insurance types and amounts in excess to the minimum requirement as deemed appropriate based on the risks of the work outlined within the subagreement.
- c. Recipient shall require the contractor(s) to require that all of its subcontractors carry insurance coverage that the contractor deems appropriate based on the risks of the subcontracted work. Contractor shall obtain proof of the required insurance coverages, as applicable, from any subcontractor providing Services related to the Contract.

2. TYPES AND AMOUNTS.

a. WORKERS COMPENSATION.

All employers, including Contractor, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and shall provide **Workers' Compensation Insurance** coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). The coverage shall include Employer's Liability Insurance with limits not less than \$500,000 each accident. **Contractor shall require compliance with these requirements in each of its subcontractor contracts.**

b. COMMERCIAL GENERAL LIABILITY.

Commercial General Liability Insurance shall be issued on an occurrence basis covering bodily injury and property damage and shall include personal and advertising injury liability, products and completed operations, and contractual liability coverage. When work to be performed includes operations or activity within fifty (50) feet of any railroad property, bridge, trestle, track,

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roadbed, tunnel, underpass or crossing, the Contractor shall provide the Contractual Liability – Railroads CG 24 17 endorsement, or equivalent, on the Commercial General Liability policy. Amounts below are a minimum requirement as determined by ODOT:

Coverage shall be written on an occurrence basis in an amount of not less than \$1,000,000 per occurrence. Annual aggregate limit shall not be less than \$2,000,000.

c. AUTOMOBILE LIABILITY.

Automobile Liability Insurance covering Contractor's business-related automobile use covering all owned, non-owned, or hired vehicles for bodily injury and property. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for Commercial General Liability and Automobile Liability). Amount below is a minimum requirement as determined by ODOT:

Coverage shall be written with a combined single limit of not less than \$1,000,000.

d. ADDITIONAL INSURED.

The Commercial General Liability Insurance and Automobile Liability Insurance must include the "State of Oregon, the Oregon Transportation Commission and the Department of Transportation, and their respective officers, members, agents and employees" as an **endorsed** Additional Insured but only with respect to the contractor's activities to be performed under the Subcontract. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

Additional Insured Endorsements on the Commercial General Liability shall be written on ISO Form CG 20 10 07 04, or equivalent, with respect to liability arising out of ongoing operations and ISO Form CG 20 37 07 04, or equivalent, with respect to liability arising out of completed operations. Additional Insured Endorsements shall be submitted with the Certificate(s) of Insurance and must be acceptable to the Recipient.

e. "TAIL" COVERAGE.

If any of the required insurance policies is on a "claims made" basis, such as professional liability insurance or pollution liability insurance, the contractor shall maintain either "tail" coverage or continuous "claims made" liability coverage, provided the effective date of the continuous "claims made" coverage is on or before the effective date of the Subcontract, for a minimum of twenty-four (24) months following the later of : (i) the contractor's completion and Recipient's acceptance of all Services required under the Subcontract or, (ii) the expiration of all warranty periods provided under the Subcontract. Notwithstanding the foregoing twenty-four (24) month requirement, if the contractor elects to maintain "tail" coverage and if the maximum time period "tail" coverage reasonably available in the marketplace is less than the twenty-four (24) month period described above, then the contractor may request and ODOT may grant approval of the maximum "tail" coverage period reasonably available in the marketplace. If ODOT approval is granted, the contractor shall maintain "tail" coverage for the maximum time period that "tail" coverage is reasonably available in the marketplace.

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f. NOTICE OF CANCELLATION OR CHANGE.

The contractor or its insurer must provide thirty (30) days written notice to Recipient before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

g. CERTIFICATE(S) OF INSURANCE.

Recipient shall obtain from the contractor a certificate(s) of insurance for all required insurance before the contractor performs under the Subcontract. The certificate(s) or an attached endorsement must specify: i) "State of Oregon, the Oregon Transportation Commission and the Department of Transportation, and their respective officers, members, agents and employees" as an endorsed Additional Insured in regards to the Commercial General Liability and Automobile Liability policies and ii) that all liability insurance coverages shall be primary and non-contributory with any other insurance and self-insurance, with exception of Workers' Compensation.

The Recipient shall immediately notify ODOT of any change in insurance coverage.



MINUTES

Wednesday, June 24, 2020

Regular Session

REMOTE

Approved: DRAFT

CALL TO ORDER AND PLEDGE OF ALLEGIANCE

Mayor Sharon Konopa called the meeting to order at 7:15 p.m. The mayor led the pledge of allegiance.

ROLL CALL

Councilors present: Mayor Sharon Konopa and Councilors Rich Kellum, Bill Coburn, Bessie Johnson, Alex Johnson II, Dick Olsen, and Mike Sykes

Councilors absent: None.

PUBLIC HEARING

Landmarks Commission appeal, Planning File HI-04-20.
Construction of two buildings at Fourth Avenue and Calapooia Street.

OPEN: Konopa opened the hearing at 7:19 p.m.

Ex parte contact: Councilor Dick Olsen heard from Dave Pinyerd that the Landmarks Commission (LC) minutes should have been in the agenda. Councilor Mike Sykes said he received an email from a citizen and forwarded it to staff. Councilor Bill Coburn said he received an email from a citizen and deleted it. He noticed that they also sent a letter. Councilor Alex Johnson II said he consulted on Bill Ryals' brother's health insurance. Councilor Bessie Johnson said she received an email and deleted it. Councilor Rich Kellum said the same.

Konopa said she has driven past the site. No councilors reported site visits. No councilors wished to abstain. No one wished to challenge any councilor's participation.

Ray Kopczynski made a statement in favor of approval of the development without conditions. He did not challenge any councilor's participation.

Konopa read the rules for testimony.

City Attorney Sean Kidd said the decision of the LC is included in the packet and is part of the record. The council may allow a continuance or leave the record open, but they are not required to do so.

Staff Report

Planner III Laura LaRoque described the application and the property. She summarized the review process. She said decision-making is not based on opinion, but on findings of fact related to specific review criteria. She described the review criteria applicable to this application. The criteria contain some subjective words.

LaRoque shared a map from the agenda. She said there is some "tension" between the zoning and the historic district. The property is in a mixed-use zone and within the Monteith Historic District, but directly across the street from a single-family zone and within the historic district.

LaRoque described the review criteria and findings of fact, using slides (see agenda file). She said most of the discussion in previous hearings was about setbacks, height, and size of the proposed buildings. Staff recommends as a condition of approval, increasing the setback along Calapooia Street.

As to size, the building is larger than comparable structures in the block. LaRoque described design features that break up the building's mass. Staff recommends further measures to reduce the building's mass at the street.

The building's height is forty feet ten inches. Staff recommends reducing the overall height by four feet.

Johnson II asked if the height of the proposed buildings is within code. LaRoque said the maximum height is 45 feet. Review is also based on similar size to other buildings nearby. The building to the east is one story, and the one to the north is a daylight basement and two stories. A story is about 8 to ten feet. There is no definition of "surrounding properties."

Kellum asked how many different styles are in the Monteith historic district. LaRoque said there's a wide range of styles and construction dates. Kellum listed several nearby buildings that are bigger or taller than the proposed building.

Applicant Testimony

Bill Kloos, 375 West Fourth Street, Suite 204, Eugene, spoke on behalf of the applicant. He sent a letter which was distributed. It was frustrating to prepare the appeal statement, because the LC said the application didn't comply with two of the three review criteria but didn't explain why. The architect provided a design according to City standards. The staff report really shows a different sense of design. It says staff would do the project differently, but that shouldn't be the basis for denial. The applicant is asking the council to agree with the design produced by the professional architect.

Kloos said he believes staff has misconstrued the language of review criterion A. The starting point should be to identify a "unifying development pattern," and then ask if the development maintains it. The only issue here is the setback on Calapooia Street. Staff is using a single building to require a larger setback. There is no pattern.

Page 42 of the staff report shows six small storage buildings along the east property line. Staff has asked for more detail on these. Kloos asked the council not to require a new application, which could stop the project.

Kloos also believes staff has misunderstood the language of review criterion B. He said this is about size and scale relative to surrounding buildings. Requiring bigger offsets will require redesign of both buildings. The applicant has looked at a several-block area, and the proposed building is similar. Kloos said staff looked at only adjacent residential buildings. This is the same problem as staff's recommendation to reduce the height of the proposed building to "respect" the height of one house to the east.

Kloos said Review Criterion C says that "building materials are reflective of and complementary to existing buildings within the district." The surrounding area includes all kinds of construction. Staff is requiring solid wood beams; the criterion doesn't support that requirement.

Kloos asked the council not to accept staff's recommended conditions. As they are written, if the case is appealed, LUBA will remand it. Kloos has rewritten the conditions so that they would be safe on appeal.

Mark Siegner, 516 Kouns Drive, Albany, said the process has seemed to him biased and subjective. He compared it to the City's demolition of the house at 610 Sherman Street. This is not an ill-conceived, thrown-together project. Architect Bill Ryals is sensitive to development in the historic district.

Siegner said his team has shown that the project meets all three review criteria. The project is designed to meet building codes. They've worked to go above and beyond minimum compliance and make it compatible. Siegner shared slides of buildings in the neighborhood (see agenda file). The LC denied the project due to its size and height, but it is well under the restrictions for the mixed-use zone. If the zone encourages this type of development, then approval should follow. One of the houses previously on the property was two and a half stories tall. This building is three stories.

Siegner said conditions five through eight should not be a part of the decision to approve. Design details are subjective. The LC was wrong to deny the proposal, and the Siegners hope the council will reverse their decision and not set conditions.

Bill Ryals, 935 Jones Avenue NW, gave some history of the downtown historic district and the LC. The district is much more than architecture. He read from the Landmarks Commission's web page. They were not meant to be vinyl-window police. The commission was created for the welfare of the people of the city.

Public testimony

The following comments were posted to the website and archived for the record (see agenda file):

Public comment received by 5:00 p.m., June 22, 2020: posted to the website:

Ray Kopczynski, 1303 Tamarack Ct. SW, Albany, OR 97321
Jerry Bohme, Bohme Running LLC Public Accountants, P.O. Box 1009, Albany, OR 97322
Terry LaRue
Linda Melikian, 623 Maple St SW, Albany, OR 97321
Peggy Moretti, Executive Director, Restore Oregon, 1130 SW Morrison St. Suite 318, Portland, OR 97205
Chelsee O'Brien, 334 Calapooia Street SW, Apt 1, Albany, OR 97321
Evin O'Brien, 334 Calapooia Street SW, Apt 1, Albany, OR 97321
Jeff Heesacker, 320 Washington Street, Albany, OR 97321
Kris McLaughlin, 3192 Pacific Place SW #B, Albany, OR 97321
Kerry McQuillin, Landmarks Commission Chair, 525 Sixth Avenue SW, Albany, OR 97321
Ashley Baldwin, 11030 Barclay Point, San Antonio, TX, 78254
Dave Pinyerd, 1116 11th Avenue SW, Albany, OR 97321

Written Testimony Received in Advance of the Landmarks Commission Hearing Held on May 6:

Kate Foster, 485 Young Street, Woodburn, OR 97071
Keith and Barbara Sandberg, 3666 Fir Tree Drive SE, Salem, OR 97317
Camron Settlemier, 230 7th Avenue SW, Albany, OR 97321
Jeff Heesacker, 320 Washington SW, Albany, OR 97321
Richard H. Engeman, Oregon Rediviva LLC, 955 Fifth Avenue SW, Albany, OR 97321
Jennifer Cepello
Bernadette Niederer, 1116 11th Avenue SW, Albany, OR 97321
Dave Pinyerd, 1116 11th Avenue SW, Albany, OR 97321
Joel Orton, Friends of Historic Albany, (see sign in sheet)
Camron Settlemier, 230 7th Avenue SW, Albany, OR 97321

Written Testimony Received in Advance of the Landmarks Commission Hearing Held on May 19:

Cheryl French and John Byrne, 705 6th Avenue SW
Jerry Bohme, Bohme Running LLC Public Accountants, P.O. Box 1009, Albany, OR 97322
Jim Richards
Christian Noteboom
Christopher Berry
Dirk Olsen
Ronald and Wendy Wobig
William Ryals
Dean C Stavros
Mary H Curran, 624 Baker Street SE
Any Vosika
Linda Melikian, 623 Maple St SW
Patrick Richards, PO Box 159, Albany
Candice Clark, 720 8th Avenue SW
Ray Kopczynski, 1303 Tamarack Ct SW
Jim Jansen, 804 Broadalbin Street SW
Mark and Tina Siegner
Restore Oregon
Scott Lepman and Candace Ribera, 100 Ferry Street NW
Rebecca Ziegler, Friends of Historic Albany
John and Deborah Conrad, 630 6th Avenue SW
William Ryals
Carrie Richter, 1151 SE 72nd Avenue, Portland, OR, 97215
Joint letter signed by the following: David Abarr; Roz Keeney; Oscar B. Hult; Camron Settlemier;
David Pinyerd; Robyn van Rossmann; Kate Foster; Larry Preston; Linda Herd; and Heidi Overman.
Monica Weber
Larry Preston, 1152 12th Avenue SW
Patrick Spence, 707 Broadalbin Street SW
Jayne Crupi, 1015 5th Avenue, Apt 17
Terry LaRue

Gary and Linda House
Mike Bischopink
Karen Bischopink
George and Marilyn Stursa
Robert T. Olguin, Oregon Parks & Recreation Department
Joan Baratta, 722 Calapooia Street SW
Mary Frances McClean, 515 4th Avenue SW
Bernadette Niederer, 1116 11th Avenue SW

Public comment received by 5:00 p.m., June 23, 2020; posted to the website:

John and Deborah Conrad, 630 6th Avenue SW
Kate Foster, 2815 Marion Street SE
Camron Settlemier, 230 7th Avenue
Richard H. Engeman, Oregon Rediviva LLC, 955 Fifth Avenue SW
Richard Engeman, Friends of Historic Albany, 1116 11th Ave. SW Albany, OR 97321
Molly Miller, 1312 8th Avenue
Joint letter signed by: Roz Keeney; Oscar B. Hult; Larry Preston; Linda Herd; Camron Settlemier;
David Pinyerd; Robyn van Rossmann; David Abarr; Kate Foster; and Heidi Overman.
Mary McClean, 515 4th Avenue SW
Bernadette Niederer, 1116 11th Avenue SW
Carrie Richter, 1151 SE 72nd Avenue, Portland, Or, 97215
Patrick Spence, 707 Broadalbin Street SW
Michael Thomson, 1291 Elm Street SW
Norma and Rita Tolonen, 31213 Loan Oak Lane SW
Laurie Walcutt
Michael Yuan
Martin Kirkwood

Written comments provided by the applicant received by noon, June 24, 2020, and posted to the website:

Mark and Tina Siegner
Bill Kloos
Bill Ryals

Konopa called on those who registered to speak on the signup sheet (see agenda file).

Kopczynski, 1303 Tamarack Court SE, said he already read his testimony.

Richard Engemann, 955 Fifth Avenue SW, said he is the board secretary for Friends of Historic Albany and is testifying on their behalf. The property is in the historic district overlay zone, which establishes stricter standards than the mixed-use zone. The project does not meet the standards of the historic district overlay zone. It should be compared only to properties within the historic zone. It replaces three small houses and is quite different from them in size and scale. The applicants need to go back and start at the beginning. The Friends of Historic Albany ask the council to deny the application.

Jeffrey Heesacker, 320 Washington Street, said he submitted a letter. Staff shared a picture from the letter to the screen for the audience. The letter was in the packet in front of the council. The picture showed the previous houses on the property. Heesacker said the proposal doesn't meet all of the criteria. The LC was correct to deny it. He repeated some points already discussed in this hearing and showed pictures of nearby buildings. He also showed pictures of other Siegner building projects.

Sykes noted that Heesacker was talking about information already in the packet. Coburn said Heesacker's information is not pertinent. Konopa asked Heesacker if he had anything different to add. He said if the council approves this case, he wants to know if he can replace his own windows with ones like these without review.

BREAK: The council recessed for a break at 9:14 p.m.

RECONVENE: The council reconvened at 9:16 p.m.

Coburn clarified that the council gave the applicant and his attorney and architect an unlimited amount of time to speak. He wants to hear both sides, and is not proposing a time limit, but comments really need to be pertinent.

Konopa continued to call names of those registered to speak.

Sergio Cano Soto, 1425 Calapooia Street, is in favor of the project. He showed a PowerPoint (see agenda file). He said Albany has a problem with equity in access to housing. Decisions made on the basis of esthetics can keep young people and minorities out of a neighborhood. Diversity is good for communities. Historic district residents are mostly wealthy and white. The proposed building will create a sense of place.

Kresta Wallace was no longer in the meeting.

David Abarr, 625 Fourth Avenue SE, said when the historic district overlays another zone, those requirements take precedence. The biggest problem of this project is the scale of the property. Other buildings it's being compared to have roofline changes so that the scale is more subdued.

Bernadette Niederer was no longer in the audience.

Konopa asked if anyone else wished to speak.

Mary McQueen, 515 Fourth Avenue SW, said the proposed building will be 8 feet from her house and nearly 30 feet taller. She described setbacks of nearby houses. The houses Siegner showed pictures of to support the height of his building were only 2 and a half stories, not 3 stories. She doesn't object to the mixed-use building, but it should be more compatible in scale and mass.

Camron Settlemier, 220 Seventh Avenue SW, asked to speak. He screenshared a drawing and pictures (see agenda file). He is against the proposal. He said it doesn't meet any of the requirements in ADC 7.270. The guidelines in the packet specify comparing proposed development to "adjacent" buildings. He objects to the height of the building and its setback. He asked the council to deny the application.

Stephanie Newton, no address given, said the Siegners do excellent work. Albany's historic neighborhoods draw income into Albany. She's worried that this development could set a precedent for other development that could detract from the integrity of the historic neighborhoods. She isn't for or against the project; she just wondered if the council had considered that.

Heesacker said there is no clear view right-of-way on Fourth and Calapooia shown in the drawings.

Applicant rebuttal

Kloos reminded the council that the proposal doesn't max out the height or the square footage allowed. Ryals submitted details on the accessory structures today. This is a contest between competing design views.

Siegner said the project is being compared to residential uses, but it isn't strictly a residential development. They are trying to fit into what is more of a mixed-use zone. It isn't trying to look like a house.

Ryals said he wanted to correct a few statements Settlemier made. Settlemier said the building is supposed to be compatible with adjacent historic homes, but the one he mentioned is non-contributing. Also, Settlemier flew his drone up to 44 feet, four feet above the roof of the proposed building.

Konopa asked how many bedrooms are in the proposed building. Ryals said eight two-bedroom apartments, four apartments in each building. She and Ryals discussed parking.

Staff response

Planning Manager David Martineau said historic review of accessory buildings costs \$46, not \$8,752, as Kloos stated.

Konopa asked if anyone had anything further to say.

CLOSE: Konopa closed the public hearing at 10:03 p.m.

Councilor Bessie Johnson said the goal is to bring businesses downtown. She thinks this project does that and meets code. Ryals and the Siegners do good work. She likes the project.

Councilor Dick Olsen is concerned that this project would set a precedent. We need to protect our historic districts.

MOTION: Olsen moved to deny the application because the applicant did not demonstrate meeting review criteria 2,3,and 4 for the following reasons: it is too big for the area where it sits and it is incompatible with the neighborhood.

The motion died for lack of a second.

Councilor Alex Johnson II said he has been in Albany for 26 years. If we don't build affordable housing and provide jobs, our young people will leave. Albany cannot thrive without young people. Young professional people would be able to live in the proposed development and raise their kids. It will raise the property values of everyone in the neighborhood.

Councilor Rich Kellum said a lot has been said about the scale of the building. We've allowed big buildings to be close to houses in the past. There are big buildings in this neighborhood. He's in favor of the project. He asked how much parking the City requires for any apartment downtown. LaRoque said this property is in the parking assessment district, which does not require parking.

MOTION: Councilor Bill Coburn moved to approve Option 1, Approve as proposed in the April 29, 2020 staff report. Johnson seconded and the motion passed 5-1, with Olsen voting no.

Konopa read the repeal rules.

REPORTS

Transient lodging tax funding report

10:20 p.m.

This item was moved up on the agenda.

Deputy City Manager/CIO Jorge Salinas shared a spreadsheet titled "TLT Fund Distribution as recommended by the TLT Committee on June 22, 2020 – with Staff's proposal and EcDec opp. Fund Loan" (see agenda file). This option takes dollars from the Economic Development Opportunity Fund to provide an interim loan to TLT recipients on this list.

Albany Visitors Association (AVA) Executive Director Rebecca Bond explained what the funds would pay for and noted it's a barebones budget. Discussion followed about the parameters of the exercise.

Albany Downtown Association (ADA) Executive Director Lise Grato discussed services performed by her staff and Republic Services in the downtown area. The discussion about garbage pickup will be continued at a future meeting.

Bond and Grato discussed their budget challenges. There is hope that the impact of COVID-19 will improve soon, and travel will pick up again in July, August, and September.

MOTION: Coburn moved to approve the interim budget for three months. Kellum seconded and the motion passed 6-0.

BUSINESS FROM THE PUBLIC

10:50 p.m.

None.

AWARD OF CONTRACTS

- a. Emergency loans for small business.

Planner II Anne Catlin said this contract would provide a second round of funding to Albany's small businesses from the city's Emergency Loan Fund.

Johnson II would like to see the list of recipients from the first round.

MOTION: Kellum moved to award the contract in the amount of \$208,311 to Community Lending Works of Springfield Oregon. Johnson seconded and the motion passed 6-0.

b. Housing rehabilitation loan program.

Catlin said DevNW of Corvallis applied through the competitive process. A public hearing was held and funding will come from Community Development Block Grant (CDBG) funds. The owner-occupied housing residents must have incomes of less than 80% of area median income.

MOTION: Johnson II moved to award a contract in the amount of \$240,000 to DevNW of Corvallis for a housing rehabilitation loan program. Kellum seconded and it passed 6-0.

c. CARES Act funding agreement.

Finance Director Jeanna Yeager said the state is allocating Coronavirus Aid Relief and Economic Security (CARES) Act funds. During the first costing period, March 1 through May 15, the city incurred over \$626,000 in costs related to COVID-19. This reimburses the city for those costs.

MOTION: Kellum moved to authorize the Finance Director to sign a grant agreement for CARES Act funds. Sykes seconded and the motion passed 6-0.

ADOPTION OF CONSENT CALENDAR

10:57 p.m.

a. Reappointing Amy Roberts to the Library Board.

b. Approval of minutes

1) May 13, 2020, meeting.

c. Recommendation to OLCC

1) Annual liquor license renewals.

d. Adoption of resolution

1) Accepting the abstract of votes regarding the ballots cast in the state of Oregon general election held Tuesday, May 19, 2020, regarding City of Albany public safety levy.

RES NO. 6899

2) Adopting the public transportation agency safety plan.

MOTION: Sykes moved to adopt the consent calendar as presented. Olsen seconded, and the motion passed 6-0.

REPORTS

Republic Services annual report.

This item was postponed to the July 8, 2020, regular session.

BUSINESS FROM THE COUNCIL

There was none.

NEXT MEETING DATES:

Monday, July 6, 2020; 4 p.m. work session

Wednesday, July 8, 2020; 7:15 p.m. regular meeting

ADJOURNMENT

There being no other business, the meeting was adjourned at 11:00 p.m.

Respectfully submitted,

Reviewed by,

Mary Dibble
City Clerk

Peter Troedsson
City Manager

Note: Staff handouts referred to in the minutes as (see agenda file) are available on the website in the "Staff Handouts" column.



MINUTES

Monday, July 6, 2020

Work Session

Remote

Approved: DRAFT

CALL TO ORDER

At the Mayor's request, Chair Bill Coburn called the meeting to order at 4:00 p.m.

ROLL CALL

Councilors present: Mayor Sharon Konopa and Councilors Bill Coburn, Bessie Johnson, Alex Johnson II, Rich Kellum, Dick Olsen, and Mike Sykes

Councilors absent: None.

BUSINESS FROM THE PUBLIC

4:00 p.m.

None.

PARKS AND RECREATION FEE ADJUSTMENT DISCUSSION

4:23 p.m.

Parks and Recreation Director Kim Lyddane gave an overview of the request to increase fees for rentals.

Lyddane said that fees are currently intended to cover hard costs and services. Coordinator and specialist time have not been included in the cost recovery models in the past. Next year she hopes to come before the council with a new, fully fleshed out cost recovery model.

Councilor Rich Kellum said that he believes that there should be two prices for fees: one for those who pay taxes in Albany, one for those who do not.

Lyddane said that it is a common practice in the Parks and Recreation sector to have a non-profit rate, an industry rate, and an individual rate. She would pursue a resident and non-resident structure if directed by council.

Councilor Bessie Johnson suggested that team fees go up one dollar instead of fifty cents.

Councilor Alex Johnson II said that he is comfortable with non-profits having a lower fee because of the services they provide, and believes that the commercial rate should be higher.

Mayor Sharon Konopa said that she is glad that staff is suggesting charging a non-resident fee for Albany Community Pool.

Councilor Mike Sykes said that he agrees that non-profits deserve breaks in fees and believes that non-residents should pay more.

A majority of councilors concurred that they would like staff to look into developing a rental fee system that includes a private resident rate, a private non-resident rate, a non-profit rate, and a commercial rate.

Lyddane said that tournaments pay a separate fee to rent spaces and then can set their own admission charges for their events.

Kellum spoke about how he considers the proposal that requires non-profits, businesses, and individual to pay different fees to be discrimination.

After discussion, a majority of councilors confirmed that they would like staff to look into developing a rental fee system that includes solely a resident rate and non-resident rate. Staff will bring back a proposal to the July 20, 2020, work session.

FIRE AND LIFE SAFETY FEE ADJUSTMENT DISCUSSION

4:02 p.m.

Fire Chief Shane Wooton gave councilors an overview of the Fire Department's responses to 4th of July activities.

Fire Marshal Lora Ratcliff gave an overview of the proposed resolution and the proposed changes.

Ratcliff said that the motor vehicle dismantling license occurs annually for inspection of a facility.

Kellum expressed concern about the methods that car disposal companies use to remove gasoline from cars.

Johnson II said that re-inspection fees should be tiered and should increase with the number of times staff must go and re-inspect. After confirmation from a majority of councilors, staff said that the directed changes would be made and brought before the council at the July 22, 2020, regular meeting.

Sykes suggested that the fees start at the third re-inspection.

Ratcliff said that the type of facility determines how often state inspections take place.

PLANNING FEE ADJUSTMENT DISCUSSION

4:44 p.m.

Public Works Engineering and Community Development Director Jeff Blaine gave an overview of the fee adjustment proposal. Blaine said the minimum increase to not fall behind in cost recovery would be in the area of fifteen percent.

Sykes thinks that, at a minimum, the fee should be increased at the same percentage as the Consumer Price Index; he is fine with fifteen percent if that is what it takes to not fall behind.

Blaine will research to see if there is any third-party information about how COVID-19 is going to affect development.

Konopa said that she does not like subsidizing new development out of the general fund since new development puts more demand on services and does not pay its own way. If the fee had been increased twenty years ago to get full cost recovery, the city would not be having this discussion and more communities would have done the same. She has heard the argument that the city does not want to price itself out of the market, but the city cannot continue delaying and needs a plan. She would rather see the money used to subsidize development go into parks, the library, and other city services.

Blaine said that staff intends to develop a plan that would lead the city back to significant cost recovery.

Sykes requested that staff provide data and documentation about how it was determined that the fifteen percent increase was necessary in order to not go backwards.

Councilor Dick Olsen said that he would support a raise that was on the higher end, toward fifteen percent, rather than lower so that the money would not come out of the general fund and limit spending on libraries and parks.

Johnson II said that he supports an increase, though fifteen percent is high.

Kellum, Olsen, and Sykes discussed who ultimately pays the planning fee.

Blaine said that staff would come back to another work session with a specific adjustment proposal.

PUBLIC WORKS FEE ADJUSTMENT DISCUSSION

5:15 p.m.

Engineering Manager/Assistant City Engineer Rob Emmons spoke about the proposed public works fee adjustments.

Councilors gave consensus to have a proposal increasing the rates by the ENR Construction Cost Index brought before them at the July 22, 2020, regular meeting.

RECESS TO EXECUTIVE SESSION TO DISCUSS EMPLOYEMENT EVALUATION PER ORS 192.660(i)

The work session recessed to executive session at 5:29 p.m.

RECONVENE

The work session reconvened at 6:06 p.m.

BUSINESS FROM THE COUNCIL

6:07 p.m.

Kellum spoke about comments that he has received concerning masks. After a brief discussion about face shields, councilors said that it was their understanding that face shields were an acceptable alternative.

Sykes said that he has been receiving complaints from constituents about fires and smoke at night.

Konopa said that she has received a lot of complaints about the amount of fireworks on the fourth of July.

CITY MANAGER REPORT

6:20 p.m.

City Manager Peter Troedsson noted that the city has received \$620,000 in reimbursement from the CARES Act.

ADJOURNMENT

There being no other business, the meeting was adjourned at 6:24 p.m.

Respectfully submitted,

Reviewed by,

Gabe Shepherd
Recorder

Peter Troedsson
City Manager



MEMO



TO: Albany City Council

VIA: Peter Troedsson, City Manager

8/20

FROM: Marcia Harnden, Chief of Police

@10

DATE: August 10, 2020, for the August 26, 2020, City Council Meeting

SUBJECT: Limited On-Premises, Liquor License Application for Northwest Mobile Cuisine LLC, DBA N'Reener's/McCarthy's Tap Shack, Location at 520 Pacific Boulevard SW.

Action Requested:

I recommend the limited, on-premises sales, liquor license application for Northwest Mobile Cuisine LLC, DBA N'Reener's/McCarthy's Tap Shack, location at 520 Pacific Boulevard SW, be approved.

Discussion:

Norene Collins, on behalf of Northwest Mobile Cuisine LLC, DBA N'Reener's/McCarthy's Tap Shack, has applied for a limited, on-premises sales, liquor license. Based on a background and criminal history investigation through Albany Police Department records, the applicant has no criminal record.

Budget Impact:

None

MH:de





RESOLUTION NO. _____

A RESOLUTION ACCEPTING FUNDS FROM BUSINESS OREGON

WHEREAS, the COVID-19 crisis continues to harm small businesses in Albany; and

WHEREAS, the State of Oregon has made a limited amount of emergency grant funding available for small business relief; and

WHEREAS, the primary intent of this emergency grant funding is to support sole proprietors and businesses owned by historically disadvantaged individuals; and

WHEREAS, grants are only available to businesses who have not yet received certain federal financial assistance associated with the COVID-19 crisis; and

WHEREAS, businesses who have received federal financial resources associated with the COVID-19 crisis can apply for the use of these grant dollars but will receive grants less the amount of federal funds already received up to maximum grant amount.

WHEREAS, at their August 26, 2020, meeting, the Albany City Council authorized the city manager to enter into an agreement to accept and receive grant funds in the amount of \$120,000 from Business Oregon.

NOW, THEREFORE, BE IT RESOLVED by the Albany City Council that the Business Oregon grant funds are hereby accepted as follows:

Resources:	Debit	Credit
21111025-469015		\$120,000
Requirements:		
21111025-670700	\$120,000	

DATED AND EFFECTIVE THIS 26TH DAY OF AUGUST 2020.

Mayor

ATTEST:

City Clerk



MEMO

TO: Albany City Council

VIA: Peter Troedsson, City Manager *PT*

FROM: Chris Bailey, Public Works Operations Director *CB*

DATE: August 19, 2020, for the August 26, 2020, City Council Meeting

SUBJECT: Acceptance of Coronavirus Aid Relief and Economic Security (CARES) Act Funds for Albany Municipal Airport

Relates to Strategic Plan theme: Effective Government

Action Requested:

Staff recommends Council authorize the application for and acceptance of Coronavirus Aid Relief and Economic Security (CARES) Act funds in the amount of \$30,000 for the operation and maintenance of the Albany Municipal Airport.

Discussion:

The federal CARES Act was approved in response to the COVID-19 pandemic and includes funding for many airports across the county. The Federal Aviation Administration developed allocations for various categories of airports, which resulted in \$30,000 being made available for the Albany Municipal Airport. CARES Act funds will be paid to the City on a reimbursement basis and require no local match.

Staff recommends the council approve the application for these funds, which will be used for operational expenses. These funds will be available to be drawn down in future years until they are fully expended and can be used for payment of utility bills, routine operational expenses, and routine maintenance costs.

Budget Impact:

The acceptance of CARES Act funding will have no impact to current appropriation levels; these funds will be used to pay for ongoing operational costs.

CB:kc
Attachment



RESOLUTION NO. _____

A RESOLUTION ACCEPTING CORONAVIRUS AID RELIEF AND ECONOMIC SECURITY (CARES) ACT FUNDING FROM THE FEDERAL AVIATION ADMINISTRATION FOR THE ALBANY MUNICIPAL AIRPORT

WHEREAS, the CARES Act was signed into federal law on March 27, 2020, to provide emergency appropriations in response to the COVID-19 pandemic; and

WHEREAS, the Federal Aviation Administration allocated \$30,000 in CARES Act funding for the Albany Municipal Airport; and

WHEREAS, the CARES Act funding will provide reimbursement for eligible expenses for airport operations.

NOW, THEREFORE, BE IT RESOLVED by the Albany City Council that the City of Albany accepts CARES Act funding from the Federal Aviation Administration in the amount of \$30,000 for eligible operating expenses of the Albany Municipal Airport; and

BE IT FURTHER RESOLVED that the city council accepts these funds and authorizes the public works operations director to execute the agreement and conditions for their acceptance.

DATED AND EFFECTIVE THIS 26TH DAY OF AUGUST 2020.

Mayor

ATTEST:

City Clerk



MEMO



TO: Albany City Council

VIA: Peter Troedsson, City Manager *8/20*

FROM: Shane Wooton, Fire Chief *SW*

DATE: August 18, 2020, for the August 26, 2020, City Council Meeting

SUBJECT: Acceptance of Charitable Contribution from Country Financial
Relates to Strategic Plan theme: An Effective Government

Action Requested:

Council acceptance of a donation of equipment from Country Financial.

Discussion:

Country Financial has donated \$1,000 worth of radio equipment. These funds will be used for the Fire Department Water Rescue Team.

Budget Impact:

There is no budget impact from accepting this donation.

SW:rb
Attachment (1)





City of Albany, Oregon

CHARITABLE CONTRIBUTION RECEIPT

Internal Revenue Code Section 170(f)8(A) requires that donors of any single charitable gift of \$250 or more be evidenced by written confirmation of the receipt of such gift, including a description of any goods and services provided by the donee in exchange for making the gift.

In order to comply with this requirement, the Fire Department certifies that a contribution was received from:

Name: Allison Brock
Address: Country Financial
775 SW Bonnett Way, Ste 200
Bend, OR 97702

Purpose of donation: Decaling and radio headsets for the Water Rescue Team.

Cash/check amount received: \$0

Non-cash gift value: \$1,000

Description of property: Boat decals and radio headsets

Date contribution received: August 2020

Were goods and/or services provided in return for the contribution (meals, entertainment, gifts, etc.) If yes, value: No

City of Albany Tax ID No.: 93-6002114

Signature of Department Representative:

Title: Shane Wooton, Fire Chief

Date: August 12, 2020



MEMO

TO: Albany City Council

VIA: Peter Troedsson, City Manager *PT 8/20*

FROM: Holly Roten, Central Administrative Officer/PIO *HR*

DATE: July 30, 2020, for the August 26, 2020, City Council Meeting

SUBJECT: November and December 2020 Council Meeting Dates

Action Requested:

Council's approval of the proposed changes in the meeting schedule for November and December 2020.

Discussion:

Staff recommends the following meeting schedule:

November

Monday, November 2	Work session, 4:00 p.m.
Wednesday, November 11	City offices closed; Veterans Day
Monday, November 16	Work session, 4:00 p.m.
Wednesday, November 18	CARA & ARA meetings, 5:15 p.m.
November 23 – 27	No work session or meeting this week
November 26 & 27	City offices closed; Thanksgiving and Day after Thanksgiving
Monday, November 30	Work session, 4:00 p.m.

December

Wednesday, December 2	Council meeting, 7:15 p.m.
Wednesday, December 9	CARA & ARA meetings, 5:15 p.m.
Monday, December 14	Work session, 4:00 p.m.
Wednesday, December 16	Council meeting, 7:15 p.m.
December 21 – 25	No work session or meeting this week
Friday, December 25	City offices closed; Christmas Day
December 28 – January 1	No work session or meeting this week
Friday, January 1, 2021	City offices closed; New Year's Day

The above schedule is also shown on the attached calendar view.

HR
Attachment



November							December						
S	M	T	W	T	F	S	S	M	T	W	T	F	S
1	2	3	4	5	6	7		1	2	3	4	5	
	W									R			
8	9	10	11	12	13	14	6	7	8	9	10	11	12
	☑		Veterans Day					☑		C			
15	16	17	18	19	20	21	13	14	15	16	17	18	19
	W		C					W		R			
22	23	24	25	26	27	28	20	21	22	23	24	25	26
	☐	No work session or meeting this week.		Thanksgiving Day	Day after Thanksgiving			☐	No work session or meeting this week.			Christmas Day	
29	30				27		28		29	30	31	1	2
	W							No work session or meeting this week.				New Year's Day	

-  City Council Work Session; 4:00 p.m.
-  City Council Meeting; 7:15 p.m.
-  CARA & ARA Meetings; 5:15 p.m.
-  Planning Commission meeting scheduled (No city council meetings on these dates)