

ORDINANCE NO. 5635

AN ORDINANCE AMENDING ORDINANCE NO. 4441, WHICH ADOPTED THE CITY OF ALBANY DEVELOPMENT CODE AND ZONING MAP BY AMENDING THE DEVELOPMENT CODE TEXT RELATING TO PERIODIC REVIEW GOAL 10 HOUSING AND GOAL 14 GROWTH MANAGEMENT, ADOPTING FINDINGS, AND DECLARING AN EMERGENCY. (FILE DC-02-05)

WHEREAS, from time to time it is appropriate to amend the Albany Development Code based on changing conditions; and

WHEREAS, the City is in Periodic Review, a process through which the City is updating its Comprehensive Plan, Plan Map, Development Code, and Zoning Map in accordance with a work program approved in 1997 by the State Department of Land Conservation and Development; and

WHEREAS, the City's annexation standards are currently located in two ordinances that have not been codified into either the Municipal Code or the Development Code; and

WHEREAS, procedures have been added to the annexation standards to address the land use aspects of annexation; and

WHEREAS, the Town Center Plan, the Central Albany Land Use and Transportation Study, and the Central Albany Revitalization Area Plan envision the industrial uses in the Waterfront zone to transition to residential and mixed uses over time; and

WHEREAS, the Willamette River waterfront is attracting the attention of developers interested in residential and mixed uses consistent with the vision for the waterfront; and

WHEREAS, typographical, grammatical and cross-referencing errors in the Albany Development Code need to be fixed from time to time and the Type IV procedure is unduly cumbersome to do this; and

WHEREAS, zoning map amendments should be evaluated against all City-sponsored land use and transportation plans and studies; and

WHEREAS, evaluation of the transportation system is important in site plan reviews; and

WHEREAS, duplexes on non-corner infill lots in single-family zoning districts have not resulted in greater neighborhoods and the "infill" wording is not clearly defined; and

WHEREAS, felling of trees planted as Christmas trees or on property under an approved Forest Stewardship Plan should be exempt from Site Plan Review; and

WHEREAS, on December 12, 2005, the Planning Commission held a public hearing on the proposed amendments and then recommended these changes to the City Council, based on public testimony, their deliberation, and the attached Findings and Conclusions; and

WHEREAS, on January 11, 2006, the Albany City Council held a public hearing on the proposed amendments, reviewed the amendments recommended by the Planning Commission and the testimony presented at the public hearing and then deliberated; and

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

Section 1: The Albany Development Code text is hereby amended as shown in the attached Exhibits A, B and C for the sections listed below (excluding the staff comments shown thereon):

EXHIBIT A-ANNEXATIONS

Article 2, Sections 2.100 to 2.180: Amend Article 2 to add the City's annexation standards; and

EXHIBIT B-WATERFRONT ZONING DISTRICT

Article 5, Section 5.030(4): Amend the Waterfront zoning district purpose statement; and

Article 5, Sections 5.060 and 5.070: Change the types of uses allowed and related special conditions in the Waterfront zoning district; and

Article 5, Section 5.080(2): Grant existing industrial uses in the Waterfront zone special status; and

EXHIBIT C—MISCELLANEOUS

Article 2, Section 2.280: Allow the Community Development Director to make minor administrative corrections to the Development Code through a Type I procedure; and

Article 2, Section 2.550(6) and Section 2.650(1): Add new review criteria related to transportation; and

Article 3, Section 3.080: Amend Special Condition (1) to no longer allow duplexes on non-corner lots in the RS-5, RS-6.5 and RS-10 zones and amend Special Condition (2) to clarify the minimum lot size for duplexes needs to be met in the RM-5 and RM-3 zones; and

Article 9, Section 9.207: Add two exceptions from site plan review for tree felling.

Exhibits A, B and C, upon the effective date of this Ordinance, shall supercede the corresponding sections of the Development Code. Language shown in the Exhibits as having been struck is removed from the Development Code, and language shown in bold is added to the existing text.

Section 2: The Findings and Conclusions attached as Exhibit D are hereby adopted in support of this decision. The Staff Report, attached as Exhibit E, is approved.

Section 3: Inasmuch as this Ordinance is necessary for the immediate preservation of the peace, health and safety of the citizens of the City of Albany, an emergency is hereby declared to exist. This ordinance will be in full force and effect immediately upon its passage by the Council and approval by the Mayor.

Passed by the Council: January 11, 2006

Approved by the Mayor: January 11, 2006

Effective Date: January 11, 2006


Mayor

ATTEST:


City Clerk

All proposed amendments to Article 2 would be new text in the Development Code.

ANNEXATIONS

Staff Comments: The City's annexation standards are currently housed in two ordinances that have not been codified into either the Municipal Code or the Development Code. For that reason, locating our procedures can be cumbersome. The proposed Annexation section combines this language and places it in the Development Code.

Procedures have been added to address the land use aspects of annexation.

Annexations would become a Type IV process, meaning that the Planning Commission would hold a hearing and make a recommendation to the City Council. Council would make the final decision about placing an annexation request on the ballot.

At a joint work session on November 14, 2005, the City Council/Planning Commission requested the addition of language that would allow residents of an "island" territory to vote on annexation. That language is included below. Following its deliberation on December 12, 2005, the Planning Commission recommended the following language to the City Council.

2.010 Overview. The Development Code provides a combination of nondiscretionary and discretionary standards for the City to use in evaluating land use proposals for compliance with the use and development requirements of the Code. The nondiscretionary criteria provide the certainty needed in most situations by providing straightforward, clear, and objective standards. Discretionary criteria provide needed flexibility by allowing more subjective standards and objectives, and providing for the modification of regulations in response to specific site conditions. This chapter contains the criteria for evaluation of the following land use applications:

- Adjustments
- **Annexations**
- Comprehensive Plan Amendments
- Conditional Uses
- Development Code Amendments
- Nonconforming Situations
- Site Plan Review
- Vacations
- Variances
- Zoning Map Amendments

[Ord. 5445, 4/12/00]

2.100 Purpose. Annexation is the first step in converting urbanizable lands to urban land within the **Albany Urban Growth Boundary**. Annexation and subsequent development may provide economic and social benefits to the City of Albany through the creation of housing, business and commercial enterprise; creation of construction and permanent jobs; and expansion of the City's tax base. When annexations are properly timed, they allow for orderly expansion of city boundaries and contribute to logical extensions of public infrastructure. An ill-conceived annexation may impose burdens on the community that could outweigh the benefits. An

annexation application must meet the quasi-judicial and legislative requirements of this Code and state law.

2.110 **Procedure.** Annexation applications are reviewed as a Type IV procedure. If it is the Albany City Council's legislative determination to set the matter for a citywide vote, annexation shall only be approved by a prior majority vote among the electorate.

(1) **Exception.** These procedures do not apply to an annexation mandated by state law, which is a Type I procedure and not subject to voter approval.

2.115 **Voting in Island Annexations.** When considering the annexation of "island" territory as authorized by ORS 222.750, the City Council shall authorize the electors within the annexation territory to vote on the question of annexation. In such event, the votes of the electors in the annexation territory shall be counted with the votes of the electors within the city. This section shall not authorize the votes of the electors within the annexation territory to be considered separately from those of the citizens within the city, except that an annexation will not be approved unless the majority of the votes cast by city electors approve the annexation.

2.120 **Annexation Agreement.** The annexation applicant and the City of Albany may enter into an Annexation Agreement for the purpose of addressing the annexation-related quasi-judicial or legislative concerns of the City of Albany. The agreement may contain proffers made by the applicant to address quasi-judicial or legislative criteria or concerns. The annexation agreement may provide the basis for the City Council to determine that the proposed annexation is in the public interest. The terms of the annexation agreement may help the applicant meet applicable review criteria for annexation or enhance the public benefits that will result from the annexation. The terms of an annexation agreement may include, but are not limited to, timing of the submittal of an application for zoning, dedication of land for future public facilities, construction of public improvements, waiver of compensation claims, waiver of nexus or rough proportionality objections to future exactions, or other commitments deemed valuable to the City of Albany. The annexation agreement shall be recorded as a covenant running with the land, binding on the landowner's successors in interest.

2.125 **Review Criteria.** The review body shall make a quasi-judicial land use decision as to whether the proposed annexation complies with all of the following criteria:

(1) **Eligibility Criteria.** The City shall determine that property is eligible for annexation based on the following criteria:

- (a) The property is contiguous to the existing city limits; and
- (b) The property is located within the Albany Urban Growth Boundary as established by the Albany Comprehensive Plan.

(2) **Infrastructure Criteria.** The City shall determine that it is timely to annex property based on the following criterion:

- (a) An adequate level of urban services and infrastructure is available, or will be made available in a timely manner.
- (b) As used in this section:
 - i. "Adequate level" means conforms to adopted plans and ordinances.
 - ii. "Urban services" means police, fire, and other City-provided services.
 - iii. "Infrastructure" means sanitary sewer, water, storm drainage, and streets.
 - iv. "Be made available in a timely manner" means that improvements needed for an adequate level of urban services and infrastructure will be provided at the

time and place needed to serve the anticipated development. Improvements may be secured by a development agreement, annexation agreement, or other funding mechanism that will place the primary economic burden on the territory proposed for annexation and not on the City of Albany generally.

- (3) **Planning Criteria.** The City shall determine that adequate planning has occurred based on the following criterion:

Sufficient planning and engineering data have been provided, and necessary studies and reviews have been completed such that there are no significant unresolved issues regarding *appropriate Comprehensive Plan* and implementing ordinances. Examples of needed studies may include public infrastructure plans, buildable lands inventories, area refinement plans, or any task in an approved work program for Periodic Review.

- (4) **Reasonableness Criteria.** The City shall determine that it is reasonable to annex the property.

2.130 **Legislative Review.** The City has been entrusted by the people of Albany to make decisions affecting the livability of the community. The people rely on the City to consider whatever factors it deems appropriate in making quality of life determinations on their behalf, including whether to place annexation requests before the voters of the City of Albany.

- (1) The City is not obligated to reach a legislative decision to either place an annexation on the ballot or to refrain from doing so. The City is not obligated to approve the annexation even if it determines that the quasi-judicial review criteria have been met. Following the quasi-judicial land use determination, the City may decline to take legislative action, or make a legislative determination to approve or deny the proposed annexation if it deems such action to be in the public interest.
- (a) The legislative decision to place the matter on the ballot for election, or to decline to take such action, shall be at the discretion of the City and shall be made by resolution. If authorized, the matter shall be placed before the voters of the City in the manner prescribed by the City.
- (b) An annexation application denied by the City shall not be placed on the ballot for election.

2.140 **Proclamation of Annexation.** If the annexation is approved by the electorate, the City Council, by ordinance, shall set the final boundaries of the area to be annexed by a legal description of the annexation boundary and proclaim the annexation in accordance with state law.

ZONING OF ANNEXATION TERRITORY

2.150 **Interim Zoning.** Any area annexed to the City shall retain the zoning classification of the county until changed by the City. During the period between the proclamation of annexation and application of City zoning, the City shall enforce the current zoning regulations of the county along with any conditions, limitations or restrictions applied by the county as though they were a part of this Code, except that the provisions of this Code shall supersede comparable provisions of the county zoning regulations.

2.160 **Procedure.** Applying initial City zoning to annexation territory is subject to the provisions of ADC 2.510 through 2.570.

2.170 **Application of Initial City Zoning.** The City may exercise full discretion in determining the initial City zoning of annexation territory.

- (1) The City may initiate a zoning map amendment as provided by ADC 2.520 to apply the initial City zoning to annexation territory.
- (2) The City may approve the zoning requested by the applicant.
- (3) The City may select a zoning district other than that requested by the applicant in order to best satisfy the criteria for a zoning map amendment set forth in ADC 2.550. In this event, the applicant may withdraw the annexation application by written notice to the City within ten (10) days of the City's action, or forty-eight (48) hours prior to the filing date and time required by the County Clerk for inclusion in the election, whichever shall first occur.

2.180 **Concurrent Applications.** The City does not have authority to zone land or to regulate development under this Code until land is annexed. However, the applicant for annexation may request zone change and development-related applications filed for concurrent review with an annexation request. As used in this section, "development-related application" includes, but is not limited to, site plan review, conditional use, land division, or variance.

- (1) If the applicant for annexation desires concurrent, pre-annexation determinations for related land use applications, those applications shall be processed concurrently through a Type IV procedure.
- (2) In order to be eligible for filing zone change and development-related applications for concurrent review with an annexation request, the applicant shall waive the provisions of state law and this Code that require a final decision within 120 days.
- (3) The determination on all land use applications filed for concurrent review with an annexation application shall not be final for the purposes of administrative or judicial review until the date that the annexation is proclaimed.
- (4) All land use applications filed for concurrent review shall result in a single decision for purposes of appeal, such that all applications, excluding annexation, are subject to review on appeal if any one application is challenged.
- (5) If any land use decision concurrent with annexation is reversed on appeal, all concurrent applications, excluding annexation, are void.
- (6) Concurrent, development-related applications, once approved, may be modified pursuant to the procedures in ADC 1.226, or the development-related application may be withdrawn and a new application submitted for review.
- (7) In the event land is not developed in substantial conformance with a concurrent, development-related approval and the decision is no longer valid, the City may initiate a zone change pursuant to ADC 2.520 to revert all or a portion of the annexation territory to the previous county zoning classification. Such a reversionary stipulation may be included in the annexation agreement.

WATERFRONT ZONING DISTRICT

ARTICLE 5 – MIXED USE VILLAGE CENTER ZONING DISTRICTS

Staff Comments: At the time the City created the Waterfront zone ten years ago, several industries had plants along the Willamette River. These included Inland Quick Freeze and Tec-Labs. These industries have either moved or gone out of business. Today, the area is attracting the attention of developers interested in residential, office, and limited retail uses, in keeping with the CALUTS and CARA vision. The proposed changes to the Development Code would prohibit new industrial uses, while protecting several businesses that are there today.

Following a public hearing on December 12, 2005, the Planning Commission recommended the following language to the City Council.

- 5.030(4) **WF – WATERFRONT DISTRICT.** The WF district is intended to **transition Albany’s Willamette River waterfront into a vibrant center characterized by a variety of housing choices and a mixture of housing, office, and retail uses. Development and design standards will result in great neighborhoods, a pedestrian friendly environment and an enhanced community image.** ~~allow the properties along the Willamette River to transition to medium or high density residential uses while preserving the viability of existing light industrial businesses in this area. Both residential and light industrial uses are allowed in this zoning district, and regulations are provided to facilitate compatibility.~~
- 5.060 Schedule of Permitted Uses. The specific uses listed in the following schedule are permitted in the zones as indicated, subject to the general provisions, special conditions, additional restrictions, and exceptions set forth in this Code. A description of each use category is in Article 22, Use Categories and Definitions. The abbreviations used in the schedule have the following meanings:

- Y Yes; use allowed without review procedures but may be subject to special conditions.
- S Use permitted that requires a site plan approval prior to the development or occupancy of the site or building.
- CU Use considered conditionally under the provisions of Sections 2.230-2.260.
- PD Use permitted only through Planned Development approval.
- N No; use not allowed in the zoning district indicated.
- X/X Some zones have two abbreviations for a use category (ex. Y/CU). Refer to the special condition to determine what review process is required based on the details of the use.

A number appearing opposite a use in the “special conditions” column indicates that special provisions apply to the use in all zones. A number in a cell particular to a use and zone(s) indicates that special provisions apply to the use category for that zone(s). These conditions are found following the schedule in Section 5.070. [Ord. 5555, 2/7/03]

SPECIAL CONDITIONS

5.070 General. Where numbers appear in the "Special Conditions" column in the Schedule of Permitted Uses, the corresponding numbered conditions below shall apply to the particular use category as additional clarification or restriction:

(1) Contractors and Industrial Service Uses in the WF, CB, LE and PB zones.

- (a) Prohibited Uses. Salvage or wrecking operations. See Section 5.360 for outside storage standards by zone.

Section 5.070 (2) has been intentionally omitted since no text changes are proposed at this time.

~~(3) Warehousing and Distribution in the WF zone.~~

- ~~—(a) Outside Storage. Operations and related storage (except shipping and loading) must be conducted entirely within enclosed buildings.~~

~~(4) Waste and Recycling Related Uses in the WF zone.~~

- ~~—(a) Limited Uses. The only waste and recycling related uses allowed in the WF zone are transfer stations, excluding sheet and scrap metal and hazardous waste recycling or collection.~~

- ~~—(b) Outside Storage. Operations and related storage must be conducted entirely within enclosed buildings.~~

Section 5.070(3) [formerly Section 5.070(5)] has been intentionally omitted since only sequential re-numbering (no text changes) is proposed at this time.

~~(6)~~(4) Indoor Entertainment and Recreation in the WF, PB, MS, ES and MUC zones.

- ~~(a) Conditional Uses in WF. The following indoor entertainment and recreation uses require a Conditional Use approval in WF: convention centers, bowling alleys, skating rinks, pool halls, games, amusements, arcades and similar uses.~~

- ~~(b)~~(a) Prohibited Uses in WF, PB and MUC. The following indoor entertainment and recreation uses are prohibited in WF and PB: movie theaters, indoor firing ranges, paint gun facilities, coliseums, stadiums and similar facilities.

- ~~(c)~~(b) Limited Uses in MS and ES. Only the following indoor entertainment and recreation uses are allowed in MS and ES: athletic or exercise facilities, bowling alleys, skating rinks, pool halls, games, amusements, arcades and uses with similar impacts. All other indoor entertainment and recreation uses are prohibited.

~~(7)~~(5) Outdoor Entertainment and Recreation in the WF and CB zones.

- (a) Conditional Uses in WF and CB. The following outdoor entertainment and recreation uses are allowed with a Conditional Use approval: tennis courts, miniature golf, skateboard parks and similar uses.

~~(8)~~(6) Parking in the WF and ES zones.

- (a) Limited Uses. **Parking that is required for a primary use on the same or adjacent property is allowed. Fee parking for people not connected to the primary use is** ~~Parking facilities are~~ limited to parking structures.

~~(9)~~(7) Retail Sales and Service in the WF zone. All retail uses in the WF zone require a Conditional Use approval.

- (a) Limited Uses. The only retail uses allowed in the WF zone are: convenience and personal service-oriented commercial intended to serve nearby residents and employees; specialty retail stores and studios; ~~rental and repair oriented services limited to small appliance repair, shoe repair, tailoring and miscellaneous furniture, apparel and appliance rental.~~ All other retail uses are prohibited.

Section 5.070(8) through Section 5.070(22) [formerly Section 5.070(10) through Section 5.070(24)] have been intentionally omitted since only sequential re-numbering (no text changes), is proposed at this time.

5.080 Existing Uses Granted Special Status.

(1) Single-Family Homes.

Notwithstanding the restrictions or terms of any other section of the Albany Development Code (ADC), all single-family residential units built before January 1, 2002, shall be deemed to be conforming with the base zoning district. If any building on these properties is substantially destroyed, as defined in ADC Section 2.340(4), it may be rebuilt to the same density, size and setbacks as existed on the property at the time it was destroyed, but will be subject to the regulations of any applicable overlay zone. If any single-family dwelling is converted to non-residential use, the special status granted here is rescinded, and the use of the property shall thereafter conform to the requirements of Article 5. The special status granted herein shall be lost if it is determined that the use which existed on May 22, 1996 (date the Central Albany districts were first created) was not then lawfully in existence. [Ord. 5555, 2/7/03]

(2) Industrial and Commercial Uses.

The regulations below apply to those properties indicated on Figure 5-2.

Notwithstanding the restrictions or terms of any other section of the Albany Development Code (ADC), all industrial and commercial uses legally in operation before January 11, 2006, shall be deemed to be conforming with the base zoning district. The use may change to another industrial or commercial use provided the new use does not create greater off-site impacts than the current use. A change of use is subject to the applicable site plan review requirements of this Code.

If any building on these properties is substantially destroyed, as defined in ADC Section 2.340(4), it can be rebuilt for the same use provided that the off-site impacts are no greater than its impacts on January 11, 2006. When any listed buildings are converted to a permitted use in the Waterfront zoning district, the special status granted here is rescinded, and the use of the property must thereafter conform to the requirements of this article.

The intent is that each and every established industrial and commercial use in existence when the use changes were adopted (January 11, 2006) be listed here. Should an existing use

not be listed here, the property owner may have the property listed upon showing that the use was legally established at the time of the January 11, 2006 amendments to this article. Satisfactory evidence must be provided by the property owner or applicant to document that the use existed. Such evidence may consist of building permits, utility hookups, tax records, or telephone directory listings, for example.

Figure 5-2

- (1) 520 Water Avenue NE: Haring Drywall
- (2) 101 Jackson Street NE: Metal storage buildings
- (3) 703 Water Avenue NE: Metal storage buildings
- (4) 755 Water Avenue NE: Titan Rebuilders
- (5) 705 1st Avenue E; 135 Thurston Street NE: Consolidated Electrical Dist. Inc.
- (6) 710 Water Avenue NE: Metal storage building
- (7) 725 1st Avenue E: McDonald Wholesale
- (8) 812 Water Avenue NE: Cosmetic Dental Materials
- (9) 801 1st Avenue E: Larsell Mechanical; Oregon Gourmet Cheeses
- (10) 135 Hill Street NE: Storage Building
- (11) 1017 1st Avenue E: Cordray's Transmission
- (12) 716 1st Avenue E: Katon Precision Machining
- (13) 740 1st Avenue E: Solis Auto Repair
- (14) 705 2nd Avenue SE: Shop building
- (15) No Address: 3-sided storage building
- (16) 760 2nd Avenue SE: Big B Feed & Farm
- (17) 211 Jefferson Street NE: All-Star Construction



Figure 5-2

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MISCELLANEOUS DEVELOPMENT CODE CHANGES

Staff Comments: The following changes are proposed to improve our review process and streamline the processing of certain types of applications. Staff comments are dispersed throughout the exhibit to describe the purpose of the proposed amendments.

Following a public hearing on December 12, 2005, the Planning Commission recommended the following language to the City Council.

ARTICLE 2 REVIEW CRITERIA

DEVELOPMENT CODE AMENDMENTS

Staff Comments: This change would allow the Community Development Director to make very minor administrative corrections to the Development Code (Type I decision). Currently any change to the Development Code requires Planning Commission and City Council public hearings (Type IV decision).

2.280 Procedures. Code amendments shall be processed as a **Type IV procedure** in accordance with the legislative procedures of Sections 1.580-1.660. **Exception: The Director may initiate and approve amendments for the following types of corrections through a Type I procedure: typographical, grammatical, and cross-referencing errors.**

ZONING MAP AMENDMENTS

Staff Comments: The proposed criterion acknowledges other land use and transportation-related plans prepared for the City should be considered when reviewing zoning map amendments. Examples might include a refinement plan or local street plan for a particular part of town.

2.550 Review Criteria. Zoning map amendments will be approved if the Council finds that the applicant has shown that all of the following criteria are met:

- (1) The proposed base zone is consistent with the Comprehensive Plan map designation for the entire subject area unless a Plan map amendment has also been applied for. ~~in accordance with Section 2.080.~~
- (2) Existing or anticipated transportation facilities are adequate for uses that are permitted under the proposed zone designation.
- (3) Existing or anticipated services (water, sanitary sewers, storm sewers, schools, police and fire protection) can accommodate potential development within the subject area without adverse impact on the affected service area.

- (4) Any unique natural features or special areas involved such as floodplains, slopes, significant natural vegetation, historic district will not be jeopardized as a result of the proposed rezoning.
- (5) The intent and purpose of the proposed zoning district best satisfies the goals and policies of the Comprehensive Plan.
- (6) **The land use and transportation pattern recommended in any applicable City-contracted or funded land use or transportation plan or study has been followed, unless the applicant demonstrates good cause for the departure from the plan or study.**

SITE PLAN REVIEW

Staff Comments: The proposed criterion would give transportation its own criterion. Currently we review transportation under the public facilities criterion. The wording change proposed in Criterion 3 reflects that this is the place where we look at water, sewer, and storm drainage, which are part of our public utility systems.

2.650 Review Criteria. A site plan approval will be granted if the review body finds that the applicant has met all of the following criteria that are applicable to the proposed development.

- (1) The transportation system can safely and adequately accommodate the proposed development.**
- ~~(4)~~**(2)** Parking areas and entrance-exit points are designed to facilitate traffic and pedestrian safety and avoid congestion.
- ~~(1)~~**(3)** Public ~~facilities~~ **utilities** can accommodate the proposed development.
- ~~(2)~~**(4)** Any special features of the site (such as topography, hazards, vegetation, wildlife habitat, archaeological sites, historic sites, etc.) have been adequately considered and utilized.
- ~~(3)~~**(5)** The design and operating characteristics of the proposed development are reasonably compatible with surrounding development and land uses, and any negative impacts have been sufficiently minimized. [Ord. 5445, 4/12/00]

ARTICLE 3: RESIDENTIAL ZONING DISTRICTS

Staff Comments: Several years ago the Code was changed to allow duplexes on "infill" non-corner lots that are 1.5 times the minimum lot size of the zone. The intent was to disallow new "duplex subdivisions." The "infill" language has caused confusion. Additionally, residents in established single-family neighborhoods are often surprised when a duplex goes in on a vacant lot. We propose to no longer allow duplexes on infill lots in the RS-6.5, RS-5 and RS-10 districts, but to provide an exception for those lots created during the recent time period when this was allowed by the Code.

SPECIAL CONDITIONS

3.080 General. Where numbers appear in the column "special conditions" in the Schedule of Permitted Uses, the corresponding numbered conditions below shall apply to the particular use category as additional clarification or restriction:

- (1) In the RS-6.5, RS-5, and RS-10 districts, ~~one duplexes are is~~ permitted on a corner lots that meets the minimum lot size for a duplexes in the zone. **Exception for non-corner lots created between May 1, 2000 and January 11, 2006: A duplex is allowed on a non-corner lot provided that the lot is at least 1.5 times the single-family minimum lot size in the zone. The lot size threshold may be reduced by use of the 10% transportation bonus provided the lot is not a flag lot and it meets the standards in Section 3.220.** ~~and on other lots that are at least 1.5 times the single-family minimum lot size in the zone.~~ [Ord. 5445, 4/12/00]
- (2) In the RM-5 and RM-3 Districts, duplexes are permitted outright on any lot so long as the **minimum lot size for a duplex is met.**

ARTICLE 9: ON-SITE AND ENVIRONMENTAL STANDARDS

TREE FELLING

Staff Comments: The proposed exception language would clarify what has been a gray area in the Development Code.

9.207 Applicability. Site plan review approval is required for the felling of five or more trees larger than 25 inches in circumference (approximately 8 inches in diameter) on a lot or property in contiguous single ownership in excess of 20,000 square feet in any zone.

The following activities are exempt from site plan review:

- (1) The action of any City official or of any public utility necessary to remove or alleviate an immediate danger to life or property; to restore utility service or to reopen a public street to traffic.
- (2) Felling of any tree that is defined as a nuisance under the Albany Municipal Code.
- (3) Any felling necessary to maintain streets or public or private utilities within a public right-of-way or utility easement provided the Tree Commission or City Forester approved the proposed tree felling. [Ord. 5445, 4/12/00]
- (4) **Felling of trees planted as Christmas trees.**
- (5) **Felling of trees on property under a Forest Stewardship Plan approved by the Oregon Department of Forestry.**

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FINDINGS AND CONCLUSIONS

File DC-02-05

Recommended by the Planning Commission on December 12, 2005

Adopted by the Albany City Council on January 11, 2006

The Planning Commission recommended these findings in support of their recommendations for the Development Code changes. The Albany City Council adopted these findings in support of the Ordinance.

Section 2.290 of the Albany Development Code contains the following review criteria that must be met for text amendments to the Development Code to be approved:

(1) The proposed amendments better achieve the goals and policies of the Comprehensive Plan than the existing regulatory language.

ANNEXATION

The following Comprehensive Plan goals and policies are relevant to the proposed annexation amendments. Each goal or policy is written in *italic* type and is followed by findings.

- *Periodically review and update all City and County implementing ordinances to ensure continued coordination, consistency in procedure, and efficient processing of development applications within the Urban Growth Management Agreement Area.*
- *Require annexations to be logical and efficient extensions of city limit boundaries to facilitate the economic provision of services.*
- *Encourage urban level development to locate within the city limits of the Albany Urban Growth Boundary, unless such development can occur under annexation procedures (such as consent, delayed, and contract annexations).*
- *Achieve stable land use growth which results in a desirable and efficient land use pattern.*

FINDINGS: COMPREHENSIVE PLAN

1. Putting the City's annexation standards into the Development Code will result in consistent and more efficient processing of annexations.
2. The proposed modifications to the existing annexation standards will ensure annexations are logical and efficient extensions of the city limits.
3. The proposed Code changes provide for the use of annexation agreements, which may provide the basis for the City Council to determine that the proposed annexation is in the public interest.

CONCLUSION: COMPREHENSIVE PLAN

1. Locating the proposed annexation standards into the Development Code with minor changes to will better achieve the goals and policies in the Comprehensive Plan.

FINDINGS: STATEWIDE PLANNING GOALS

1. On November 19, 1982, the Oregon Land Conservation and Development Commission acknowledged the Albany Comprehensive Plan to be in compliance with the statewide planning goals. Acknowledgement means that the City of Albany successfully applied the statewide planning goals through its comprehensive plan and land use regulations.

2. The acknowledged Albany Comprehensive Plan is the policy document that guides land use within the Albany Urban Growth Boundary. Because the annexation territory lies within the Albany Urban Growth Boundary, the Albany Comprehensive Plan sets forth the goals and policies that are applicable to the annexation territory.
3. Ultimately, Albany intends to annex and zone all land within the Urban Growth Boundary. Until that happens, the county is responsible for zoning unannexed land inside the Urban Growth Boundary. Regulation of land use activities is coordinated between the City and county through an urban growth management agreement to ensure consistency with the Albany Comprehensive Plan. The current agreements with Linn and Benton Counties were adopted in 1988 and acknowledged through the periodic review process in 1989.

Goal 1: Citizen Involvement. To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.

4. Albany citizens participated in the establishment of Albany's Urban Growth Boundary in 1980. The Albany Comprehensive Plan, including the Urban Growth Boundary, was found to comply with the Statewide Planning Goals in 1982. The Albany Comprehensive Plan has maintained relevancy through repeated updates.
5. The City mailed a "Measure 56" notice of the Planning Commission and City Council public hearings to owners of property in the urban fringe.

Goal 2: Land Use Planning. To establish a land use planning process and policy framework as a basis for all decision and actions related to use of land and to assure an adequate factual base for such decisions and actions.

6. The legislative public hearing was conducted in the manner prescribed by local ordinance (ADC 1.490).

Goal 3: Agricultural Lands. To preserve and maintain agricultural lands.

7. According to Statewide Planning Goal 3, "agricultural land" protected by the Goal does not include farm land within acknowledged urban growth boundaries. A full reading of Goal 3 reveals that it is intended to protect large tracts of farmland for long-term farm use, an objective that is contrary to the objective of urban growth boundaries to provide a place for residential, commercial, and industrial development to occur. Farmland as an open space value within the urban growth boundary is discussed under Goal 5.

Goal 4: Forest Lands. To conserve forest lands by maintaining the forest land base and to protect the state's forest economy by making possible economically efficient forest practices that assure the continuous growing and harvesting of forest tree species as the leading use on forest land consistent with sound management of soil, air, water, and fish and wildlife resources and to provide for recreational opportunities and agriculture.

8. Statewide Planning Goal 4 does not contain an explicit exemption similar to Goal 3. However, in the implementing rules for Goal 4, OAR 660-06-0020 states, "Goal 4 does not apply within urban growth boundaries." As with Goal 3, the purpose of Goal 4 is to protect large tracts of forest land for long-term timber production. Protection of wooded open space areas within the urban growth boundary is discussed under Goal 5.

Goal 5: Open Spaces, Scenic and Historic Areas, and Natural Resources. To protect natural resources and conserve scenic and historic areas and open spaces.

9. Statewide Planning Goal 5 is directed toward the protection of many types of resources not singled out in other Goals. Goal 5 is applicable inside urban growth boundaries. Resources addressed by Goal 5 are:

riparian corridors, including water and riparian areas and fish habitat; wetlands; wildlife habitat; federal wild and scenic rivers; state scenic waterways; groundwater resources; approved Oregon recreation trails; natural areas; wilderness areas; mineral and aggregate resources; energy sources; and cultural areas. Local governments are encouraged, but not required, to address historic resources; open space; and scenic views and sites.

10. The urban fringe territory has been included in Goal 5 planning for the Albany Comprehensive Plan. The principle tool for protection of Goal 5 resources is the City's Open Space Comprehensive Plan designation. The corresponding zoning district is the only compatible zoning district with the Open Space Comprehensive Plan designation, according to the Plan Designation Zoning Matrix set forth in the Albany Comprehensive Plan. It is not necessary to process a zone change to apply the Open Space zoning district because the Comprehensive Plan designation will not change.
11. The City relies on the National Wetlands Inventory and the Local Wetlands Inventory to identify the location of wetlands. Wetlands under one-half acre are generally not mapped. When development is proposed in or near a wetland, the City directs the developer to contact the Oregon Department of State Lands and the U.S. Army Corps of Engineers. Albany relies on the Open Space zoning district to protect wetlands rated as "significant" as that term is defined by the Department of State Lands (OAR 141-86-0350). The Albany Development Code does not prohibit development of other wetlands. The decision whether to allow development of wetlands is made by the Oregon Department of State Lands and the U.S. Army Corps of Engineers.
12. Albany relies on the Open Space zoning district to set aside the highest quality natural areas for wildlife habitat. Development of other areas may result in the loss of marginal wildlife habitat, including areas suitable for foraging, nesting and roosting.

Goal 6: Air, Water and Land Resources Quality. To maintain and improve the quality of the air, water and land resources of the state.

13. This goal is typically applied to waste and process discharges emanating from industrial properties. Regulation of point source discharges is deferred to state and federal agencies that permit, monitor and enforce industrial discharges.
14. In residential areas, the quality of storm water runoff is gaining national and state attention. To date, however, the City is not required to improve the quality of storm water runoff.

Goal 7: Areas Subject to Natural Disasters and Hazards. To protect people and property from natural hazards.

15. Flood hazard is the primary natural hazard identified in the annexation territory. Maps depicting Special Flood Hazard Areas, published by the Federal Emergency Management Agency (FEMA) for Linn County, dated September 29, 1986, portray the limits of the 100-year floodplain. The City of Albany administers the provisions of the National Flood Insurance Program through Development Code regulations set forth in ADC 6.070 to 6.125 in order to reduce the risk of loss of life and property in flood-prone areas. A copy of the maps and Code language is included in the record for Council consideration.
16. To develop land in the floodplain, fill is needed to raise the land above the flood elevation. The cost to import and compact fill can substantially increase the cost of development. Current federal, state, and City policies allow development of the floodplain in areas to be zoned for residential use, but in practical terms, it may be too expensive to develop some areas. When fill is approved, the developer has to provide adequate storm drainage and not worsen existing drainage problems for nearby homes where no storm drains exist.

17. A lesser natural hazard in the annexation territory is slumping or sliding of soils on steep slopes. These tend to be found along waterways where cut banks are continually eroded by water. Most of these areas are located away from developed and developable areas within the Open Space Comprehensive Plan designation. In areas to be zoned for residential use upon annexation, provisions to protect the terrain where steep slopes exist are found in ADC 6.170 to 6.260. These provisions are intended to avoid the risk of loss of life and property in areas where slopes exceed 25 percent, and to minimize the risk where slopes range from 12 to 25 percent.
18. The minimum provisions of the National Flood Insurance Program allow for fill and development along the fringe of the floodplain as long as a narrow corridor termed the floodway is reserved for passage of flood waters. Flood Insurance Rate Maps published by FEMA denote the official boundaries of the floodway and flood fringe. In determining the width of the floodway, FEMA has assumed that the entire flood fringe would be filled.
19. The need to protect against the loss of life and flood damage must be balanced with the individual right to possess and use land. Under the takings doctrines of the United States and Oregon Constitutions, a landowner must be compensated when government regulation deprives the landowner of all economic use of the land. For this reason, Albany has allowed development in the flood fringe as allowed by the National Flood Insurance Program. The Willamette River flood fringe in North Albany is the most notable example. The building site is usually filled to remove the site from the floodplain.
20. The City's fill regulations, in combination with floodplain management standards, are intended to ensure that development in floodplain areas does not impose a measurable risk of flood damage to other properties in the flood fringe.

Goal 8: Recreational Needs. To satisfy the recreational needs of the citizens of the state and visitors and, where appropriate, to provide for the siting of necessary recreational facilities including destination resorts.

21. The City's urban fringe is included in Goal 8 planning for the Albany Comprehensive Plan. Albany's *Parks, Recreation and Open Space Plan* (2000) addresses the recreational needs of Albany's residents and others who visit our city. A copy of the *Plan* is included in the record for Council consideration. The *Plan* provides a framework for acquisition and development of park facilities throughout the Urban Growth Boundary. The *Plan* identifies a recreation corridor along the Calapooia River for future consideration. Residents of the annexation territory already benefit from other parks facilities provided by the City of Albany.

Goal 9: Economic Development. To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens.

22. The City's urban fringe has been included in Goal 9 planning for the Albany Comprehensive Plan. The *Economic Opportunities Analysis* (2000) addresses Albany's role in economic development activities for our community. The *Analysis* provides a framework for strengthening local businesses and welcoming new businesses to the Albany Urban Growth Boundary. The *Analysis* forecasts employment opportunities for future residents of Albany. Residents in the urban fringe benefit from employment opportunities realized through the economic development efforts of the City of Albany.

Goal 10: Housing. To provide for the housing needs of citizens of the state.

23. The City's urban fringe area has been included in Goal 10 planning for the Albany Comprehensive Plan. Albany's *Housing Needs Analysis* (2005) provides a forecast for housing needs and a framework for addressing those needs. The housing strategy relies in large part on residential zoning to accommodate Albany's growing population.

24. Land is zoned for residential use based on a number of factors including the ability to provide City services, protection of natural resources, and a variety of housing policies in the Albany Comprehensive Plan.

Goal 11: Public Facilities and Services. To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.

25. The urban fringe has been included in Goal 11 planning for the Albany Comprehensive Plan. Albany's Public Facilities Plan includes the *Water Facility Plan* (2004), *Wastewater Facility Plan* (1998), and *Drainage Master Plan* (1988). Planning for public facilities is based on full build-out of the Urban Growth Boundary. Timing and funding of major public works projects over the next six years is described in the annual *Capital Improvements Plan*. Other projects are built as needed by new development.

Goal 12: Transportation. To provide and encourage a safe, convenient and economic transportation system.

26. The urban fringe area has been included in Goal 12 planning for the Albany Comprehensive Plan. Albany's *Transportation System Plan* (1997) is a comprehensive analysis of transportation needs for buildout of the Albany Urban Growth Boundary. The *Plan* presents a strategy for prioritizing and funding key system improvements needed by 2015. Extension of local streets will occur as needed in the course of development.

Goal 13: Energy Conservation. To conserve energy.

27. To the extent that this Goal is applicable, the location of homes near employment areas within the Urban Growth Boundary maximizes the conservation of energy. As an incentive upon annexation, the Albany Development Code allows a 10-percent density bonus for securing solar access to homes in new developments (ADC 3.220).

Goal 14: Urbanization. To provide for an orderly and efficient transition from rural to urban land use.

28. The City's Urban Growth Boundary has been included in Goal 14 planning for the Albany Comprehensive Plan. Goal 14 requires the City to forecast future growth needs and establish an urban growth boundary to separate land needed for urbanization from rural land. Goal 14 allows the expansion of urban growth boundaries under certain conditions to keep pace with growth.

Goal 15: Willamette River Greenway.

29. The Willamette River Greenway boundary is within the city limits. Therefore, Goal 15 does not apply to the proposed annexation standards.

Goal 16: Estuarine Resources.

30. An estuary is the part of the wide lower course of a river where its current is met by the tides. The closest estuary is found on the Yaquina River, located approximately 65 miles west of Albany. Therefore Goal 16 does not apply to the proposed annexation standards.

Goal 17: Coastal Shorelands.

31. Coastal shore lands associated with the Pacific Ocean are located approximately 65 miles to the west. Therefore, Goal 17 does not apply to the proposed annexation standards.

Goal 18: Beaches and Dunes.

32. Coastal beaches and dunes associated with the Pacific Ocean are located approximately 65 miles to the west. Therefore, Goal 18 does not apply to the proposed annexation standards.

Goal 19: Ocean Resources.

33. The Pacific Ocean is located approximately 65 miles to the west. Therefore, Goal 19 does not apply to the proposed annexation.

CONCLUSION: STATEWIDE PLANNING GOALS

1. The proposed annexation standards meet applicable statewide planning goals.

FINDINGS: ANNEXATION ELIGIBILITY CRITERIA

1. Eligibility criteria are objective threshold criteria that explain the qualifications for annexation.
2. The logical extension of services is accomplished on a parcel to parcel basis. A parcel contiguous to the city limits is the next candidate for extension of services, not a parcel that is distant from the city limits. Contiguity avoids “leap frog” development patterns, avoids confusion as to the identity of the service provider, and is the most economical rationale for expansion of municipal services. State law (ORS 222.111) requires contiguity to be eligible for annexation. The only exception to strict contiguity is when the parcel proposed for annexation is separated from the city limits only by a public right-of-way or a stream, bay, lake or other body of water.
3. Not all contiguous property will be eligible for annexation. Only those parcels that are situated within the Albany Urban Growth Boundary are qualified. The Urban Growth Boundary represents the extent of urban growth over the planning period. The Albany Urban Growth Boundary was adopted in 1980. It appears as Plate 1 of the Albany Comprehensive Plan. The Oregon Land Conservation and Development Commission acknowledged the Albany Comprehensive Plan to be in compliance with the Statewide Planning Goals on November 19, 1982.

CONCLUSION: ANNEXATION ELIGIBILITY CRITERION

1. The eligibility criteria foster logical extension of city services and avoid “leapfrog” development.

WATERFRONT ZONING DISTRICT

The following Comprehensive Plan goals and policies are relevant to the proposed Waterfront zoning amendments. Each goal or policy is written in *italic* type and is followed by findings.

- *Revitalize the Central Albany area so that it will accommodate a significant portion of Albany's future employment and housing needs while retaining its unique historic character, vibrancy and livability.*
- *Support the transition of industrial uses along the Willamette River to urban residential and supporting mixed uses.*
- *Attract new private investment while retaining and enhancing the value of existing investments (both public and private).*

FINDINGS – COMPREHENSIVE PLAN

1. The proposed amendments will no longer allow new industrial uses and will therefore require properties in the Waterfront zone to transition into residential and mixed-use development.
2. The proposed amendments will encourage private and public investment in this district that will help create a vibrant and livable district.

CONCLUSION – COMPREHENSIVE PLAN

1. Transition of this area from industrial uses to residential mixed-uses will achieve the goals of revitalizing the Central Albany Revitalization Area and attracting new private investment into the area that meets the City's visions for this area.

FINDINGS – STATEWIDE PLANNING GOALS

Goal 5: Open Spaces, Scenic and Historic Areas, and Natural Resources. To protect natural resources and conserve scenic and historic areas and open spaces.

1. Encouraging this declining industrial area to transition to residential mixed-uses will promote a healthier and visually attractive environment along the Willamette River than currently exists.
2. New residential development in the Waterfront zone will help support the preservation and adaptive reuse of Albany's historic downtown buildings.
3. New investment will take advantage of scenic views that have been ignored for decades, and draw attention to the Willamette River as a natural feature and asset of the community.
4. A public easement exists over the bike/walking trail to the river bank in the Waterfront zone to provide a recreational amenity as well as riverbank protection.

Goal 6: Air, Water and Land Resources Quality. To maintain and improve the quality of the air, water and land resources of the state.

5. No longer allowing new industrial uses may help to improve the water quality of the Willamette River and air quality in this area.
6. The district is in the Willamette Greenway overlay district, which requires air, water and land resources to be protected and enhanced to the maximum extent possible.

Goal 10: Housing

7. Encouraging properties in the Waterfront zone to transition to mostly residential uses will provide more medium- to high-density housing choices, in particular attached and condominium-style housing, and needed housing units.

Goal 14: Urbanization

8. Redevelopment of areas in Central Albany is an efficient use of land and existing services that will provide needed housing opportunities.
9. The vision for the Waterfront district is to revitalize an aging industrial area to provide synergy and enhance livability of the City's core.

Goal 15: Willamette River Greenway.

10. Most of the properties within the Waterfront district are within the City's Willamette Greenway overlay district. The greenway overlay district is intended to guide development along the Willamette River in a manner that preserves, and when possible, enhances the existing scenic, use and natural features of the river.
11. Minimum setbacks from the river bank are established for buildings in order to maintain the natural vegetative fringe along the river.

MISCELLANEOUS AMENDMENTS

The following Comprehensive Plan goal written in *italic* type is relevant to the miscellaneous Development Code amendments. It is followed by findings and conclusions.

- *Ensure the City's land use planning process and its policy framework is workable and understandable for local officials, staff and the public. Ensure the degree of application and review is commensurate with the size and complexity of various development requests.*

FINDINGS – COMPREHENSIVE PLAN

1. The proposed new transportation review criteria for zoning map amendments and site plan review will ensure the City's land use planning process stays current and addresses all appropriate areas of review.
2. The proposal of no longer allowing duplexes as "infill only" will resolve a confusing section of the Code.
3. Adding additional tree felling exceptions for Christmas trees and trees under a Forest Management Plan will clarify a grey area in the Code.

CONCLUSION – COMPREHENSIVE PLAN

1. The proposed Development Code amendments will provide necessary updates that will improve the City's land use planning process and make the Code more usable and understandable to all who use it.

FINDINGS – STATEWIDE PLANNING GOALS

Goal 4: Forest Lands. To conserve forest lands by maintaining the forest land base and to protect the state's forest economy by making possible economically efficient forest practices that assure the continuous growing and harvesting of forest tree species as the leading use on forest land consistent with sound management of soil, air, water, and fish and wildlife resources and to provide for recreational opportunities and agriculture.

1. The proposal to create an exception from the site plan review process for cutting of trees on property under a Forest Stewardship Plan supports Statewide Planning Goal 4 by allowing the trees to be harvested as planned.

Goal 12: Transportation. To provide and encourage a safe, convenient and economic transportation system.

2. The proposed new transportation review criteria for zoning map amendments and site plan review will encourage a more safe and convenient transportation system than currently.

CONCLUSIONS – STATEWIDE PLANNING GOALS

1. The proposed miscellaneous Development Code amendments meet applicable Statewide Planning Goals.

(2) The proposed amendments are consistent with Development Code policies on purpose and with the purpose statement for the base zone, special purpose district, or development regulation where the amendment is proposed.

FINDINGS

The following purposes written in *italics* are relevant to the proposed Development Code amendments and are followed by findings:

Serve as the principal vehicle for implementation of the City's Comprehensive Plan in a manner that protects the health, safety, and welfare of the citizens of Albany.

1. The proposed amendments will help implement the Comprehensive Plan goals and policies as noted under Criterion 1.
2. The proposed amendments in the Waterfront zoning district are consistent with the purpose statement and intent of the district, the Comprehensive Plan, and the Central Albany Revitalization Area Plan.

Establish procedures and standards requiring that the design of site improvements and building improvements are consistent with applicable standards and flexible design guidelines.

3. The proposed transportation-related review criterion for site plan review and zoning map amendments will result in the design of site improvements that are consistent with applicable City standards, plans and studies.

Facilitate prompt review of development proposals and the application of clear and specific standards.

4. The proposed amendments will clarify several ambiguous sections of the Code and allow for more efficient processing, and consistent application and decision making.

Satisfy relevant requirements of federal law, state law, statewide goals, and administrative rules.

5. The proposed amendments help satisfy the requirements of Statewide Planning Goal 10, Housing, and Goal 14, Growth Management, by encouraging quality and diverse residential development that is compatible with the surrounding environment.

Protect and enhance the city's aesthetic beauty and character.

6. The proposed amendments in the Waterfront zoning district will encourage the transition of property along the Willamette River from vacant industrial properties to attractive residential and light commercial uses. The proposed amendments will enhance the City's character; support downtown's redevelopment and beautify properties along the riverfront.

CONCLUSION

1. The proposed Development Code text amendments are consistent with Comprehensive Plan policies, the purpose statements of the Development Code, and with the Waterfront zoning district purpose statement. This criterion is satisfied.

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Community Development Department

333 Broadalbin Street SW, PO Box 490, Albany OR 97321 Phone: (541) 917-7550 Facsimile: (541) 917-7598

STAFF REPORT Development Code Amendments

HEARING BODY	CITY COUNCIL
HEARING DATE	January 11, 2006
HEARING TIME	7:15 p.m.
HEARING LOCATION	Council Chambers; Albany City Hall; 333 Broadalbin Street SW

GENERAL INFORMATION

DATE OF THIS REPORT: January 4, 2006, for January 11 City Council Public Hearing

FILE: DC-02-05

TYPE OF REQUEST: Amendments to the Albany Development Code relative to annexation, waterfront zoning district, site plan and zone change review criteria, tree removal, and duplexes.

REVIEW BODY: City Council

APPLICANT: City of Albany, Community Development Department, Planning Division

APPLICANT REP: Helen Burns Sharp, Community Development Director

NOTICE INFORMATION

A Notice of Public Hearing was published in the *Albany Democrat-Herald* on December 5, 2005. A "Measure 56" notice of the public hearing was mailed to approximately 1,300 property owners on December 9, 2005.

PLANNING COMMISSION RECOMMENDATION

The Planning Commission held a public hearing on December 12, 2005, to discuss the proposed changes to the Albany Development Code. After making modifications, they recommended the attached amendments (Exhibits A, B, and C) to the City Council for adoption.

NOTICE OF DECISION

Within five days of final action on this proposal, the Community Development Director will provide written notice of the decision to any parties entitled to notice.

APPEALS

The Decision of the City Council may be appealed to the State Department of Land Conservation and Development as prescribed in state law.

STAFF ANALYSIS

Development Code Amendments File DC-02-05

INTRODUCTION

From time to time it is necessary to make adjustments to the Development Code to stay current with new ideas, community values, or state law. Some of the proposed amendments relate to clarifying existing process or Code language. Other changes relate to meeting housing needs. The City of Albany is currently in a state-mandated land use process called Periodic Review. The City is currently working on amendments related to Statewide Planning Goal 10, Housing. We have completed several tasks under our Periodic Review work program including: Statewide Planning Goal 9, Economy; the North Albany Refinement Plan; the East I-5 area plan; and the Balanced Development and Great Neighborhoods projects.

OVERVIEW OF PROPOSED DEVELOPMENT CODE CHANGES

Article 2: Annexation Standards: Codify annexation procedures into the Development Code (**Exhibit A**).

The City's annexation standards are currently housed in two ordinances that have not been codified into either the Municipal Code or the Development Code. The proposed Annexation section combines this language and places it in the Development Code. Procedures have been added to address the land use aspects of annexation. A new provision would allow property owners within a proposed "island" territory to vote on the annexation.

Article 5: Waterfront District Use Standards: Prohibit new industrial uses in this area while protecting existing businesses (**Exhibit B**).

In 1996, the Central Albany Land Use and Transportation Study (CALUTS) plan created a mixed-use zoning district along the Willamette River called MUI, Mixed Use Industrial. At that time, there were several industrial uses remaining along the waterfront and industrial uses were allowed in the zone. However, the CALUTS Town Center Plan and the MUI zone purpose statement envisioned this area to transition to residential and mixed uses over time. In 2003, the MUI zone was renamed Waterfront (WF). Since that time, several major industries have either moved or gone out of business. Today, the area is attracting the attention of developers interested in residential, office, and limited retail uses, in keeping with the CALUTS and CARA vision. The proposed changes to the Development Code would prohibit new industrial uses, while protecting existing businesses.

Miscellaneous Amendments: (**Exhibit C**).

- **Article 2, Zoning Map Amendment Review Criterion:** The proposal is to create a new review criterion that would require other land use and transportation-related plans and studies sponsored by the City to be followed unless the applicant demonstrates good cause for the departure from the plan or study.
- **Article 2, Site Plan Review Criterion:** A separate review criterion for transportation would be created to address the adequacy of the transportation system in supporting a proposed new use.
- **Article 2, Development Code Amendments:** This proposed change would allow the Community Development Director to make very minor administrative corrections to the Development Code.
- **Article 3, Duplexes on Non-Corner Infill Lots:** The proposal is to no longer allow duplexes on infill lots in the RS-6.5, RS-5 and RS-10 districts. They would be restricted to corner lots of a certain size.
- **Article 9, Tree Felling:** The proposal is to create an exception from the site plan review process for cutting of trees planted as Christmas trees and cutting of trees on property under a Forest Stewardship Plan.

ANNEXATION BACKGROUND

Legal Context for the Proposed Amendments

The purpose of the proposed annexation-related amendments is to codify our annexation procedures into the Development Code and to ensure Albany's annexation procedures comply with outcomes of recent court decisions. Here is a summary of relevant statutory and case law on annexation:

1. Annexation proceedings result in a land use decision. In *Cape v. City of Beaverton* [43 Or LUBA 301 (2002), *aff'm* Or App A119986 (2003)], LUBA rejected Beaverton's motion to dismiss for lack of jurisdiction in which Beaverton asserted that annexation is not a land use decision. In affirming LUBA's decision in *Cape*, the Oregon Court of Appeals quoted from LUBA's "well reasoned opinion":

"Either (1) the city's comprehensive plan or land use regulations have criteria that govern the annexation, in which case the annexation decision is a land use decision under ORS 197.015(10)(a)(A)(ii) or (iii), or (2) the comprehensive plan and land use regulations do not have criteria that govern annexation decisions, in which case under ORS 197.175(1) and OAR 660-001-0310 the statewide planning goals continue to apply directly and make the annexation decision a land use decision under ORS 197.015(10)(a)(A)(i). In either case, the city's annexation decision is a land use decision."

2. Annexation proceedings also result in a non-land use decision. If the question in the land use decision is, "Can the City annex the territory?" the question in the non-land use decision is, "Should the City annex the territory?"

In *Cape*, LUBA expounded that annexation is a two-step process that could be decided separately or in a consolidated manner. Citing *Johnson v. La Grande* [39 Or LUBA 377 (2001)], LUBA explained:

"We continue to see no reason why a city could not pursue a bifurcated decision making process and perform its obligation to address statewide planning goals or comprehensive plan or land use regulation annexation criteria in one decision and perform its obligation to address other statutory annexation criteria and other relevant non-land use requirement in a separate decision."

In footnote 5 of LUBA's opinion in *Cape*, LUBA expands this line of thinking:

"Actually, there are at least four analytically distinct decisions, some of which could be combined, that a city may adopt in annexing land. First, as we have already explained, any decision to annex property must be consistent with the statewide planning goals or with comprehensive plan or land use regulations that the city may have adopted to govern annexation decisions. This requirement necessitated a land use decision. A second separate decision could be adopted to address ORS Chapter 222 or any other non-land use annexation criteria. Absent some specific legal requirement to the contrary these two decisions could be adopted as a single land use decision. A separate election decision, where necessary, is potentially a third decision. As previously noted, the decision of the electorate in an annexation election is not a land use decision. Finally, the city will need to replace the county comprehensive plan and zoning designations that apply to the property. We see no reason why this decision could not be included in the land use decision that addresses annexation land use criteria, but it need not be included in that decision. Where the city does not adopt city comprehensive plan and zoning designations to replace county designations as part of the annexation process, the county designations will continue to apply to the annexed property until the city adopts a post-annexation decision to change those designations. ORS 215.130(2)(a)."

3. The 120-day clock applies to the application of initial city zoning but not to the annexation process. The 120-day statute [ORS 227.178(1)] requires a city to take "final action on an application for a permit, limited land use decision or zone change, including resolution of all appeals under ORS 227.180, within 120 days after the application is deemed complete."

The land use and non-land use components of the annexation decision are not “limited land use decisions” as defined in ORS 197.015(12), nor are they “permits” according to ORS 227.160(2).

4. There are few guidelines for establishing annexation land use criteria. Oregon statutes and administrative rules do not prescribe any criteria for annexation land use decisions. Opponents to annexation have attempted to identify statutes, rules, and other reasons that should be used as land use criteria with mixed results. The following decisions provided the clearest guidance:
 - a. Annexation decisions are governed by comprehensive plan annexation criteria or, if no such comprehensive plan criteria have been adopted, by the statewide planning goals. Where a city annexation decision is adopted without applying its comprehensive plan or the statewide planning goals, the decision must be remanded [*Morsman v. City of Madras*, 45 Or LUBA 16 (2003)].
 - b. A decision to annex adjacent industrially planned, zoned and developed land that includes the city’s airport and sewerage treatment plant is not unreasonable under *Portland Gen. Elec. Co. v. Estacada*, 194 Or 145, 241 P2d 1129 (1952); *Morsman v. City of Madras*, 45 Or LUBA 16 (2003).
 - c. A determination of whether an annexation is reasonable requires a case-by-case analysis of several factors, including whether the contiguous territory represents the actual growth of the city beyond its city limits, whether it is valuable by reason of its adaptability for prospective town uses, whether it is needed for the extension of streets or to supply residences or business for city residents, and whether the territory and city will mutually benefit from the annexation. The reasonableness test for approval of an annexation has a low threshold and is satisfied by a showing that the territory is suitable for annexation and represents the city’s current and future direction for commercial growth [*Northwest Aggregates Co. v. Scappoose*, 34 Or LUBA 498 (1998)].
5. There is a logical sequence in decision-making during the land use process. In *Cape v. Beaverton*, LUBA explained that the order of the proceeding is relevant:

“Where an annexation requires an election, the election is logically the last event and no question about whether the land use decision must precede the election is likely to be presented. However, where no election is contemplated, and a bifurcated decision making process is employed, the timing of the land use decision and the non-land use decision could become an issue. In view of our conclusion above that relevant statutory and LCDC administrative rules make a final annexation decision subject to the statewide planning goals, or local land use criteria that were adopted in place of the statewide planning goals to govern annexations, the land use decision that addresses relevant land use criteria must be adopted and become final prior to or at the same time that any separate decision that addresses ORS chapter 222 and any other relevant non-land use standards is adopted and the annexation becomes final. Otherwise the annexation could become an accomplished fact before the city establishes that the decision to annex is consistent with the relevant land use criteria that govern the decision to annex.”
6. The act of applying the initial city zoning following annexation is an amendment of a land use regulation. The City of Lebanon applied the “initial zoning” reasoning in *Just v. Lebanon* [2003-106, (2005)], but LUBA rejected it citing *Adams v. Medford* [39 Or LUBA 464, 475 (2001)]. (The rationale in *Adams* is that the city’s zoning map is amended when the initial zoning is applied to the annexation territory.) Without discussion of the merits of Lebanon’s arguments, LUBA rejected their position stating, “the challenged decision does amend the city’s zoning map, which is a land use regulation.” An amendment to the zoning map is an amendment of a land use regulation under ORS 197.015(11). LUBA stated, “No serious argument can be made that a decision that amends the city zoning map is not a decision that amends a land use regulation. The city erred in concluding that the challenged decision does not amend a land use regulation.”
7. If the zone change does not occur concurrently with the proclamation of annexation, county zoning continues to apply. The City of Albany will continue to rely on county zoning under the authority of ORS 215.130(2) until the City adopts initial city zoning for the annexation territory.

Albany Annexation Procedural History

Pursuant to ORS 222 and Section 54 of the Albany Charter, the City Council may establish provisions that govern the annexation of territory.

Local provisions for annexation appeared as early as the 1960 Zoning Ordinance adopted as Ordinance 2916. These provisions were updated in the first Development Code adopted in 1981 as Ordinance 4441. Annexation provisions were removed from the Development Code with the adoption of Ordinance 4975 on October 9, 1991.

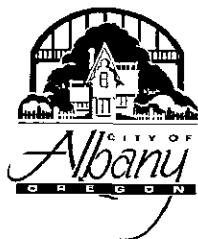
On March 10, 1998, Section 54 of the Albany Charter was amended by vote of the electors to require voter approval of annexations. In response to the passage of this local initiative, the City Council redefined their role in the annexation process through the adoption of Ordinance 5366, describing a process and establishing review criteria that would govern subsequent annexations. These provisions were amended by Ordinance 5447 in 2000. These ordinances were not codified into the Municipal Code or Development Code.

As a result of the case law expressed earlier in this document, the City Council decided to re-adopt significant portions of Ordinance 5366, as amended, into the Development Code. The City Council has determined that the review criteria, as modified from Ordinance 5366, as amended, provide an appropriate basis for determining whether territory is suitable for annexation to the City of Albany.

FINDINGS AND CONCLUSIONS

Findings and conclusions to support the proposed amendments are located in Ordinance Exhibit D.

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TO: Albany City Council
VIA: Wes Hare, City Manager
FROM: Helen Burns Sharp, Community Development **HBS**
DATE: January 11, 2006, for the January 11 City Council Meeting
SUBJECT: Proposed Development Code Amendments in the Waterfront District

[Note: This memo is an adaptation of one I presented at the Chamber's Governmental Affairs Committee last Thursday. Staff's revised recommendation grew out of that discussion.]

At the time the City created the Waterfront zone, several industries (e.g., Inland Quick Freeze, Tec-Labs) had plants along the Willamette River. These industries have either moved or gone out of business. Today, Albany's waterfront area is attracting the attention of developers interested in residential, office and limited retail uses consistent with the vision for this area. The vision has evolved from several plans with these common themes:

- Private sector investment
- Transition from industrial to residential
- New forms of housing
- Mixture of uses (housing, office, retail)
- Great neighborhoods
- Pedestrian friendly
- Enhanced community image

The proposed amendments to the Waterfront zone would:

- Revise the purpose statement to reflect the transition of the Willamette River waterfront from an industrial area to a vibrant place characterized by a variety of housing choices and a mixture of housing, office and retail uses;
- Prohibit new industrial uses and certain commercial uses; and
- Protect the existing businesses that are there today by granting them "special status" so that the uses would not become non-conforming.

Special Status

We are paying particular attention to existing businesses in the Waterfront district while this area transitions by granting them "special status." This designation means that all industrial or commercial uses legally in operation before January 11, 2006 (or whenever the ordinance is adopted) will be considered legal conforming uses.

Q. Can I change the use of my property to another industrial or commercial use?

- A. Yes, the use may change to another industrial or commercial use so long as the new use does not create greater off-site impacts than the current use.

Q. Can I expand my existing industrial/commercial business?

- A. Expansions would be evaluated based on additional off-site impacts. An expansion would likely be approved if it did not create greater off-site impacts than the current use and parking and other standards can be met.

Q. If I sell my property, will it still have special status?

A. The special status is with the land/building. It would transfer to a new owner.

Q. Can my property lose the special status?

A. Once a special status property is converted to a permitted use in the Waterfront zone, the special status is rescinded and the use of the property must then conform to the Code standards.

What Uses Would Be Allowed In The Waterfront Zone If These Amendments Are Adopted?

The following is a list of things that you could do. (If the property has special status, then previously legal industrial and other commercial uses are also allowed):

- Most types of residential uses, including condominiums, apartments, and attached single-family housing;
- Restaurants;
- Offices;
- Some Retail Sales and Service uses - including specialty retail stores and studios and uses that are convenience and personal service-oriented; and
- Some Indoor Entertainment and Recreation uses, such as membership gyms.

Why Are Some Uses Proposed to be Conditional Uses (rather than allowed with Site Plan Review)?

The draft language in your packet calls for several uses to change from Site Plan Review (S) to Conditional Use (CU). We were proposing this change because many of the properties in the Waterfront Zoning District are also in the Willamette Greenway overlay district. Statewide Planning Goal 15 (Willamette River Greenway) requires local government to provide the opportunity for at least one public hearing. The proposed change to CU from S in the use matrix was intended to address this issue. (Conditional uses go the Planning Commission for a public hearing.)

At the Planning Commission public hearing, we heard testimony that the CU process could be viewed as intimidating for potential applicants. As you know, in a conditional use situation, the review body can say "no" to the use itself, although this rarely happens. In the case of the Waterfront District, we've got a good handle on the uses we want. Our objective in the review process should be to focus on appropriate conditions of approval.

So, as an alternative, staff proposes that you consider keeping office, restaurant, and daycare uses as site plan review, giving applicants the certainty that the use is allowed. On the sheet attached to this memo is an alternative version of the Schedule of Permitted Uses.

If you restore the status quo for these uses and a property falls within the Greenway District, the applicant would submit a separate application that would just deal with the Greenway criteria. We would continue to provide the opportunity for a public hearing relative to the Greenway criteria only.

