

ORDINANCE NO. 4528

AN ORDINANCE AMENDING ORDINANCE NO. 4441, ADOPTING THE CITY OF ALBANY DEVELOPMENT CODE (Exhibit "A").

Recitals:

WHEREAS, the City of Albany has forwarded to the Land Conservation and Development Commission the City of Albany Development Code for review and acknowledgement; and

WHEREAS, the Land Conservation and Development Commission has reviewed the City of Albany Development Code and has recommended to the City that consideration be given to certain amendments; and

WHEREAS, after being utilized for 11 months, it has been determined that certain amendments would clarify the intent of the Code, make the Code easier to administer, and/or simplify the review process; and

WHEREAS, the Albany Planning Commission held one public hearing on said amendments to the Development Code and has recommended adoption of certain amendments to the City Council; and

WHEREAS, the City Council held one public hearing on said amendments to the Development Code; and

WHEREAS, the City Council determines that adoption of said amendments to the Development Code is in the public interest and substantially complies with the Statewide Goals and Guidelines.

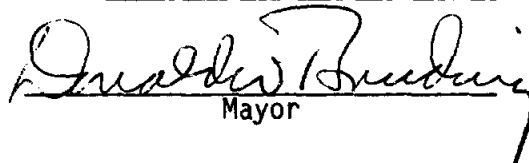
NOW, THEREFORE, THE PEOPLE OF THE CITY OF ALBANY DO ORDAIN AS FOLLOWS:

Section 1: That Ordinance No. 4441 is hereby amended such that the Albany City Council does hereby adopt the attached amendments (Exhibit A) to the City of Albany Development Code.

Passed by the Council: September 1, 1982

Approved by the Mayor: September 1, 1982

Effective Date: October 1, 1982

  
Mayor

ATTEST:

  
City Recorder

- (3) Unless appealed, a decision on a development permit shall be final upon expiration of the period provided for filing an appeal as outlined in this Code, or if appealed, upon rendering of the decision by the reviewing body.
- (4) All development permits shall expire one year from the date of issuance, unless construction or operation of the development has begun within that time and has continued toward final completion. A development permit may be revoked by the Director if a project has been discontinued for more than one year unless an extension has been granted by the approval authority upon request of the applicant.

1.070

Exclusions from Development Permit Requirement. Activities and developments listed below are excluded from the requirement for a development permit but are nevertheless subject to the provisions of this code where applicable:

- (1) Detached single family dwellings and two unit dwellings.
- (2) Accessory buildings less than ~~250~~ 500 square feet which conform to the provisions of this Code and the Uniform Building Code.
- (3) Landscaping and maintenance or other treatment or use of the land not involving a structure except grading and filling in a flood plain area and improvement of parking areas containing less than 1,000 square feet.
- (4) A change internal to a building or other structure that does not result in a change of use as listed in Article 5.
- (5) An emergency measure necessary for the safety or protection of property when authorized by the City Manager.
- (6) Erection of a tent or portable structure for non-commercial use up to ten days.
- (7) Agricultural uses as permitted outright in Article 5.
- (8) The establishment, construction or termination of a public facility authorized by the City Engineer that directly serves a development, including streets, drainage ways, sewers, pump stations, water lines, electrical power or gas distribution lines, or telephone or television cable systems, but not including major substations, treatment facilities, and storage tanks, reservoirs, and towers.
- (9) Excavation or filling of land involving 50 cubic yards or less, except when used as backfill or excavation for foundations.

- (10) Outside storage of materials in conformance with the provisions of this Code and other sections of the Municipal Code and provided with screening where required.

1.080

Validity of Prior Approval - The following actions initiated prior to the adoption of this Code may be continued and completed according to prior approvals granted by the City and in accordance with requirements in effect at the time approval was granted; except as otherwise provided in this Code, all other permits, approvals, authorization or permission in any form given prior to the enactment of this Code by the City or any Department thereof, which in anyway pertains to an action for which a development permit is required shall be invalid:

- (1) Completion of any construction activity for which a building permit had been issued prior to the adoption of this Code provided that such work continues to be in conformance with the requirements under which it was issued and provided further that such work is progressing in a timely manner by not having been discontinued for a period of more than one year after which time a development permit shall be required or an extension of the previous approval granted by the approval authority.
- (2) Completion of final subdivision plat, final mobile home park plan, and final PUD plan for which preliminary or interim approval has been granted by the Planning Commission provided such plats and plans are submitted within 180 days of adoption of this Code or are submitted in accordance with a previously approved phasing plan under which building construction has begun on at least one phase.
- (3) Construction of any subdivision, PUD, or mobile home park, which has received final Planning Commission approval provided that such work is commenced within one year of final approval and is completed within two years of final approval or in accordance with an approved phasing plan. Extensions to this time requirement may be granted by the approval authority upon request by the applicant.
- (4) Construction of any structure or facility for which a Conditional Use Permit, Variance or site plan approval has been granted provided such work is commenced within one year of approval and is completed within two years of approval. Extensions to this time requirement may be granted by the approval authority upon request by the applicant.

1.090

Non-Conforming Uses Situations - General

- (1) A non-conforming building or a building containing a non-conforming use which has been damaged or destroyed by fire, flood, wind or other calamity or act of God may be restored to its original condition, utilizing the same development standards (except where there is encroachment on right-of-way

or adjoining properties) if demonstration can be made that conforming to the standards of the zone would create undue hardship, provided such work is started within 12 months of such calamity and completed within 24 months of the time the restoration is commenced, and provided further that any such work complies with appropriate building and fire codes.

- (2) Any non-conforming development or structure or portion thereof declared unsafe under the City's Building Code by the City Building Official may be strengthened or restored to a safe condition provided that any such non-conforming development or structure has not been unoccupied for more than 12 months.

1.100 Non-Conforming Developments Uses

- (1) A non-conforming use may continue (and a non-conforming building may be occupied), except that no non-conforming use which shall have been discontinued for a period of one year shall be resumed nor shall it be replaced by another non-conforming use. Extensions, limited to one year, may be granted by the approval authority upon the request of the applicant.
- (2) A non-conforming use may be enlarged or extended modified through intensification, expansion or change in use within a building or on the same lot in accordance with Section 1.120 the criteria below provided that the more restrictive provisions of this Code for either the district involved or the proper district for the use involved applies to such enlargement or extension; modification.
- (3) Approval of a modification to a non-conforming use shall be based upon findings that the request:
  - (a) Does not create additional adverse effects and provided further that additional adverse effects are not created for abutting properties or the neighborhood, e.g., objectional conditions, visual and noise pollution, vehicular traffic, dust, or street parking, and; provided further, that the provisions of this article are adhered to.
  - (b) Meets all other applicable code standards, or necessary variances are granted, and
  - (c) Structural expansions shall be limited to the following:

<u>1. Existing Gross Floor Area</u>	<u>% of Expansion Allowed</u>
Building under 4,000 square feet	25%
Building under 10,000 square feet	20%
Building larger than 10,000 square feet	15%

**2. Non-conforming buildings may expand one time only.**

- (4) If a modification to a non-conforming use, building, or lot will not increase the degree of non-compliance with the provisions of this Code, the modification shall be considered under a Type I procedure. If, however, a proposed modification to a non-conforming use, building or lot may result in increasing the degree of non-compliance with the standards of this Code, a Type II Procedure shall be initiated for review of the proposal in accordance with the provisions of Article 2.**

**1.110 Non-Conforming Lots Developments**

- (1) A development which is non-conforming due to failure to meet current the development code siting requirements of Article 6 may be modified, enlarged, or extended through the normal Development Permit process provided that in accordance with Section 1.120 provided that the Planning Director or Hearings Board finds that every reasonable effort has been made to bring the development site into conformance with this Code.**
- (2) In addition to the above requirement, when the Planning Director or Hearings Board determines that the proposed changes will increase the degree of non-compliance with code requirements, variance approval must be granted as set forth in Article 15.**

**1.120 Non-Conforming Lots**

- (1) Any lot of record which existed at the effective date of adoption of this Code and was created in accordance with City requirements in effect at the time of creation, and is non-conforming due to requirements for area, width, or depth that are generally applicable in the district, may be used for development as originally intended (e.g., duplexes may be permitted on lots which were subdivided for duplexes but which no longer meet area requirements) provided that setbacks and other requirements pertaining to the lot shall conform to the regulations for the district in which the lot is located. Further, no division of lots or lot line adjustments shall be made which will leave remaining any separate lot with an area less than the requirements stated in this Code or leave an area or dimension less than that which already was non-conforming.**
- (2) Any single vacant lot of record or parcel which existed at the effective date of adoption of this Code and is non-conforming due to a public facility deficiency (i.e., unimproved street, lack of sidewalks, sewers or storm drainage) may have further development upon meeting the other requirements of this Code, only after provisions have been made to correct the public facility deficiency or to assure that the applicant will meet the appropriate share of the**

responsibility for correcting the deficiency when the correction takes place through formation of an improvement district.

- (3) Any change to a conforming lot which increases the degree of non-compliance shall first receive variance approval as set forth in Article 15.

A non-conforming building may be structurally altered, repaired or enlarged in accordance with Section 1.120 provided that any alteration conforms to the requirements of the district in which it is located and the following expansion provisions:

of up to 14 days is requested by the agency and granted by the Director, the referral agency or city department is presumed to have no comments or objections. The Director shall grant an extension only if the application involves unusual circumstances.

- (2) Transmit the development permit application to other governmental bodies where approval of other governmental bodies is required prior to granting a development permit.
- (3) Provide for notices to be sent to affected parties and hearings to be established as required under Type II, III, and IV procedures established in Sections 2.030-2.060.

2.016 Development Permit Decision.

- (1) Within 30 days of the date of accepting a permit application not involving approval by other governmental bodies or within 10 days of receiving required approval by other governmental bodies, the Director shall grant or deny the development permit. The decision of the Director shall be based upon the application, the evidence, comments from referral agencies, and approvals required by other governmental bodies. The Director shall notify the applicant and, if required, others entitled to notice of the disposition of the application. The notice shall indicate the date that the decision will take effect and describe the right of appeal pursuant to Article 4.
- (2) The Director shall issue a development permit if applicable approvals by other governmental bodies have been granted and the proposed development otherwise conforms to the requirements of this code.
- (3) The Director shall deny the development permit if required approvals from other governmental bodies are not obtained or the application otherwise fails to comply with code requirements. The notice shall describe the reason for denial.
- (4) The decision of the Director shall be final upon being rendered subject only to any appeals filed under the provisions of Section 4.150.**

2.017 Action on Resubmission of Denied Application. An applicant may make appropriate alterations to a proposal which has previously been denied and resubmit it with payment of any required fee. If a previously denied application is resubmitted within one year of the date denied previous approvals need not be reconsidered unless the Director finds that changed conditions or changes in the proposal warrant such reconsideration. Other provisions of this Code may establish a minimum amount of time between the date of denial and resubmission of some types of development proposals.

2.020

Summary of Procedure Types. For purposes of administering the provisions of this Code there are hereby established four types of procedures for processing of all development permits. The four procedures include but are not limited to the following activities:

Type I Procedure - Lot line adjustments, Type I variances, minor partitionings, site plan reviews, preliminary PD plans, final subdivision plats, mobile home parks. All other development permits not included in a Type II, III, or IV review.

Type II Procedure - Major partitionings, Type II variances, conditional use permits, modifications to non-conforming uses, final PD plans, Greenway district use permits, floodplain excavation and/or fill.

Type III Procedure - Interim PD plans, preliminary subdivision plats, future street plans.

Type IV Procedure - Zone changes, Comprehensive plan amendments, annexations, vacations.

2.030

Type I Procedure.

- (1) Under the Type I procedure, an application shall be processed by the Director without need for public hearing or notification of other property owners. When both the applicant and Director agree, a Type I review may be referred directly to the Hearings Board or Planning Commission for review.
- (2) Conditions and/or restrictions may be applied to the approval of any development permit granted under a Type I procedure in accordance with the relevant other provisions of this Code.
- (3) A decision of the Director under the Type I procedure may be appealed in accordance with Article 4 by an affected party. The criteria for reaching a decision under a Type I Procedure including appeals shall be based on compliance with the provisions of this Code.

2.040

Type II Procedure.

- (1) Except as provided by subsection (2) below, under the Type II procedure an application shall be processed by the Director without a need for public hearing. If the Director determines that the development proposal appears to meet the required standards, the Director shall mail notice of the proposal for which approval is forthcoming to all abutting property owners and those separated from the development site by a public utility, street, or railroad right-of-way except for Conditional Use Permits which shall require notices to be sent to all property owners within 300 feet. The applicant shall supply a list of the names and addresses of the owners of property to receive the notice. The mailing list must be



certified by the applicant as accurate and complete as found from current County Assessor records. The notice shall summarize the standards and facts related to the decision, invite persons to submit information relevant to the standards that are pertinent to the proposal within (10) days of notification giving reasons why the application should or should not be approved or proposing modifications the person believes are necessary for approval according to the standards. The notice also shall advise the person of his right to request a hearing. **The applicant may be required by the director to post notices as set forth in Section 4.035. If required, the notice shall be posted beginning within 3 days of filing the application and remain posted for 7 days or the date of a scheduled hearing, whichever is longer.**

- (2) If the Director contemplates that persons other than the applicant can be expected to question the application's compliance with this Code, or if any property owner entitled to notice under subsection 1 requests a public hearing in writing, the Director will initiate a public hearing on the application before the Hearings Board. The Director shall set a date for the public hearing and mail notice to those same persons receiving the original notice. The Director at his discretion may choose to initiate a public hearing and provide notice of such as required herein without making a preliminary determination and mailing notice of such as provided in sub-section (1). At the public hearing, the applicant and interested persons may present information and arguments relevant to the proposal including reasons why the application should be approved or denied or proposing modifications the person believes necessary for approval.
- (3) The Director or Hearings Board shall review the application, written comments and testimony, if any, and make a finding for each point in dispute and make a decision on the application by approving, conditionally approving, or denying the application. Conditions and/or restrictions may be applied to the approval of any development permit granted under a Type II procedure in accordance with the relevant other provisions of this Code. A decision of the Director or Hearings Board may be appealed by the applicant, appealed by a person who responded to the notice or, if a hearing was conducted, appealed by a party of the hearing in accordance with Article 4.

#### 2.050 Type III Procedure.

- (1) Under the Type III procedure, an application is scheduled for public hearing before the Planning Commission pursuant to Article 4. The Director shall notify all property owners within 300 feet of the subject property. The applicant shall supply a list of the names and addresses of the owners of property to receive the notice. The mailing list must be certified by the applicant as accurate and complete as found

from current County Assessor records. **The applicant shall also post notices as set forth in Section 4.035. The notice shall be posted beginning at least 7 days prior to the Planning Commission hearing and remain until a commission decision is rendered.**

- (2) At the public hearing, the staff, applicant, and interested persons may present information relevant to the criteria and standards pertinent to the proposal, giving reasons why the application should or should not be approved or proposing modifications and the reasons the person believes the modifications are necessary for approval. The Planning Commission may attach certain development or use conditions in granting an approval if the Planning Commission determines the conditions are necessary to avoid imposing burdensome public service obligations on the City, to mitigate detrimental effects to others where such mitigation is consistent with an established policy of the City; and to otherwise fulfill the criteria for approval. In approving or denying a Type III Development request, the Planning Commission shall make findings addressing relevant criteria of this Code.
- (3) A decision of the Commission may be appealed in accordance with Article 4.

2.060

Type IV Procedure.

- (1) Under the Type IV Procedure, an application is scheduled for public hearing before the Planning Commission pursuant to Article 4. The Director shall cause notice to be published pursuant to Article 4 and notify all affected property owners whom the Director determines have cause to be interested including at least those within 300 feet of the subject property. The applicant shall supply a list of the names and addresses of the owners of property to receive notice. The mailing list must be certified by the applicant as accurate and complete as found from current County Assessor records. **The applicant shall also post notices as set forth in Section 4.035. The notice shall be posted beginning at least 7 days prior to the Planning Commission hearing date, and shall remain until the Commission decision is rendered.**
- (2) At the public hearing the staff and interested persons may present testimony relevant to the proposal. If pertinent, they may give information on whether the proposal does or does not meet appropriate criteria for approval as specified in the sections of this Code pertaining to the type of request involved; or they may give proposals for modifications they consider necessary for approval. If criteria are involved, the Planning Commission shall make a finding for each of the criteria applicable. A written report shall be submitted to the City Council.

- (3) If the Planning Commission has recommended against a proposal the City Council will not consider the proposal except on appeal by the applicant. For a proposal on which the Planning Commission has made a favorable recommendation, the City Council shall conduct a ~~public hearing~~ **their initial review** within 45 days. The City Council shall set a date for the ~~hearing review~~ or designate the City Manager to do so. An applicant may request a ~~hearing review~~ delay of up to six months. ~~The form of notice and persons to receive notice are the same as for Planning Commission review. Council hearing notices shall be provided by the City Recorder.~~ At the ~~public hearing~~ **Council meeting** the staff shall review the report and findings of the Planning Commission and provide other pertinent information. ~~Interested persons shall be given the opportunity to present testimony and information relevant to the proposal and make final arguments why the matter should or should not be approved and, if approved, the conditions desired in approving the action.~~
- (4) The Council may, at its discretion, review the application solely on the record at the Planning Commission level, or call for a public hearing. For a hearing the form of notice and persons to receive notice are the same as for Planning Commission review. Council hearing notices shall be provided by the City Recorder. Interested persons shall be given the opportunity to present testimony and information relevant to the proposal and make final arguments why the matter should or should not be approved and, if approved, the conditions desired in approving the action.
- (5) To the extent that a finding of fact is required, the City Council shall make a finding for each of the criteria applicable and in doing so may sustain or reverse a finding of the Planning Commission. The City Council may delete, add, reject or modify any of the provisions pertaining to the proposal or recommendation of the Planning Commission, or attach certain development or use conditions if the City Council determines the conditions are appropriate to fulfill the criteria for approval.
- (6) Decisions to approve a Type IV request shall be by passage of an ordinance.

2.070

Legislative Actions.

- (1) Nothing in this Code shall limit the authority of the City Council to make changes in the Comprehensive Plan or Development Code provisions and designations by legislative act where such changes have broad application and where quasi-judicial proceedings would be unnecessary or impractical.
- (2) The Planning Commission and/or City Council may order a **review and/or** public hearing on any legislative matter.

- (3) Any property owner or resident of the City may petition the Planning Commission to initiate a public hearing on any legislative matter (such as an amendment to the Development Code text).

2.071 Legislative Hearing Notice. Notice of a **review or** hearing on a legislative decision under this Code need not include a mailing to property owners. The Manager or Director may prepare a notice designed to reach persons believed to have a particular interest and to provide the general public with reasonable opportunity to be aware of the hearings on the proposal.

2.072 Information at Planning Commission Hearing. Interested persons may submit written recommendations and comments in advance of the hearing and this information shall be available for public inspection. At the hearing, written recommendations and other information will be received and oral statements will be permitted.

2.073 Planning Commission Recommendation. In preparing its recommendation, the Planning Commission may do any of the following:

- (1) Require the proponent to identify the provisions of the Comprehensive Plan that govern the decision and prepare findings describing how the proposal complies or fails to comply with these plan provisions.
- (2) Review the nature of the proposal and describe whether the proposal warrants processing as a legislative matter.
- (3) Prepare a recommendation and make findings in support of such recommendations.

2.074 City Council Legislative Action.

- (1) The City Council may limit the nature of the information it will receive at a **hearing legislative review** and may establish separate rules for consideration of each of the following:
  - (a) Compliance with the Plan.
  - (b) Appropriateness of the legislative process.
  - (c) Policy changes or refinements proposed.
- (2) In reaching a decision on a legislative matter, the Council may adopt findings applicable to the relevant criteria in support of the decision.
- (3) After confirming, amending or reversing the recommendations of the Planning Commission, the City Council may take any of the following steps:
  - (a) Enact or defeat an ordinance on all or part of the

- proposal under consideration.
- (b) Refer some or all of the proposal back to the Planning Commission for further consideration.

ARTICLE 3.

ANNEXATION, ZONE CHANGE, COMPREHENSIVE PLAN AMENDMENT AND VACATION PROCEDURES

3.010 Annexation Procedures. A proposal to annex territory to the City may be processed by any of the following methods provided that the proposal complies with ORS Chapter 222 as now enacted or hereinafter amended.

- (1) Election by registered voters of the area to be annexed and, if approved, election by the registered voters of the City.
- (2) Election by registered voters of the area to be annexed and action by the City Council to dispense with an election and to initiate Type IV proceedings as outlined in Section 2.060.
- (3) Consent petition of at least half of the property owners representing more than half of the land area involved which consists of more than half of the total assessed value of all real property in the subject area followed by a City election or action by the Council to dispense with an election and to initiate Type IV proceedings as outlined in Section 2.060.
- (4) Delayed annexation by signed contract binding all existing and future owners of property in an area within the Urban Growth Boundary, either contiguous or not contiguous to the City, to future annexation by the City subject to procedures for such action as may be established between the City and County and subject further to City Council approval of the delayed annexation contract.
- (5) **By ordinance or resolution without a hearing or election if such action is permitted by Oregon Revised Statutes. (For example, health hazard or island annexations.)**

All proposals to annex territory shall be submitted to the Planning Department on a form prescribed by the City and shall include payment of required fees prior to processing. When the Director has determined that the territory is eligible for annexation and that all of the required information has been submitted, the application shall be processed under one of the methods described above.

3.020 Annexation Criteria. Any annexation proposal considered under a Type IV procedure must be demonstrated to be in conformance with the following criteria:

- (1) ~~The proposal conforms to the Comprehensive Plan or substantial changes in conditions have occurred which render the Comprehensive Plan inapplicable to the annexation and the Plan should be amended as proposed by the proponent of the annexation (in which case the Plan must be amended prior to final action on the annexation).~~

- (1) The proposed annexation is within the Urban Growth Boundary and is a logical and efficient extension of City limit boundaries.
- (2) The proposed annexation will facilitate the functional and economic provision of services within the Urban Growth Boundary without seriously impairing city services to existing portions of the City.
- (3) **The proposed annexation will add property to the city which is needed to provide an adequate supply of zoned lands for the uses proposed or will add property which has existing development in need of city services.**

3.030 Zoning of Annexed Property. A proposal for annexation shall include a City zoning designation request which shall be considered at the time of annexation under a Type IV procedure. The criteria for considering an annexation zoning proposal shall be the same as the criteria for consideration of a zone change as outlined in Section 3.050. The zoning designation of annexed territory shall be specified in the annexation ordinance and shall become effective upon acceptance of the annexation by the Secretary of State.

3.040 Procedures for Amending Major Zoning Districts and Special Purpose Districts. A proposal to change the zoning or special purpose district designation of a particular piece of property or area of the City may be initiated by the Planning Commission, City Council, or by petition of not less than half of the property owners representing more than half of the land area involved. Such proposals shall be considered under the Type IV procedures as outlined in section 2.060 or by legislative action as provided for in sections 2.070 - 2.110.

All proposals for District amendments shall be submitted to the Planning Department on a form prescribed by the City and shall include payment of required fees prior to processing. When the Director has determined that all of the required information has been submitted, the application shall be processed as required.

3.050 District Amendment Criteria. Any zoning or special purpose district amendment proposal considered under a Type IV procedure must be demonstrated ~~to be in conformance with each of the following criteria:~~ **to be the most appropriate zone (regarding the expected development allowed within the proposed zone) in consideration of the following criteria:**

- (1) ~~The proposed amendment conforms to the Comprehensive Plan or substantial changes have occurred which render the Comprehensive Plan inapplicable to the requested change and the Plan should be amended as proposed by the proponent of the change (in which case the Plan must be amended prior to final action on the District Amendment).~~ **The adequacy of existing or anticipated transportation facilities (streets, bus routes, etc.) and the impact on traffic generation and**

safety,

- (2) If residential zoning is involved, the proposed residential zone or zones best satisfies the objectives of the Comprehensive Plan and does not exclude opportunities for adequate provision of low and moderate income housing within the subject neighborhood area. A demonstration that the existing or anticipated services (sanitary sewers, storm sewers, schools, fire protection, etc.) can accommodate potential development within the subject area without adverse impact on the affected service area.
- (3) The natural features of the site are conducive to the proposed rezoning.
- (4) Any special areas involved such as floodplains, slopes, historic district, etc., will have increased protection as a result of the proposed rezoning.
- (5) The proposed zone is compatible with the existing and anticipated surrounding land use.
- (6) Compliance with specific policies of the Comprehensive Plan as identified in the application form approved by the Planning Director.
- (7) Impact on low and moderate income housing opportunities.
- (8) Timing of the particular zone change request, in terms of efficient service provisions, energy conservation, and a comparison with other buildable lands zoned identical to the requested change or which could otherwise accommodate the proposed use.

3.060 Procedures for Amending the Comprehensive Land Use Plan. A proposal to amend the Comprehensive Land Use Plan including text, policies, Urban Growth Boundary, or map designations may be initiated by the Planning Commission, City Council, or by petition of owners as described in Section 3.040. Such proposals shall be considered under Type IV procedures as outlined in Section 2.060 or by legislative action as provided for in Sections 2.070-2.110.

Proposals for Comprehensive Plan Amendments may be considered only on a pre-scheduled semi-annual basis as determined by the Planning Commission and City Council, except where an emergency has been declared by a vote of the City Council. In determining that an emergency situation does exist, the Council must adopt findings that the public interest would be best served by initiating a Comprehensive Plan amendment request.

3.070 Plan Amendment Criteria. In reaching a decision on a Comprehensive Plan Amendment proposal, the Planning Commission and City Council shall adopt findings in consideration of the following:



ARTICLE 4

PUBLIC HEARING, DECISION AND APPEAL PROCEDURES

- 4.010 Responsibility for Hearings
- 4.020 Notice of Hearing
- 4.030 Procedure for Mailed Notice
- 4.035 Procedures for Posted Notice
- 4.040 Challenges to Impartiality
- 4.050 Disqualification
- 4.060 Participation by Interested Officer or Employees
- 4.070 Ex Parte Contacts
- 4.080 Abstention or Disqualification
- 4.100 Burden and Nature of Proof
- 4.110 Order of Proceedings
- 4.120 Decision
- 4.130 Findings
- 4.140 Record of Proceedings
- 4.150 Appeals
- 4.160 Requirements of Notice of Appeal
- 4.170 Scope of Review
- 4.180 Review on the Record
- 4.190 Review Consisting of Additional Evidence or De Novo Review
- 4.200 Review Body Decision

4.030

Procedure for Mailed Notice. Unless otherwise provided, addresses for a mailed notice required by this Title shall be provided by the applicants for development permits. The mailing list must be certified by the applicant as accurate and complete as found from current County Assessor records. A person whose name is not in the tax records at the time of filing of an application or of initiating other action not based on an application, may only receive a notice if the person provides the Planning Department with the necessary address(es). Any deficiency in the form of notice prescribed in Section 4.020 or a failure of a property owner to receive notice shall not invalidate an action if a good faith attempt was made to comply with the requirements of this Title for notice. In addition to persons receiving notice as required by the matter under consideration, the Director may provide notice to others he has reason to believe are affected or otherwise represent an interest that may be affected by the proposed development.

- ~~1(1)~~ If posted notice is required, it shall be posted in at least one conspicuous place within the area containing affected property.
- 1(2) Required published notice shall be published in a newspaper of general circulation at least once during the week preceding the hearing and additionally as may be required by State law for a particular proceeding.
- 2(3) Cost of notice mailings shall be included in the development application fee.

4.035

Procedures for Posted Notice The applicant shall be responsible for providing a sign frame for the notice, and also responsible for posting the notice at the correct time and location. The actual notice shall be provided by the City. The posting shall comply with the following criteria:

- (1) The notice shall be 2 feet by 3 feet.
- (2) The notice shall be posted in a location which is visible and within 10 feet of the right-of-way line of the most traveled public road or street abutting the property. (If no public street abuts the property the notice shall be placed in such a manner or way be most readily seen by the public.)
- (3) If the subject property is a corner lot, then two signs are required in locations defined in (2) above.
- (4) At least 5 days prior to any hearing (or decision made by the Director) the applicant shall file with the Director an affidavit of posting.
- (5) If the subject property is not properly posted as set forth in Section 2 or this section, the decision may be postponed until such provisions are met.

- (2) A statement of the facts establishing compliance or noncompliance with each applicable criteria and assurance of compliance with applicable standards.
- (3) The reasons for a conclusion to approve or deny.
- (4) The decision or recommendation to deny or approve the proposed change with or without conditions.

The staff report shall include, as a minimum, information pertaining to (1) and (2) above.

4.140 Record of Proceedings. When possible, the secretary to the hearing body will be present at each hearing and shall cause the proceedings to be recorded either stenographically or electronically. Should it not be possible for the secretary to be present, proceedings will be recorded electronically and minutes will be taken from the tape.

- (1) Testimony shall be transcribed at the cost of the requesting party if required for judicial review.
- (2) The hearing body shall, where practicable, retain as part of the hearing record each item of physical or documentary evidence presented and shall have the items marked to show the identity of the person offering the same and whether presented on behalf of a proponent or opponent. Exhibits received into evidence shall be retained in the hearing file until after all appeal periods have expired at which time the exhibits may be released to the person identified thereon, or otherwise disposed of.
- (3) The staff report and decision shall be included in the record.
- (4) A person shall have access to the record of the proceedings at reasonable times, places and circumstances. A person shall be entitled to make copies of the record at the person's own expense.

4.150 Appeals

- (1) A decision of the Director on issuance of a development permit may be appealed to the Hearings Board by an affected party by filing a "Notice of Appeal" with the Director within ~~7~~ 15 days of the decision. The notice of appeal shall indicate the nature of the interpretation that is being appealed and the matter at issue will be a determination of the appropriateness of the interpretation of the requirements of this Code.
- (2) A decision of the Board may be appealed to the Planning Commission by an affected party by filing a "Notice of Appeal" within 15 days of the decision. The "notice of

5.050 Summary of Open Space and Residential Zoning Districts.

The OS OPEN SPACE DISTRICT allows the establishment, continuation, and preservation of agricultural uses, parks and recreation areas, and other uses that do not involve the construction of structures other than minor facilities that might be required to conduct the principal use.

The R-1 LOW DENSITY RESIDENTIAL DISTRICT allows low density urban residential development and mobile home parks and subdivisions.

The R-2 LIMITED MULTIPLE FAMILY RESIDENTIAL DISTRICT allows medium density multiple family development and mobile home parks and subdivisions.

The R-3 MULTIPLE FAMILY RESIDENTIAL DISTRICT allows high density multiple family development.

5.060 Schedule of Permitted Uses in Open Space and Residential Zoning Districts. The following specific buildings and uses are permitted in the zones as indicated, subject to the general provisions, additional restrictions and exceptions set forth in this Code:

<u>A. OPEN SPACE AND RESIDENTIAL ZONES</u>	<u>OS</u>	<u>R-1</u>	<u>R-2</u>	<u>R-3</u>
1. Accessory buildings and uses;	A	A	A	A
2. Detached Single Family Dwellings;	*	A	A	A
3. Two unit dwellings on corner lots within the R-1 District are permitted outright with the following restrictions:				
a. Corner lots are designated for 2 unit dwellings on the recorded plat or all <del>adjoining</del> <b>adjacent</b> properties are under the same ownership, and				
b. 2 unit dwellings shall not be built on contiguous parcels, and,				
c. 2 unit dwellings shall only be allowed on corner lots where each facing street exceeds 200 feet when measured from the corner to the furthest improved portion of the street.	*	A	(not applicable)	
4. Two unit dwellings on all other corner lots	*	C	A	A
5. Two unit dwellings on interior lots	*	PD	A	A
6. Multiple family dwellings exceeding 2 units	*	PD	S	S
7. Conversions of multiple-family units ( <del>exceeding</del> <b>excluding 2 units existing duplexes which may be converted through Site Plan Review</b> ) into unit ownership	*	C	C	C

- Key
- A: Use Allowed Outright
  - C: Use Allowed by Conditional Use Permit
  - PD: Use Allowed only Within Planned Unit Developments
  - S: Use Requires Site Plan Approval
  - \*: Use Prohibited in this District

OPEN SPACE AND RESIDENTIAL ZONES

OS R-1 R-2 R-3

8. Quad-quint apartment dwellings (see definitions)	*	PD	S	S
9. Mobile home parks and mobile home subdivisions (see Article 12) with densities allowed by the overlaying zone; (Mobile homes on individual parcels see Section 12.110)	*	S	S	*
10. Agricultural uses, limited to the following: flower gardening, orchards, tree crops, the raising and harvesting of vegetables and fruits for home consumption;	A	A	A	A
11. Orchards, tree crops, commercial flower gardening, berry and bush crops, truck gardening, field crops, nurseries for raising and sales confined to plant materials and other similar enterprises carried on in the general field of horticulture;	A	C	C	*
		(Allowed outright in all zones on vacant parcels in excess of 5 acres)		
12. Stands for the display and sale of only those products raised upon the same premises provided it does not exceed an area of 200 square feet;	C	C	*	*
13. Cemeteries;		C	C	C
14. Churches (includes expansion of existing buildings);	*	C	C	C
15. Hospitals;	*	C	C	C
16. Nursing Homes;	*	C	C	C
17. Group care homes;	*	C	C	C
18. Day Nurseries;	*	C	C	C
19. Off-site parking for commercial uses;	*	*	C	C
20. Private recreation sports clubs, spas;	*	C	C	C
21. Rental storage units (excluding commercial and industrial warehousing) limited to 500 square feet per unit.	*	*	C	C
22. Public or private schools (elementary, junior high, high school and colleges);	*	C	C	C

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OPEN SPACE AND RESIDENTIAL ZONES

OS R-1 R-2 R-3

- |   |   |   |   |   |
|---|---|---|---|---|
| 23. Public parks, playgrounds;  | S | S | S | S |
| 24. Golf courses, driving ranges;   | S | C | * | * |
| 25. Public and semi-public buildings (fire stations, substations, pump stations, etc.). | * | C | C | C |

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5.070 Summary of Residential Professional and Commercial Zoning Districts.

The RP RESIDENTIAL-PROFESSIONAL DISTRICT provides for a desirable mixing of residential land uses with professional offices and related limited commercial uses in possible close proximity to adjacent residential districts. The limited commercial uses allowed in this district are selected for their compatibility with residential uses. Such a district is typically appropriate along arterial streets as a transitional or buffer zone between residential districts and more intense commercial or industrial districts.

The C-1 NEIGHBORHOOD COMMERCIAL DISTRICT is intended to create, preserve and enhance small areas of retail establishments serving frequently recurring needs in convenient locations. The C-1 District is typically appropriate to small shopping clusters or service centers located within residential neighborhoods.

The C-2 COMMUNITY COMMERCIAL DISTRICT is intended to create, preserve and enhance areas which have a wide range of retail sales and service establishments. The C-2 District is typically appropriate to large commercial clusters near intersections or along major thoroughfares.

The C-3 CENTRAL BUSINESS DISTRICT is intended to preserve and enhance areas within which the greatest possible concentration of retail sales and business will occur. The district will be applied to the "core" or "downtown" area based upon the guidelines established in the Comprehensive Land Use Plan.

The CH HEAVY COMMERCIAL DISTRICT is intended to provide areas for used car lots, heavy equipment sales and rental, and other uses that have extensive outside storage, heavy equipment traffic and/or noise characteristics. This district is most appropriate in outlying areas or in areas intended to buffer heavier industrial uses.

5.080 Schedule of Permitted Uses in Residential Professional and Commercial Zoning Districts. The following specific buildings and uses are permitted in the zones as indicated, subject to the general provisions, additional restrictions and exceptions set forth in this Code.

1.B. RESIDENTIAL/PROFESSIONAL AND COMMERCIAL ZONES      RP    C-1    C-2    C-3    CH

General Commercial Uses:

1. <b>Accessory buildings under 500 sq. ft.</b>	A	A	A	A	A
2. <b>Accessory buildings and uses; 500 sq. ft. and larger, and accessory uses.</b>	S	S	S	S	S
3. <b>Advertising agencies;</b>	S	*	S	S	S
4. <b>Agricultural machinery sales and service, and agricultural supplies;</b>	*	*	C	*	S

**Additional Heavy Commercial District Uses:**

105. Any use authorized by Site Plan Review or Conditional Use Permit in an MP or ML District may also be permitted by Conditional Use Permit in a CH District. \* \* \* \* C

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## INDUSTRIAL ZONES

MP ML MH

	MP	ML	MH
9. Automobile storage and distribution;	*	S	S
10. Bakeries;	*	S	S
11. Building maintenance services;	*	S	S
12. Building material sales;	*	S	S
13. Bulk cleaning and laundry plants;	*	S	S
14. Cabinet shops;	*	S	S
15. Cemeteries;	*	C	C
16. Chemical Distribution;	C	S	S
17. Cold storage warehouses;	C	S	S
18. Concrete mixing (concrete batch plant);	*	*	S
19. Contractor equipment storage yards;	*	C	S
20. Distribution outlets, wholesale and retail for sand and gravel;	*	S	S
21. Equipment rental yards;	*	S	S
22. Exterminating and pest control;	*	S	S
23. Feed and seed stores;	*	S	S
24. Film processing, photoengraving, photocopying, and photostating;	S	S	S
25. Fuel supplies and storage;	*	S	S
26. Garden supply;	*	S	S
27. Incineration or reduction of garbage, dead animals, offal, or refuse;	*	*	C
28. Industrial equipment sales, and repair;	C	S	S
29. Industrial planned unit developments <del>subject to the provisions of Articles 15 and 16;</del>	PD	PD	PD
30. Kennels;	*	C	C

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INDUSTRIAL ZONES		MP	ML	MH
45.	All other public buildings	C	C	C
46.	Radiator service and repairs;	*	S	S
47.	Radio towers and transmitters;	*	C	S
48.	Recreational vehicle overnight parks;	*	C	C
49.	Recreational vehicle storage;	*	S	S
50.	Recycling facilities	*	C	S
51.	Research laboratories;	S	S	S
52.	Restaurants, including drive-ins, walk-ups, and taverns;	C	S	S
53.	Salvage yards	*	C	S
54.	Second hand dealers;	*	C	S
55.	Self-store lockers and storage units;	C	S	S
56.	Septic tank and sewer repair services;	*	S	S
57.	Service stations;	*	S	S
58.	Settling ponds and log ponds	*	C	C
59.	Single-family dwellings (whenever the use re- quires the on-site residence of such a person);	C	C	C
60.	Single mobile homes in accordance with Section 12.110;	C	C	C
61.	Slaughter houses, tanneries;	*	*	S
62.	Small animal hospitals;	*	S	S
63.	<b>Small Engine Repair</b>	*	S	S
64.	Storage buildings, warehousing, sales and dis- tribution centers for household or consumer goods;	C	S	S
65.	Storage yards	*	S	S
66.	Taxidermist;	*	S	S
67.	Towing service;	*	S	S

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<u>INDUSTRIAL ZONES</u>		MP	ML	MH
68.	Trucking yards and terminals;	*	C	S
69.	Truck sales and services;	*	C	S
70.	Utility distribution plants and service yards;	*	C	S
71.	Vocational schools;	S	S	S
72.	Welding shops;	*	S	S
73.	Wholesale businesses;	*	S	S

Commercial Uses:

74.	Any use authorized by Site Plan Review or Conditional Use Permit in a CH Heavy Commercial District may be considered for approval in the ML District by Conditional Use Permit;	*	C	*
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Residential Uses:

75.	Multiple family units in Willamette Greenway only;	*	PD	PD
76.	Single family units in Willamette Greenway only;	*	PD	PD
77.	Residential condominium units in Willamette Greenway only;	*	PD	<b>PD</b>

Other Uses:

78.	Undeveloped industrial lands may be used for agricultural cultivation and grazing of farm animals;	A	A	A
79.	Agricultural accessory buildings;	C	C	C
80.	<b>Motels/hotels in airport overlay zones only.</b>	*	S	*

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ARTICLE 6

DEVELOPMENT SITING REQUIREMENTS

LOT SIZE, DENSITY, SETBACKS, COVERAGE, AND HEIGHT LIMITATIONS

- 6.010 Minimum Lot Size Requirements
- 6.020 Lot Size Variation Within a Land Division
- 6.030 Lot Size Variation Within Cluster and Condominium Developments
- 6.040 Bonus Provisions for Reduction in Minimum Lot Size Requirements
- ~~6.050~~ Gal-de-sae Lots
- ~~6.060~~ Flag Lots
- 6.060 Setback Requirements - General Provisions
- 6.070 Setback Alternate in Developed Areas
- 6.080 General Exceptions to Setback Requirements
- 6.090 Special Setbacks
- 6.100 Setbacks for Properties Abutting Future Street Rights-of-Way
- 6.110 Residential Setback Restrictions for Schools, Churches, Public and Semi-Public Buildings
- 6.120 Special Willamette River Setback
- 6.140 Special Noise Corridor Setbacks
- 6.150 Clear Vision Area
- 6.160 Lot Coverage Limits
- 6.170 Minimum Floor Area Ratio Required in C-3 District
- 6.200 Height Limitations
- 6.210 Height Exceptions

ARTICLE 6.

DEVELOPMENT SITING REQUIREMENTS

LOT SIZE, DENSITY, SETBACKS, COVERAGE, AND HEIGHT LIMITATIONS

6.010 Standard Lot Size Requirements. Except as provided otherwise in this Code, (see Sections 6.020 through 6.040) a lot, parcel, or development site shall meet the following standards for the zone in which it is located:

<u>Zone</u>	<u>Standard Lot Sizes and Densities</u>	<u>Minimum Standard Lot Width (ft)</u>	<u>Minimum Standard Lot Depth (ft)</u>
OS	none*	none	none
R-1			
Single Family	6,500 sq.ft.	none	none
2-Unit Dwellings <b>(on corner lots only)</b>	4,000 sq.ft./unit		
R-2			
Detached single family	5,000 sq.ft.	none	none
2 Unit Dwellings	<del>3,750</del> 3,500 sq.ft./unit	22+ required setbacks	
3 or more attached units with 2 or more bedrooms	3,300 sq.ft./unit	none	none
3 or more attached units with less than two bedrooms	2,400 sq.ft./unit	none	none
<b>Group Care facilities</b>	<b>1,200 sq. ft./person at capacity</b>		
R-3			
2 or more bedroom apartments and attached single family	1,800 sq.ft./unit		
<b>one bedroom apt.</b>	<b>1,600 sq.ft./unit</b>		
Group quarters and other units designed for single person occupancy	<b>800</b> 750 sq.ft. per person at capacity**		
<b>Detached single-family</b>	<b>Cover not more than 70% of lot</b>		
RP			
Business and single family attached	5,000 sq.ft.	40	80
Single family detached	6,000 sq.ft.	50	80
C-1	6,000 sq.ft.	60	80
C-2	15,000 sq.ft.***	100	150
C-3	2,000 sq.ft.	20	50
	Residential density limited only by height, coverage and parking restrictions.		
C-H	25,000 sq.ft.	125	200
MP	20 acres (may be reduced in PD)	500	500
ML	10,000 sq.ft.	80	80
MH	20,000 sq.ft.	100	100

- (3) Hot Water Heaters. Where it can be shown that hot water will be provided for each anticipated resident of a development (assuming 25 gallons per person per day) for a non-renewable heat demand of less than 2,500,000 BTU's per year, the percentage of units which would install such a unit times 5% equals the amount of bonus. (If all units will have such a unit, the bonus will be 5%)

#### Moderate Cost Housing

- (1) Provision of moderate cost housing. If 50% of the units meet the following performance standards, density bonuses may be permitted as follows:
  - (a) Affordable for persons whose income is 1.2 times the median income for Linn County - 5% density increase.
  - (b) For projects affordable for persons whose income is equal to the median income for Linn County - 10% density increase.
  - (c) For projects which are affordable for persons whose income is equal to .8 times the median income for Linn County - 15% density increase.

Affordable means that the annual mortgage payments, with no more than a 10% down payment required, or the annual rent for a unit equals no more than 28% of the income level for which the density bonus points are being applied. Projects must have a guaranteed sale price, interest, or rental price, and include contractual obligations for continued availability to low and moderate income persons.

C. Affect of Bonuses on Lot Sizes

Amount of Bonus	Beginning Density		R-2		2,400	R-3
	R-1 Min. Lot 6,500	5,000	Sq.Ft. per Unit 3,750 3,500	Sq.Ft. per Unit 3,300 3,200		Sq.Ft. per Unit 1,800
5%	6,175	4,750	3,562 3,325	3,136 3,040	2,280	1,710
10%	5,850	4,500	3,375 3,150	2,970 2,880	2,160	1,620
15%	5,525	4,250	3,187 2,975	2,805 2,720	2,040	1,530
20%	5,200	4,000	3,000 2,800	2,640 2,560	1,920	1,440
25%	4,875	3,750	2,812 2,625	2,476 2,400	1,800	1,350
30%	4,550	3,500	2,625 2,450	2,310 2,240	1,680	1,260
35%	4,225	3,250	2,437 2,275	2,145 2,080	1,560	1,170
40%	3,900	3,000	2,250 2,100	1,980 1,920	1,440	1,080

(11) Industrial. Except as provided elsewhere in this Code all lots and development sites in the MP, MI and MH districts shall maintain front and interior yards as follows:

District	Front Yards	Interior Yards * Abutting Resi- dential District	Interior Yards Abutting Comm. & Ind. Districts
MP	100 ft.	100 ft.	50 ft.
ML	30 ft.	1 foot per each foot of wall height	0 ft.
MH	30 ft.	2 feet per each foot of wall height	0 ft.

\*No setbacks are required for buildings abutting railroad rights-of-way in industrial and Heavy Commercial districts.

6.080

Setback Alternate in Developed Areas. When an addition or new development is proposed to be located in an area containing the same type of uses which have been developed to a previous setback standard, the Director or Hearings Board may approve setbacks which are the same as those for the existing buildings on the site for additions, or the same as those for buildings on adjoining parcels for new development. In such instances, the Type I procedure shall be used to process requests and approval shall be based upon the following criteria:

- (1) The amount of area between buildings is sufficient to provide adequate property maintenance and rear yard access.
- (2) If there are **dwelling non-accessory structures** on both abutting lots with front yards of less than the depth otherwise required, the front yard for a lot need not exceed the average front yard of the abutting **dwelling structure**.
- (3) If there is a **dwelling non-accessory structure** on one abutting lot with a front yard of less than the depth otherwise required, the front yard for a lot need not exceed a depth one-half way between the depth of the abutting front yard and the required front yard depth.
- (4) A driveway extending not less than 20 feet from the street right-of-way must precede on-site parking spaces or structures.
- (5) No wall of one dwelling unit is closer than 10 feet from a window of another dwelling unit.
- (6) No adverse impacts will be created on the neighborhood or adjoining parcels relative to sun exposure, architectural compatibility, and fire protection.
- (7) All other provisions of this Code must be met.



6.090 General Exceptions to Setback Requirements. The following intrusions may project into required yards provided that the conditions and limitations indicated are adhered to:

- (1) Depressed Areas: In any district, open work fences, berms, hedges, guard railings or other landscaping or architectural devices for safety protection around depressed areas, ramps, stairs or retaining walls, may be located in required yards, provided that such devices are not more than 3-1/2 feet in height.
- (2) Projecting Building Features: The following building features may project into the required front yard no more than five feet and into the required interior yards no more than two feet:
  - (a) Awnings, **eaves**, buttresses, architectural appendages; examples such as but not limited to bay windows, planters, cantilivered stairways, or other similar features.
  - (b) Chimneys and fireplaces, provided they do not exceed eight feet in width.
  - (c) Porches, steps, platforms or landings, raised patios or decks. **(applies only to structures above 30 inches in height, structures under 30 inches are not subject to setback provisions).**
  - (d) Signs conforming to applicable ordinance requirements.

6.100 Special Setbacks.

6.110 Setbacks for Properties Abutting Future Street Rights-of-Way. Where the adopted Comprehensive Plan and future Street Plans include the widening or connecting of existing streets, or the establishment of new streets, the placement of all buildings and the establishment of all required yards shall be in relation to the proposed street right-of-way boundaries. Also, no building shall be erected on a lot which abuts a proposed street right-of-way unless the lot will contain the width and depth needed to complete the street width plus the width and depth of the yards required on the lot.

6.120 Residential Setback Restrictions for Schools, Churches, Public and Semi-Public Buildings. Any school, church, or public or semi-public building erected after the effective date of this Ordinance shall be set back at least 25 feet from any property line adjoining or directly across public right-of-way from any residential district. Further, no required front or interior yard of the lot on which such building or use is located shall be used for stockpiling or storage of materials or equipment. All other setbacks of the district within which the property is located shall also apply.

6.140 Special Willamette River Setback & Height Restrictions New and expanded industrial development adjacent to the Willamette River shall adhere to the sun exposure plane (as defined) for determining setback requirements from average low water. Except for water-related and water dependent uses (see definitions Article 22), all construction must be located outside the floodway line as defined for

a 100 year storm. Development structure heights and setbacks south of the Willamette River shall not extend above a plane which begins

at the floodway line and extends directly south. The angle of this plane shall be as follows:

- (1) For river-oriented uses the angle shall be 30°.
- (2) For non river-oriented uses the angle shall be 15°.

6.150 Special Noise Corridor Setbacks. Residential developments adjacent to the following listed streets and highways shall maintain the setbacks listed from the designated right-of-way in addition to the required setbacks for the Zoning District:

Interstate 5	50 feet
Pacific Boulevard (Hwy. 99E)	25 feet
Santiam Highway (Hwy. 20)	25 feet
Waverly Drive - S. of Santiam Highway	10 feet
Geary Street - Pacific to Grand Prairie	10 feet
Queen Avenue	10 feet

In review of development proposals the Hearings Board on Planning Commission may require additional noise mitigating features such as berms, landscaping, or fences or walls within the above described setback areas.

6.160 Clear Vision Area.

- (1) A clear vision area shall be maintained at each access to a public street and on each corner of property at the intersection of two streets or a street and a railroad. No fence, wall, hedge, sign, or other planting or structure that would impede visibility between the heights of 2 feet and 8 feet shall be established in the clear vision area. Measurements shall be made from the top of the curb or, where no curb exists, from the established street center line grade.
- (2) The preceding provisions shall not apply to the following:
  - (a) A public utility pole;
  - (b) A tree trimmed (to the trunk) to a line at least eight feet above the level of the intersection;
  - (c) Another plant species of open growth habit that is not planted in the form of a hedge and which is so planted and trimmed as to leave at all seasons a clear and unobstructed cross-view;
  - (d) A supporting member or appurtenance to a permanent building lawfully existing on the date this standard becomes effective;
  - (e) An official warning sign or signal and;
  - (f) A place where the natural contour of the ground is such that there can be no cross-visibility at the intersection.
  - (g) **The post section of a pole sign when there are no more than two posts and any post is less than 8 inches in diameter.**

6.180 Minimum Floor Area Ratio Required in C-3 District. Within the C-3, Central Business District, there shall be a minimum of one square foot of building floor area (which may include landscaped area but not parking areas for purposes of this section only) for each square foot of buildable lot area for all new developments except the following:

- (1) Expansion to existing buildings.
- (2) Public parking and open space uses.
- (3) Development within the Greenway Boundary.

6.190 Height Limitations.

(1) Residential.

- (a) In the OS, AG, R-1, R-2 and RP districts, no main building shall exceed 2-1/2 stories, or 30 ft. in height, whichever is the lesser. Accessory buildings in the AG district shall have no building height limitation. Accessory buildings in the OS, R-1, R-2, R-3 and RP districts are limited to one story in height or 20 feet whichever is less.
- (b) In the R-3 district no main building shall exceed 3 stories or 45 feet in height, whichever is the lesser.

(2) Commercial.

- (a) In the C-1 district no main building or accessory building shall exceed 2-1/2 stories or 30 feet in height, whichever is less.
- (b) In the C-2 district no main building or accessory building shall exceed 4 stories or 50 feet in height, whichever is less. Higher structures may be permitted by Conditional Use Permit.
- (c) In the C-3 district no main building or accessory building shall exceed 7 stories or 85 feet in height, whichever is less. Higher structures may be permitted by Conditional Use Permit.
- (d) In the CH district there shall be no height limitation.

(3) Industrial.

- (a) In the MI and MH districts there are no height limitations.
- (b) In the MP district no building shall exceed 40 50 feet in height. **Higher structures may be permitted by Conditional Use Permit.**

6.200 Height Exceptions.

- (1) Roof Structures and Architectural Features. Roof structures for the housing of elevators, stairways, tanks, ventilating fans and similar equipment required to operate and maintain the

The final landscape inspection shall be made prior to any security being returned. Any portions of the plan not installed, or properly installed, shall cause the inspection to be postponed until the project is completed or cause the security to be used by the City.

- (6) Maintenance of Landscaped Areas. It shall be the continuing obligation of the property owner to maintain required landscaped areas in an attractive manner free of weeds and noxious vegetation. In addition, the minimum amount of required living landscape materials shall be maintained.

7.020

Front Yard Landscaping Requirements. All front yards exclusive of accessways and other permitted intrusions are required to be landscaped within one year of building occupancy. Minimum landscaping acceptable per 1000 square feet of required yard area shall be as follows:

Residential Districts (R-1, R-2, R-3)

- (1) One tree at least six feet in height.
- (2) Four one gallon shrubs or accent plants.
- (3) The remaining area treated with attractive ground cover (i.e., lawn, bark, rock, ivy, evergreen shrubs, etc.).

Commercial Districts (RP, C-1, C-2, C-3, C-H)

- (1) Five five-gallon shrubs, trees, or accent plants.
- (2) The remaining area treated with attractive ground cover (i.e., lawn, bark, rock, ivy, evergreen shrubs, etc.).
- (3) All landscaped areas shall be provided with a piped underground water supply irrigation system unless a landscape architect or certified nurseryman submits written verification that the proposed plant materials do not require irrigation.

Industrial Districts (I-P, L-I, H-I) (MP, ML, MH)

- (1) Two trees at least six feet in height.
- (2) Five five-gallon shrubs, trees, or accent plants.
- (3) The remaining area treated with suitable living ground cover, lawn, or decorative treatment of bark, rock, or other attractive ground cover.
- (4) All landscaped areas shall be provided with a piped underground water supply irrigation system unless a licensed landscape architect or certified nurseryman submits written verification

for each person.

4/800 = .005 acres for each person.

Therefore, the land area requirement for all types of dwelling shall be 0.005 acres per bedroom where bedroom is defined as any room designed or intended for sleeping purposes.

Procedures of Land Dedication or Fee Payment: In the case of any proposed residential development, the Approval Authority shall recommend to the developer whether the dedication of land or payment of fees in lieu thereof would be appropriate. The recommendation of the Approval Authority shall be based upon the recommendation of the Parks and Recreation Department in each case and on an appropriate approved public open space plan or Comprehensive Land Use Plan.

In the case of land dedication, the developer shall designate a park site when requesting preliminary development or subdivision approval which shall contain at least the minimum acreage required by this Ordinance. The Parks and Recreation Commission shall review the proposed site together with any other potential sites within the development and shall submit its recommendation to the Approval Authority. Prior to granting preliminary development or subdivision approval, the Approval Authority shall make the final determination as to the location and size of the park within the proposed development

Where the payment of fees in lieu of land dedication is recommended by the Approval Authority and agreed to by the owner or developer for payment of such fees, they shall be paid prior to issuance of building permits for developments. ~~and minor land partitions and prior to signing of the final plat for subdivisions.~~

Payments received in lieu of land dedication shall be expended for the acquisition and/or development of public open space within the same neighborhood planning area (as established by the City Council).

No subdivider shall be required to dedicate or make payments in lieu thereof for more than forty percent (40%) of his land for all public purposes including streets, but not including utility easements for drainageways.

ARTICLE 11

SPECIAL PURPOSE DISTRICTS

FLOOD PLAIN DISTRICT REGULATIONS

11.010 General Provisions. The area of the City which is within the Flood Plain District is the area so designated by the boundary shown on the official zoning map as determined by the U.S. Army Corps of Engineers.

The Flood Plain District shall contain those areas expected to flood during a 100 year flood as determined by the Federal Emergency Management Agency and accepted by the City.

The Flood Plain District shall consist of all floodways and flood fringe areas as defined in this Article.

11.020 Development in Floodways Prohibited. No development, except park and open space uses and flood control projects, shall be allowed in any floodway as defined as follows:

- (1) Any area designated as a floodway on the official zoning map or more detailed official federal map; or
- (2) The land area which must be reserved in order to discharge the 100 year flood without cumulatively increasing the water surface more than one foot as determined by the U.S. Army Corps of Engineers or;
- (3) The land area within 50 feet of the centerlines of Burkhart, Truax, and Murder Creeks and 100 feet of the centerline of Cox Creek.

Where a conflict is shown to exist between any of the above, the City Engineer shall determine which method should be used.

11.025 Flood Plain District Density Calculation. Residential lands located in a Flood Plain District shall not be used in calculating total project density except as follows: (1) Land which has been approved for development under the provisions of Section 11.030; (2) In Planned Developments land in a flood fringe area shall be calculated at 50% the allowed density provided that the additional units can be incorporated harmoniously into the Planned Development and without adverse effects on adjoining projects and provided further that the floodplain lands can be effectively utilized within the Planned Development or dedicated for public use under the provisions of 6.040.

11.030 Development in Flood Fringe Areas. As used herein, the flood fringe is defined as that area located between a floodway boundary and the boundary of the floodplain district. All developments **including drainage improvements** proposed within a floodplain fringe area shall be subject to the provisions of Site

containing areas within a Flood Plain District shall conform to the following provisions:

- (1) The 100 year flood elevation as currently known to exist shall be indicated on the recorded plat or map by showing the location of the 100 year flood contour line followed by the date it was established. In addition, a statement on the recorded map or plat shall be referenced to the Flood Plain District portion of the land division which shall read as follows: "Development of property within the 100 year flood plain as most currently established by the U. S. Army Corps of Engineers or City of Albany may be restricted and subject to special regulations by the City."
- (2) Any lot created for development purposes must have adequate area created outside of the Flood Plain District to maintain a buildable site area meeting the minimum requirements of this Code.

11.050 Utilities. Utility systems constructed within the Flood Plain District shall conform to the following provisions:

- (1) All new or replacement utility lines, with the exception of storm sewers, shall be designed and constructed to minimize or eliminate infiltration of flood waters into the system and discharge from the system into the flood waters.
- (2) All other utilities shall be designed and constructed so as to avoid damage as a result of flooding.

11.060 Alteration of a Watercourse. Any proposal to relocate, alter, or improve an existing watercourse ~~must be approved by the City Engineer~~ shall be subject to Site Plan Approval and where required by other State and Federal agencies with authority for approving such modifications. **In addition to complying with Site Review criteria,** all such modifications shall be designed, constructed, and maintained to retain or improve the flood carrying capacity of the watercourse including, where possible, the containment of 100 year flood waters on open space lands.

11.070 Warning and Disclaimer of Liability. The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes, and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased as a result of failure of man-made structures and/or natural causes. This ordinance does not imply that the land outside the area of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This ordinance shall not create liability on the part of the City of Albany, any officer or employee thereof, for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made thereunder.



WILLAMETTE GREENWAY DISTRICT

11.110 General Provisions. The area of the City which is within the Willamette Greenway District is the area so designated by the boundary shown on the official zoning map.

Except for developments and uses exempted by this Article an application for a development permit within the Willamette Greenway District shall be approved under the Type II procedure outlined in Section 2.040. Approval of a Greenway District Use Permit shall be granted only if compliance with this Article is found in addition to compliance with the other provisions of this ordinance applicable to the development. In the case of conflict between the provisions of this Article and the provisions of any other Article of this ordinance, the more restrictive provisions shall apply.

11.120 Greenway Use Permit Exceptions. The following developments and uses shall not be subject to the provisions of this Article but shall comply with other applicable provisions of this Code:

- (1) Customary dredging and channel maintenance conducted under permit from the State of Oregon;
- (2) Gravel removal from the bed of the Willamette River conducted under a permit from the State of Oregon or a seasonal increase in gravel operations;
- (3) The placing by a public agency of signs, markers, aids, etc. to serve the public;
- (4) Activities to protect, conserve, enhance and maintain public recreational, scenic, historical and natural uses of public lands, except that a substantial increase in the level of development of existing public recreational, scenic, historical or natural uses on public lands shall require review as provided by this Article;
- ~~(5) Erosion control activities not requiring a permit from the Division of State Lands;~~
- 6(5) Agriculture as allowed within the subject major zoning district;
- (6) Reasonable emergency procedures necessary for the safety or protection of property and not in conflict with the provisions of this Code;
- (7) Maintenance and repair usual and necessary for the continuance of an existing use.
- (8) Landscaping, construction of driveways, repair or maintenance of existing structures, and the construction or placement of accessory structures less than 250 square feet, provided that such activities are conducted in conjunction with uses

- (12) Any public recreational use of facility will be developed, maintained, and operated in such a way as to minimize adverse affects on adjacent properties.
- (13) Maintenance of public safety and protection of public and private property, especially from vandalism and trespass, will be provided to the maximum extent practicable.
- (14) Building setbacks from ~~average low water the floodway line~~ shall be determined by the ~~sun exposure setback and height plane as defined in this Code with the exception of water related uses approved under the provisions of this Article.~~ **Section 6.140 of this code.**
- (15) Public access will be provided to and along the Willamette River by appropriate legal means for all development in conformance with plans approved by the City.
- (16) The development, change, or intensification of use provides the maximum possible landscaped area, open space, or vegetation between the activity and the river.

11.140 Conditions. The Approval Authority shall have the power to impose conditions, restrictions, or limitations upon any use proposed in the Greenway District if such conditions, restrictions, or limitations are found to be necessary in order to satisfy the criteria of Section 11.130.

11.150 Notification. Notification regarding requests for Greenway Use Permits will be done in accordance with the procedures established for Type II Procedures in Article 2 of this Code. In addition, notification regarding such requests shall be sent to the Oregon State Department of Transportation - River Programs Section. Notification of the Oregon State Department of Transportation shall be given by certified mail--return receipt requested--and shall be sent within seven days of the receipt of the application for the conditional use.

Notice of the decision on the Greenway use permit application shall be mailed to the Department of Transportation - River Programs Section within ten days of such decision.

#### Planned Developments

11.310 General Provisions. A Planned Development District may be established by the City Council as a special purpose district requiring that development of lands within such districts conform to the provisions of this Article; or a Planned Development may be established voluntarily on lands not designated as a Planned Development District provided that the provisions of this Article are adhered to.

The purpose of these provisions is to encourage comprehensive

development of large parcels of land; to promote architecturally appealing and functional land use design by allowing flexibility in the placement and uses of buildings, recreational areas, open spaces, streets, utilities and off-street parking areas, and to more efficiently utilize special features of geography, topography, size or shape of parcels and to permit variation in height of buildings, but still requiring a development to maintain a ratio of the site area to dwelling units that will be in harmony with the area.

11.320 Permitted Buildings and Uses. The following buildings and uses may be permitted either singly or in combination in a Planned Development:

(1) Planned Developments in Residentially Zoned Areas.

- (a) Accessory buildings and uses (permitted in combination with principal uses only)
- (b) Duplexes.
- (c) Dwellings, multiple family.
- (d) Dwellings, single family.
- (e) Open space.
- (f) Parks, playgrounds, golf courses, driving ranges or community centers or recreation facilities supported by the PUD.
- (g) Commercial services to primarily serve the Residential Planned ~~Unit~~ Development.

(2) Planned Developments in Commercially or Industrially Zoned Areas. Buildings and uses permitted in planned commercial or industrial developments shall be governed by the buildings and uses permitted in the district either conditionally or by right.

11.330 Planned Development General Requirements.

- (1) Size of Parcel. Planned Residential, Commercial or Industrial developments may be established in permitted districts on parcels of land which are of sufficient size to be planned and developed in a manner that is consistent with the purposes and objectives of the Comprehensive Plan.
- (2) Ownership.
  - (a) The tract or tracts of land included in a proposed Planned Development must be in one ownership, joint ownership or under control of the applicant.
  - (b) Unless otherwise provided as a condition for approval of a Planned Development permit, the applicant may divide and transfer title of phases or units within a PD provided that either; (1) State Law regarding condominiums is adhered to or, (2) State and local provisions regarding major and minor subdivisions are adhered to. In both instances, interim PD applications

- (2) Outdoor Living Area. Whenever private common outdoor living area is provided, the Commission may require that an association of owners be created under the laws of the State of Oregon. Owners of the subject property shall automatically be members and shall be subject to assessments levied to maintain said outdoor living area for the purposes intended. The period of existence of such association shall be not less than 20 years, and it shall continue thereafter and until a majority vote of the members shall terminate it.
- (3) Streets. The Commission may require that right-of-way width within the development be maintained as private streets or be dedicated to the City when such is necessary in accordance with the City of Albany Master Street Plan. Such other streets necessary to the proper development of adjacent properties may also be required. Streets shall be constructed in accordance with standards established by the City Engineer.
- (4) Easements. Easements necessary for the orderly extension of public utilities may be required as a condition of approval.

11.360

Permit Criteria. A planned development permit may be granted by the Commission only if it is found that the development conforms to all of the following Site Plan Review criteria as set forth in 13.040 and the following additional criteria:

- (1) The location, design, size and uses are consistent with the Comprehensive Plan. More usable and suitable recreation facilities and other common and public facilities are provided than would normally be provided under conventional land development procedures.
- (2) That the location, design, size and uses are such that traffic generated by the development can be accommodated safely and without congestion on existing or planned arterial or collector streets and will, in the case of commercial or industrial developments, avoid traversing local streets. More flexibility in development code siting standards and permitted uses will result in an improved development for the city, the surrounding area, and users of the development as compared to strict compliance with code provisions.
- (3) That the location, design, size, and uses are such that the residents or establishments to be accommodated will be adequately served by existing or planned facilities and services. Provisions are established to insure the continued maintenance of any common areas.
- (4) That the location, design, size, and uses will result in an attractive, healthful, safe and efficient and stable environment for living, shopping or working. The project design will result in a more efficient utilization of the natural features of the site.

natural features of the site.

- (5) **The project design will result in a more efficient utilization of materials and public resources including streets, utilities, and energy supplies.**

11.370 Application. A letter of intent for planned developments shall be submitted by the owner(s) or authorized agent or by another party described in Section 11.330 to the Planning Department. There shall be a three-stage review process consisting of Preliminary Stage (Stage One), Interim Approval (Stage Two) and Final Approval (Stage Three).

- (1) Preliminary (Stage One). The owner(s) or authorized agent shall submit to the Planning Department the following information:

- (2) Transitional Zones. Slope seven (7) feet outward for each foot upward beginning at the sides of and at the same elevation as the primary surface and the approach surface, and extending to a height of 150 feet above the airport elevation which is 222 feet above mean sea level. In addition to the foregoing, there are established height limits sloping seven (7) feet outward for each foot upward beginning at the sides of and at the same elevation as the approach surface, and extending to where they intersect the conical surface.
- (3) Horizontal Zone. Established at 150 feet above the airport elevation or at a height of 372 feet above mean sea level.
- (4) Conical Zone. Slopes 20 feet outward for each foot upward beginning at the periphery of the horizontal zone and at 150 feet above the airport elevation and extending to a height of 350 feet above the airport elevation.

1.520 Excepted Height Limitations. Nothing in this Ordinance shall be construed as prohibiting the construction or maintenance of any structure, or growth of any tree to a height up to 50 feet above the surface of the land.

11.530 Other Interference Prohibited. Notwithstanding any other provisions of this Ordinance, no use may be made of land or water within any zone established by this Ordinance in such a manner as to create electrical interference with navigational signals or radio communication between the airport and aircraft, make it difficult for pilots to distinguish between airport lights and others, result in glare in the eyes of pilots using the airport, impair visibility in the vicinity of the airport, create bird strike hazards, or otherwise in any way endanger or interfere with the landing, takeoff, or maneuvering of aircraft intending to use the airport.

11.540 Noise Construction Standards. Within the designated airport noise contours which are projected future noise levels and are indicated in figure 10-6, the following regulations shall apply:

- (1) In the 55 to 60 ldn area, a declaration of anticipated noise levels shall be attached to any development permit and recording of such declaration may be required for permit approval on each parcel within such area.
- (2) Development of "noise sensitive property" (residential zoned areas, group quarters used for sleeping, motels, hotels, schools, churches, hospitals, libraries) within the 60 ldn area and above shall be subject to the provisions of Site Plan Review outlined in Article 13 and may be required to include additional sound buffering features within the development as a condition of approval.

- (16) Delivery and loading areas.
- (17) Screened trash disposal areas.
- (18) Exterior lighting; the type, height and areas of illumination.
- (19) Outdoor play areas, if any.
- (20) Service areas for uses such as mail delivery and trash disposal.
- (21) Location, size, materials, color and method of illumination of all signs.
- (22) Landscape Plan indicating the size, species (identifying both botanical and common names) and location of plant material and other landscaping materials and screening materials, when required (refer to Article 7).
- (23) Conceptual Drawings including floor plans and building elevations.

**When Site Plan Review is for a change of use or minor addition the Planning Director may reduce the amount and/or type of information required.**

13.040

Criteria. The Approval Authority shall approve a Site Plan Review application upon determining that the following criteria have been satisfied:

- (1) **The proposed use and development conforms to the provisions of this code and any other applicable City standards except where a variance to any such provision has been applied for in accordance with Article 15. The adequacy and continuity of public facilities is sufficient to accommodate the proposed development. Such consideration should include modifying the proposal to conform with public facility plans or upgrading existing public facilities to accommodate the proposed developments.**
- (2) **The proposed use and development conforms to applicable sections of the Comprehensive Plan. However, it shall be the burden of the Approval Authority to establish nonconformance with the Comprehensive Plan for any development which is found in conformance with the first criteria above. Any special features of the site (such as topography, natural features, hazards, vegetation, or wildlife habitat, archaeological sites, historic sites, etc.) have been adequately considered and utilized.**
- (3) **The size, site and building design, and operating characteristics of the proposed development are reasonably compatible and minimize negative impacts on the surrounding**

properties, with surrounding development and land uses, and any negative impacts have been sufficiently minimized.

13.045 Design Considerations. To assure conformance with the purposes of the Comprehensive Plan each development requiring site plan review should give consideration to the following factors during site design:

- (4) Parking areas and entrance-exit points are designed so as to facilitate traffic and pedestrian safety and avoid congestion.
- (5) The design promotes energy conservation through the use of materials, landscaping, and building orientation.
- (6) The buildings are located so as to provide light and air according to yard requirements and afford adequate solar access where desired.
- (7) The design promotes crime prevention and safety features through lighting, visibility of building entrances, secure storage areas, etc.

13.050 Conditions Which May Be Attached To Site Design Review. To the extent necessary to meet the criteria for site design review contained in this Code, the approval authority may impose the following additional requirements on a development subject to advising the applicant of the reason in writing.

- (1) Obtain City Engineer's approval for a grading and drainage plan for the collection and transmission of storm or ground water.
- (2) Establish vehicle access and parking requirements and pedestrian access facilities with due consideration to size, location and grade.
- (3) Dedicate and improve public street right-of-way, a pedestrian or bicycle way, or an easement for utilities, a waterway or slope protection.
- (4) Support a future public improvement necessary for full compliance with City improvement standards in an agreement that will run with the land.
- (5) Install an on-site fire hydrant connected to a water line which has sufficient fire flow capability to comply with City standards.
- (6) Install lighting for outdoor circulation and parking areas, including approval of the type and placement of the outdoor lighting.



- (7) Establish setbacks to protect hazardous areas, important vegetation, and habitat areas, solar access, and archaeological sites.
- (8) Require protective construction techniques to minimize slope or flood hazards.
- (9) In the case of commercial or industrial development, provide access by a frontage road having limited and controlled access onto an arterial street by means of traffic signals, traffic control islands, or other means that will preserve the traffic carrying capacity and safety of the arterial street and that will avoid the cumulative effect of individual access points directly onto the arterial street.
- (10) In the case of development that is not required to provide a frontage road, provide access to a street that intersects an arterial street instead of taking access directly from the arterial street in order to preserve the traffic carrying capacity and safety of the arterial street and avoid the cumulative effect of individual access points directly onto the arterial street.

13.055

Planning Commission Review. If the Director determines that specific design feature(s), (site or building design, materials, colors, texture, shape of structure, signage, or other development feature) are so inappropriate, incongruous with the surrounding area or in some other way sufficiently detrimental to the aesthetics, property values, general stability or other public welfare concern for the area, the director shall state in writing his findings and refer the development request to the Planning Commission for site approval. As a condition of Site Plan approval the Planning Commission may modify the design features mentioned to insure reasonable compatibility with the neighborhood.

## ARTICLE 14

### CONDITIONAL USE PERMITS

14.010 Description and Purpose. Uses identified in Article 5 as requiring Conditional Use Permits may be permitted, enlarged or altered in accordance with the provisions of this Article. In addition, where a use is not authorized in any district or where ambiguity exists concerning the appropriate classification of a particular use of type of development within the intent of this Code, said use or type of development may be established by a Conditional Use Permit in accordance with this Article.

The purpose of conditional use permits is to allow determination of the appropriateness and compatibility of certain uses proposed to be located in areas not specifically designated for such uses and which may only be suitable for location in such areas with application of special conditions as allowed by this Article.

14.020 Procedure. An application for a Conditional Use Permit shall be processed as a Type II procedure and shall be made by the owner of the subject property or authorized agent on a form prescribed by the Planning Department and shall be accompanied by the prescribed fee and evidence demonstrating compliance with the criteria noted below.

14.025 Plan Requirements. Review of a Conditional Use Permit shall be based upon submission of detailed plans containing the same information as required for Site Plan Approval in Section 13.030. However, a Conditional Use Permit may be reviewed based upon submission of preliminary or conceptual plans provided that both the applicant and approval authority agree to utilize the Site Plan Review procedures of Article 13 for final development review.

14.030 Criteria. A Conditional Use Permit shall be granted if the Approval Authority finds that the proposal conforms with the following general Site Plan Review criteria as set forth in 13.040 and the following additional criteria:

- (1) The proposal is in conformance with the Comprehensive Plan. That the proposed use will be compatible with the abutting properties and the surrounding neighborhood in terms of both appearance and the particular operating characteristics of the area. Special consideration shall be given to:
- (2) The location, size, design and operating characteristics of the proposed development are such that the development will be reasonably compatible with and have minimal impact on the livability and appropriate development of abutting properties and the surrounding neighborhood.
- (3) In determining the above consideration shall be given to the following:
  - (a) Harmony in scale, bulk, coverage and density. How the

proposed structures will fit in with existing or anticipated uses in terms of scale, bulk, coverage, density, architectural, and aesthetic design.

- (b) The availability and capacity of public facilities and utilities. How the operation of the proposed use will fit in with the purpose of the base zone and enhance the operating characteristics of the particular neighborhood.
- (c) The generation of traffic and the capacity of surrounding streets.
- (d) Public safety and protection.
- (e) Architectural and aesthetic compatibility with the surrounding area.

14.040

Conditions. The Approval Authority may designate conditions in connection with the Conditional Use Permit as it deems necessary to secure the purpose of this Article and may require the guarantees and evidence that such conditions will be complied with. Such conditions may include:

- (1) Regulation of uses.
- (2) Special yards, spaces.
- (3) Fences and walls.
- (4) Street dedications and improvement petitions (or bonds).
- (5) Regulation of points of vehicular ingress and egress.
- (6) Regulation of signs.
- (7) Regulation of building textures, colors, architectural features and height.
- (8) Landscaping screening and buffering where necessary to increase compatibility with adjoining uses.
- (9) Regulation of noise, vibration, odors or other similar nuisances.
- (10) Regulation of hours for certain activities.
- (11) Time period within which the proposed use shall be developed.
- (12) Duration of use.
- (13) Preservation of natural vegetative growth and open space.
- (14) Such other conditions as will make possible the development of the City in an orderly and efficient manner in conformity

## ARTICLE 15

### VARIANCES

15.010 Description and Purpose. Where a practical difficulty, unusual hardship, or the literal interpretation of a provision of this Code results in rendering a property incapable of reasonable economic use or causes specific hardships unintended by the Comprehensive Plan and the provisions of this Code, a variance may be granted as provided in this Article; however, no variance shall be granted which would permit a use outright or conditionally contrary to the schedule of Permitted Uses outlined in Article 5. **or which would result in a situation more appropriately allowed by a district zone change.**

15.020 Procedure. Variance requests shall be processed as a Type II procedure except as follows:

- (1) A Type I procedure may be used to process a variance request involving not more than a 10 percent reduction or expansion of the quantifiable provisions of this Code where such variation can be determined to have no adverse impact on surrounding properties.
- (2) A Type III procedure may be required by the Director when a variance request can be expected to establish a new precedent, interpretation of Code provisions, or have substantial impact on a surrounding area.

Application for a variance shall be made by the owner of the subject property or authorized agent on a form prescribed by the City and shall be accompanied by the prescribed fee and evidence demonstrating compliance with the criteria noted below.

- (3) **"A Type III procedure shall be used to process any Variance request which involves an increase in project density or a decrease in a lot area requirements provided that no Variance shall be considered which would result in a project density increase or lot size reduction of more than 20% beyond existing density standards. In addition, such Variances shall not be considered where the Density Bonus provisions of Section 6.040 could be reasonably utilized to achieve the same result.**

15.030 Criteria. A variance shall be granted if the proposal is determined by the Approval Authority to comply with all of the following where applicable:

- (1) That there are unique physical circumstances or conditions, such as irregularity, narrowness or shallowness of the lot, or exceptional topographical or other physical conditions peculiar to the affected property.
- (2) The property together with any adjoining property under the

## ARTICLE 22

### DEFINITIONS

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

Abut: Contiguous to; for example, two lots with a common property line. However, "abut" does not apply to buildings, uses, or properties separated by public right-of-way.

Access: The place, means or way by which pedestrian or vehicles shall have ingress and/or egress to a property or parking space.

Accessory Buildings: A building of less than 1,000 sq. ft. the use of which is subordinate to and consistent with the principle use of the property.

Accessory Use Way: An unobstructed way of specified width containing a drive or roadway which provides vehicular access and connects to a public street.

Active, Passive Solar Systems: Active or indirect solar heating utilizes heat collection which is separate from the area being heated, with a mechanical method of transferring heat between the two areas. A passive solar system is any method which requires no external energy input to collect and disperse solar heat. In new building design this means utilizing site design, building orientation, window placement, insulation, vegetation, etc. to heat and cool a building. Passive solar systems may also include the addition of such solar collectors as greenhouses or water traps or improved insulation or other weatherization techniques.

Adjacent: Contiguous to a property boundary or across an adjoining right-of-way.

Alley: A public way not over 30 feet wide providing a secondary means of access to private property.

Alter, Alteration: A change, addition or modification in construction or occupancy of a building or structure.

Amendment: A change in the working, context, or substance of the Code, or a change in the zone boundaries or use district boundaries upon the zoning map or a change in the Comprehensive Plan.

Apartment House; See Dwelling, Multiple.

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

Arterial Street: A major street which functions primarily to move large amounts of traffic and is identified as such on the Master

or partitioned lot or parcel.

Travel Trailer: A portable structure capable of being towed or driven, having a width of less than ten feet, and which is designed to be used as a temporary dwelling unit.

Trailer: See Travel Trailer

Use: The purpose for which land or a building is arranged, designed or intended, or for which either land or a building is, or may be, occupied or maintained.

Water-Dependent: A use or activity which can be carried out only on, in, or adjacent to water areas because the use requires access to the water body for water-borne transportation, recreation, energy production, or source of water.

Water-Oriented Use: Any use which receives a demonstrable benefit from being located with a view to the river. Examples might include restaurants, residential structures, and commercial structures when river views are incorporated into the design of the river.

Water-Related: Uses which are not directly dependent upon access to a water body, but which provide goods or services that are directly associated with water-dependent land or waterway use, and which, if not located adjacent to water, would result in a public loss of quality in the goods or services offered.

Water Related Use: A marina, boat dock, pier, or other use of areas dependent upon water access for existence or operation.

Wrecking Yard, Motor Vehicles and Building Materials: Any premises used for the storage, dismantling or sale of either used motor vehicles, trailers, machinery and/or building materials, or parts.

Yard: Any open space which is required, created, or is maintained on a lot and which is not obstructed from the ground up by any structure or building.

Yard, Front: The area between the front property line and the nearest point of any building on that same parcel.

Yard, Interior: Any yard, required or otherwise, which is not a front yard and which is adjacent to an interior lot line.

Zoning District: A classification of land in which only uses specified by this Code are allowed, except for non-conforming uses, and for which specific requirements are set forth pertaining to height, yard, area, coverage, landscaping, parking, and other land use restrictions.