

ORDINANCE NO. 5747

AN ORDINANCE AMENDING THE ALBANY MUNICIPAL CODE TITLE 12, CHAPTER 12.35, GRADING, TO PREVENT DUAL REGULATION OF GRADING ACTIVITIES IN THE FLOODPLAIN AND ON STEEP SLOPES; AND DECLARING AN EMERGENCY.

WHEREAS, the Federal Emergency Management Agency (FEMA) has published a revised Flood Insurance Study for Linn County and accompanying Flood Insurance Rate Maps, dated September 29, 2010; and

WHEREAS, the portions of the City of Albany located in Benton County are included on the Linn County Flood Insurance Rate Maps and not on the Benton County maps; and

WHEREAS, the Albany City Council has adopted the Linn County Flood Insurance Rate Maps effective September 29, 2010; and

WHEREAS, the Albany City Council has adopted required amendments to the Albany Development Code that include the requirement for a floodplain development permit for fill, grading, and excavating within the floodplain to be effective September 29, 2010; and

WHEREAS, staff recommends amending Title 12, Chapter 12.35 of the Albany Municipal Code to avoid dual regulation of fill, grading, and excavating proposed in the floodplain; and

WHEREAS, Article 6 of the Albany Development Code regulates fill on steep slopes; and

WHEREAS, staff has recommended amending Title 12, Chapter 12.35 of the Albany Municipal Code to avoid dual regulation of fill, grading, and excavating proposed on steep slopes; and

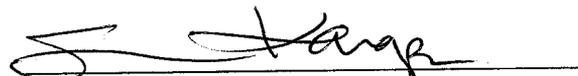
WHEREAS, the Albany City Council held a public hearing on September 22, 2010, on the proposed Albany Municipal Code revisions to Title 12, Chapter 12.35;

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

Section 1: Title 12, Chapter 12.35 of the Albany Municipal Code is amended to provide as follows:

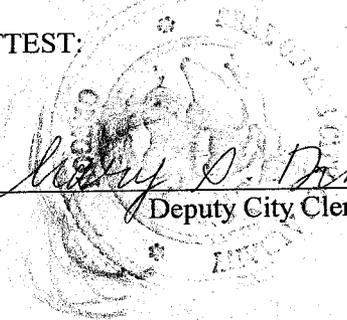
Section 2: Emergency Clause. Inasmuch as this ordinance is necessary for the immediate preservation of the peace, health, and safety of the citizens of the City of Albany, an emergency is hereby declared to exist. This ordinance will be in full force and effect on September 29th, 2010 upon its passage by the Council and approval by the Mayor.

Passed by the Council: Sept 22, 2010
Approved by the Mayor: Sept 22, 2010
Effective Date: Sept 22, 2010



Mayor

ATTEST:




Deputy City Clerk

Chapter 12.35
GRADING

Sections:

- 12.35.005 Grading – Relationship to Floodplain.**
- 12.35.010 Grading – When permits are required.
- 12.35.020 Grading – General provisions.
- 12.35.030 Grading – Permit procedure.
- 12.35.040 Grading – Notification of adjacent property owners.
- 12.35.050 Grading – Approval standards.
- 12.35.060 Grading – Permits shall be tentative pending resolution of appeals.
- 12.35.070 Grading – Standing to appeal.
- 12.35.080 Grading – Appeal procedure.
- 12.35.090 Grading – Fees.
- 12.35.100 Removal of excavation, embankment or fill required when determined to be a hazard.

12.35.005 Grading – Relationship to Floodplain

Grading (including excavation and fill) proposed in the floodplain is regulated and permitted through Article 6 of the Albany Development Code and does not require an additional grading permit under this Chapter.

12.35.010 Grading – When permits are required.

Grading permits are not required by the City of Albany for grading activities (including excavation and fill) within the City limits, except in the following circumstances:

~~(1) When any grading is proposed in floodplains. Floodplains are those areas subject to inundation from a 100-year flood and identified on Federal Flood Insurance Rate Maps (FIRMs) and Floodway Maps by the letter A, A1–A30, AE, or AO.~~

~~(1)(2)~~ When any grading is proposed in any watercourse shown in the City of Albany Drainage Master Plan, in any watercourse receiving drainage from a public roadway, or in any watercourse lying within a public easement or right-of-way. A watercourse is any natural or artificial stream, river, creek, ditch, drainageway, channel, canal, conduit, culvert, drain, waterway, gully, ravine, or wash in which water flows in a definite direction or course, either continuously or intermittently, and has a definite channel, bed and banks, and includes any area adjacent thereto subject to inundation by reason of overflow or flood water.

~~(2)(3)~~ When placement of a structure is proposed in a watercourse shown in the City of Albany Drainage Master Plan, or within a public easement or right-of-way.

~~(3)(4)~~ When grading involving more than 50 cubic yards is proposed in areas that have an average slope of 12 percent or greater.

~~(4)(5)~~ When grading is proposed over an existing public storm drain, sanitary sewer, or waterline. This does not include grading authorized under a public works contract awarded by the City of Albany, grading approved as part of a permit to construct public facilities as provided in Chapter 15.06 AMC, or grading conducted by City of Albany maintenance forces.

~~(5)(6)~~ Notwithstanding any of the foregoing, a grading permit is not required in any of the following circumstances:

- (a) Grading incidental to a valid building permit and excavation below grade for basements, foundations, or footings for retaining walls or other structures authorized by a valid building permit;
- (b) Construction of driveways or underground utilities;
- (c) Grading or landscaping when less than 50 cubic yards of earth is moved;
- (d) Grading or excavation associated with public works projects, roads, public ways, graves, or work controlled by other processes or regulations, such as wells, tunnels, utilities, or disposal sites;
- (e) Minor adjustments in active grading permits or applications when necessary in order to adhere to City requirements or good engineering practices;

(f) Grading or excavation determined by the Public Works Director or designee to be in substantial compliance with the intent of the grading ordinance. Such a determination shall be appealable to the City Council. In the event of such an appeal, the decision of the City Council shall be final.

(g) Grading proposed in areas that have an average slope of 12 percent or greater that has been approved through a land use decision under Article 6 of the Albany Development Code. (Ord. 5727 § 1, 2010; Ord. 5647 § 1 (Exh. E), 2006; Ord. 5328 § 1, 1997; Ord. 5265 § 4, 1996. Formerly 18.04.015).

12.35.020 Grading – General provisions.

The rules prescribed in this chapter shall apply to all lands within the City limits of the City of Albany.

(1) Compliance. No excavation or grading operation shall hereafter be performed, or existing graded lot altered, without full compliance with the terms of this chapter and other applicable regulations.

(2) Abrogation and Greater Restrictions. This chapter is not intended to repeal, abrogate or impair any existing easements, covenants or deed restrictions. However, where this chapter and other chapters conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

(3) Relationship to Permits Required by State or Federal Agencies. Excavation, grading, and fill activities may require State and/or Federal permits. Such permits are likely to be required if hydric soils are present on the site or if the site contains other wetland characteristics. The issuance of a permit by the City of Albany under this chapter does not eliminate the need for compliance with other State, Federal, or local regulations.

(4) Warning and Disclaimer of Liability. The issuance of a permit by the City of Albany under this chapter constitutes a determination that the applicant has met the minimum requirements for the City's regulatory purposes. Issuance of a permit does not relieve the permit holder from any responsibilities or liabilities that grading, excavation or fill activities may create if third parties are damaged or injured by such actions. (Ord. 5727 § 1, 2010; Ord. 5647 § 1 (Exh. E), 2006; Ord. 5265 § 4, 1996. Formerly 18.04.020).

12.35.030 Grading – Permit procedure.

Application for a grading permit shall be made to the Public Works Director or designee. The Public Works Director or designee shall provide the application forms. (Ord. 5727 § 1, 2010; Ord. 5647 § 1 (Exh. E), 2006; Ord. 5265 § 4, 1996. Formerly 18.04.030).

12.35.040 Grading – Notification of adjacent property owners.

The Public Works Director or designee will provide written notice that a grading permit application has been filed to the owners of property adjacent to the property on which the grading is proposed. The list of owners to be notified will be compiled from the most recent property tax assessment roll. This requirement shall be deemed met when the City can provide an affidavit or other certification that such notice was given.

(1) The notice and procedures used by the City will:

(a) Provide a 14-day period for submission of written comments prior to the decision of the Public Works Director or designee concerning whether the grading permit should be issued.

(b) State that issues which may provide the basis for an appeal shall be raised in writing prior to the expiration of the comment period. Issues shall be raised with sufficient detail that the Public Works Director or designee will be able to respond to the issue.

(c) List the approval standards of AMC 12.35.050.

(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 information submitted by the applicant is available for review, and that copies can be obtained at cost.

(g) Include the name and phone number of the City representative to contact for information about the permit application.

(h) Provide that any person who submits comments during the 14-day period referenced above shall receive a notice of the decision of the Public Works Director or designee. The notice of decision will include an explanation of appeal procedures.

(i) Include such other information as the Public Works Director or designee deems appropriate.

(2) The Public Works Director's or designee's decision on a grading permit application may be appealed as set forth in AMC 12.35.080. (Ord. 5727 § 1, 2010; Ord. 5647 § 1 (Exh. E), 2006; Ord. 5265 § 4, 1996. Formerly 18.04.035).

12.35.050 Grading – Approval standards.

Grading permit applications will be approved if the applicant has shown that each of the following criteria which are applicable have been met:

(1) Provisions have been made to maintain adequate flood-carrying capacity of existing watercourses, including future maintenance of that capacity.

(2) No grading will be permitted over an existing public storm drain, sanitary sewer, or water line unless it can be demonstrated to the satisfaction of the City Engineer that the proposed grading will not be detrimental to the anticipated service life, operation and maintenance of the existing utility.

~~(3) In floodplain areas, where no floodway is shown on the applicable map, grading will not be permitted unless it is demonstrated by the applicant that the cumulative effect of the proposed grading, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.~~

~~(4) No grading will be permitted in a floodway, except where the applicant has supplied evidence prepared by a professional engineer that demonstrates the proposal will not result in any increase in flood levels during the occurrence of the 100-year flood.~~

~~(3)(5)~~ The applicant shall notify the City of Albany, any adjacent community, and the Natural Hazards Mitigation Office of the Oregon Department of Land Conservation and Development of any proposed grading activity that will result in alteration or relocation of a watercourse.

~~(4)(6)~~ All drainage facilities shall be designed to carry waters to the nearest practicable watercourse approved by the designee as a safe place to deposit such waters. Erosion of ground in the area of discharge shall be prevented by installation of non-erosive downdrains or other devices.

~~(5)(7)~~ Building pads shall have a drainage gradient of two percent toward approved drainage facilities, unless waived by the Public Works Director or designee; except the gradient from the building pad may be one percent if all of the following conditions exist throughout the permit area:

(a) No proposed fills are greater than 10 feet in maximum depth.

(b) No proposed finished cut or fill slope faces have a vertical height in excess of 10 feet.

(c) No existing slope faces, which have a slope face steeper than 10 horizontal to one vertical, have a vertical height in excess of 10 feet.

~~(6)(8)~~ In areas that have an average slope of 12 percent or greater, the following requirements also apply:

(a) Cut and fill slopes shall not exceed a two (horizontal) to one (vertical) ratio. Slopes which are steeper (e.g., 1.5:1, or 1:1) may be approved by the Public Works Director or designee, upon certification by a qualified soils engineer or geologist that the slope will remain stable under foreseeable conditions. The certification must delineate any specific stabilization measures deemed necessary by the soils engineer or geologist. (Ord. 5727 § 1, 2010; Ord. 5647 § 1 (Exh. E), 2006; Ord. 5265 § 4, 1996. Formerly 18.04.040).

12.35.060 Grading – Permits shall be tentative pending resolution of appeals.

Grading permits, if approved, shall be "tentative" permits and shall not permit grading action until the permit has become "final." A grading permit shall become "final" when the time for appeal has passed with no appeal made, or in the event of an appeal, until the appeal has been resolved by the City. (Ord. 5727 § 1, 2010; Ord. 5647 § 1 (Exh. E), 2006; Ord. 5265 § 4, 1996. Formerly 18.04.045).

12.35.070 Grading – Standing to appeal.

Only those persons who own property adjacent to the premises on which grading is proposed and who have previously submitted comments in writing to the Public Works Director or designee as provided in AMC 12.35.040(1) shall have standing to appeal the issuance of a grading permit. (Ord. 5727 § 1, 2010; Ord. 5647 § 1 (Exh. E), 2006; Ord. 5265 § 4, 1996. Formerly 18.04.046).

12.35.080 Grading – Appeal procedure.

(1) An appeal of the Public Works Director's or designee's decision on a grading permit application shall be to the City Council. No appeal shall be timely unless a notice of appeal is actually received at the office of the Public Works Director or designee not later than 14 days after the notice of decision is mailed. The notice of appeal shall contain:

- (a) An identification of the decision sought to be reviewed, including the date of the decision.
- (b) A statement of the standing of the person seeking review and that he/she submitted written comments to the Public Works Director or designee during the period allowed in AMC 12.35.040(1)(a).
- (c) The specific approval standard on which the appeal is based.
- (d) If a de novo review is requested, a statement summarizing the new evidence which will be offered and the approval standard to which it will relate.

(2) The person who appeals the Public Works Director's or designee's decision has the burden of proof to show that the decision is in error.

(3) The City Council will determine the scope of review on appeal to be one of the following:

- (a) Restricted to the record.
- (b) Limited to such issues as the City Council determines necessary for a proper resolution of the matter.
- (c) A de novo hearing.

(4) The City Council may affirm, remand, reverse, or modify the Public Works Director's or designee's decision.

(5) The decision of the City Council shall be final. (Ord. 5727 § 1, 2010; Ord. 5647 § 1 (Exh. E), 2006; Ord. 5265 § 4, 1996. Formerly 18.04.047).

12.35.090 Grading – Fees.

(1) A minimum grading plan review fee, applicable to all grading permits, in the amount of \$_____ is hereby established.

(2) A minimum grading permit fee, applicable to all grading permits, in the amount of \$_____ is hereby established.

(3) In addition to the minimum fees called for in subsections (1) and (2) of this section, grading fees shall also include any cost incurred by the City and shall include overhead and any costs of outside consultants, inspectors or plan review by the Public Works Director or designee. When services by outside consultants, inspectors or plan reviewers are required by the Public Works Director or designee, an approximate cost of those services shall be collected at either the time of application for the plan review or at the time of issuance of the permit for inspection services. If the fees initially collected are not sufficient to cover the cost incurred by the City, adjustments to the fees owed the City may be made at the time of permit issuance or prior to final approval of the permitted work.

(4) An appeal fee in the amount of \$_____ is hereby established. (Ord. 5727 § 1, 2010; Ord. 5647 § 1 (Exh. E), 2006; Ord. 5265 § 4, 1996. Formerly 18.04.048).

12.35.100 Removal of excavation, embankment or fill required when determined to be a hazard.

If the Public Works Director or designee determines that any excavation, embankment, or fill on private property has become a hazard, he/she may order the hazard abated by the owner or responsible party. The owner of the property upon which the excavation or fill is located, or the responsible party, upon receipt of notice in writing, shall repair or eliminate such excavation or embankment so as to eliminate the hazard. (Ord. 5727 § 1, 2010; Ord. 5647 § 1 (Exh. E), 2006; Ord. 5265 § 4, 1996. Formerly 18.04.049).