

ORDINANCE NO. 4835

TITLE: AN ORDINANCE AMENDING THE ALBANY MUNICIPAL CODE, SECTION 20.04.010, KNOWN AS "THE CITY OF ALBANY DEVELOPMENT CODE," SPECIFICALLY AMENDING ARTICLES 11.010-11.080, 11.210-11.230 AND ADDING THE DEFINITION OF "WETLANDS" TO ARTICLE 22 (EXHIBIT A).

THE CITY COUNCIL HEREBY FINDS THE FOLLOWING:

1. The City of Albany Development Code was first enacted in September of 1981, amended in October of 1982, and acknowledged with the City's Comprehensive Plan by the State Land Conservation and Development Commission in November, 1982.

2. The text of Article 11 of the Code has not been reviewed for compliance with state goals, the Oregon Revised Statutes, administrative rules, Federal Emergency Management Agency (FEMA) regulations, and the City's Comprehensive Plan since 1982.

3. The City's Comprehensive Plan and state law require periodic major updates of the Comprehensive Plan and implementing regulations.

4. The planning staff, Planning Commission, City Council, and interested citizens have met in a variety of work sessions and public hearings to review proposed changes to Articles 11 and 22 of the Development Code resulting in the attached changes.

5. The proposed changes have been specifically reviewed for compliance with state goals, the Oregon Revised Statutes, administrative rules, Federal Emergency Management Agency (FEMA) regulations, and the City's Comprehensive Plan and have hereby been found to be in full compliance with all of the foregoing.

6. In addition to these findings, Section 1.020 of the Development Code sets forth the purpose and legislative intent of all ordinance provisions, including these amendments which are intended to further satisfy these purpose and intent statements.

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

Section 1: That Albany Municipal Code, Section 20.04.010, known as "The City of Albany Development Code," specifically amending Articles 11.010-11.080, 11.210 - 11.230 and adding the definition of "wetlands" to Article 22 (Exhibit A). Articles 11 and 22 are hereby amended such that the Albany City Council does hereby adopt the attached amendments (Exhibit A) to the City of Albany Development Code.

1
October 3, 1988

/

Section 2: That the above enumerated Exhibit and the document known as the "Albany Development Code" be forwarded to the Land Conservation and Development Commission for periodic review.

Passed by the Council: October 26, 1988

Approved by the Mayor: October 27, 1988

Effective Date of this Ordinance: November 25, 1988

Tom Holman
Mayor

ATTEST:

[Signature]
City Recorder

EXHIBIT A

PROPOSED FLOODPLAIN DISTRICT AND WETLAND REGULATIONS

(Changes that reflect the Planning Commission Recommendations are on Page 3 of this document. Wetland Regulations are on Page 4. Changes proposed by the City Council on September 20, 1988, are on pages 1 and 2, and 4 and 5.

FLOODPLAIN DISTRICT REGULATIONS

- 11.010 General Provisions. The floodplain district regulations apply at a minimum to those City floodplains, floodways, and base flood elevations defined by the Federal Insurance Administration (FIA) in the Flood Insurance Study for Albany (April 3, 1987), for Benton County (August 5, 1986), and the preliminary study for Linn County (July 18, 1985). In addition, the City Council may adopt by resolution more current studies or boundary information approved by the Federal Emergency Management Agency (FEMA).

Precise floodplain district boundaries may be difficult to determine from the maps referred to above due to their large scale and lack of site specific studies. In such instances, the Director may apply FIA base flood elevations to topographic maps or site surveys in order to determine actual boundaries. In the absence of FIA base flood elevations, the Director may utilize other sources of floodplain and floodway data to determine base flood elevations and boundaries. However; when elevation data is not available through FIA or another authoritative source and the development consists of 4 or more lots, 4 or more structures, or 4 or more acres; the applicant shall generate and have certified by a registered engineer the base flood elevation. Any decision of the Director regarding a determination of a base flood elevation or interpretation of a district boundary may be appealed in accordance with Article 4.140 of this Code.

All developments proposed within the floodplain district shall be subject to the provisions of Site Plan Review and floodplain district regulations. "Development," as defined in Article 22, includes cuts and fill, residential and non-residential construction, manufactured housing, land divisions, and other forms of development.

- 11.015 State and Federal Approval - The City shall review all development permits within the floodplain to insure that applications for any required state or federal permits have been submitted obtained. Possible required state or federal permits include but are not limited to a wetland permit issued by the State Division of State Lands; a Greenway conditional use permit; or a discharge permit from the Department of Environmental Quality.

State and Federal Approval City approval of all development permits within the floodplain shall be conditioned upon receipt of any required state or federal permits. Required state and federal permits include but are not limited to:

- 1) Removal and fill permits and associated wetland development regulations administered by the Oregon Division of State Lands.
- 2) Permits administered by the Army Corps of Engineers.
- 3) Greenway Conditional Use Permits issued by the Rivers Program Division of the Oregon Department of Transportation, and;
- 4) All discharge permits covered by Environmental Protection Agency and Oregon Department of Environmental Quality regulations.

11.020 Floodway Restrictions No development shall be allowed in any floodway except where the Approval Authority finds that the development will not result in any increase in flood levels during the occurrence of a base flood. discharge-as- Such finding shall be based upon evidence certified by a registered professional engineer and documentation that one of the following three criteria have been met:

- (1) The development does not involve the construction of permanent or habitable structures.
- (2) The development is a public or private park or is a recreational use.
- (3) The development is a water-dependent structure such as a dock, pier, bridge, or floating marina.

If a floodway boundary is not designated on an adopted City or FEMA map available to the City, the floodway boundary can be estimated from available data. Proposed development along such estimated floodway boundary shall not result in an increase of the base flood level greater than one foot as certified by a registered professional engineer.

11.030 Alteration of a Watercourse Any alterations of a watercourse shall comply with site plan review criteria and be designed, constructed, and maintained to retain or improve the flood carrying capacity of the watercourse including, where possible, the containment of base year flood waters on open space lands. The Director shall notify any adjacent jurisdiction or state agency which may be affected by an alteration to a watercourse.

11.040 Information Requirements In addition to the information required for site plan approval or for the particular type of development proposal (such as a subdivision, Conditional Use, etc.), any development proposed in the floodplain district shall include the following information:

- (1) Elevations of the original contours.
- (2) Final elevations of proposed fills and excavations.
- (3) Base flood elevations of the site.
- (4) Location of any designated floodway and base flood boundary.
- (5) Location of any designated wetlands and/or wildlife habitat.
- (6) Proposed elevation in relation to mean sea level of the lowest floor (including basement) of all structures.

- (7) Description of the extent to which a watercourse will be altered or relocated as a result of proposed development.
- (8) If floodproofing is required, the proposed description and elevation of floodproofing.

11.050 Floodplain Review In addition to the Site Plan review criteria of 13.040, development within the floodplain district shall be approved only upon determining that the following criteria have been satisfied:

General Approval

- (1) Demonstration can be made that the proposed development of floodplain lands is needed to provide buildable lands for the proposed use which cannot be satisfied with a lesser amount of floodplain encroachment.
- (2) The proposed site or building will not, during potential future flooding, be so inundated by water as to result in injury to residents or serious damage to property or utilities.
- (3) Any development will not change the flow of surface water during future flooding so as to endanger residents or property in the area. (Special engineering reports on the changes in water flow and potential damage which may be caused as a result of proposed activities may be required by the City).
- (4) It shall be demonstrated that fill is necessary to allow an approved development activity to occur and that the amount of fill proposed is the minimum necessary to raise roadways to a level of at least one foot below the base year flood and to raise floor levels of habitable structures to at least one foot above the base year flood.

Design Standards

- (4) ~~The lowest floor level, including basement, of any structure, or the average height of any parking lots or any 30-foot linear section of roadway (excluding bridges and culverts) shall average no more than 3 feet above the original ground elevation.~~
- (5) The lowest floor, including basement, of any proposed structure (including manufactured homes and non-residential structures) shall be placed at least one (1) foot above the base year flood as determined by the latest Federal Insurance Study.
- (6) Any public or private street providing access to a residential development shall have a roadway crown elevation not more than one foot below the base flood elevation.

Note: Exceptions to (4), (5), and (6) above can be considered as part of a Type III Variance as long as applicable FEMA standards for elevation and floodproofing have been met or exceeded and the request is for roadways, Planned Unit Developments, additions to existing structures, agriculture dwellings, or other non-habitable structures, or non-habitable

- (1) Land which has been approved for development features (structures, roads, required yard areas, etc.) under the provisions of Section 11.050 or 11.220.
- (2) In Planned Developments land in a flood fringe or wetland area shall be calculated at 50% of the allowed density provided that the additional units can be incorporated harmoniously into the Planned Development and without adverse impacts on adjoining projects and provided further that the floodplain lands and wetlands can be effectively utilized within the Planned Development or dedicated for public use under the provisions of 6.040.

DEFINITIONS (Article 22)

Wetland: Areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

portions of new structures such as garages or other accessory buildings.

- (7) Any lot created for development purposes must have adequate area created outside of the Floodplain District to maintain a buildable site area meeting the minimum requirements of this Code.
- (8) Problems of ponding, poor drainage, high water table, soil instability, or exposure to other flood hazards have been identified and mitigation proposed. Evaluations and mitigating measures shall be based on a base year flood and wet season characteristics. Drainage improvements shall adequately remove ponding and runoff waters from and through the development site without adversely affecting other developed areas or potential development sites.
- (9) If adjacent to a designated floodway or wetlands, the development shall be designed to use the natural amenities of the floodway or wetlands (such amenities include open space, scenic views and vegetation) in accordance with an approved site plan.
- (10) Any possible impacts on fish and wildlife habitat have been considered and appropriate protection measures included in project design.

Construction Standards

- (11) All fill is engineered and compacted to City standards. Fill areas for structures shall have engineering certification that loading rates are adequate for the proposed structures.
- (12) 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.
- (13) All public utilities and facilities such as sewer, gas, electrical, and water systems shall be located and constructed to minimize damage from flooding.
- (14) ~~All new construction (including manufactured homes and substantial improvements) which is approved to be located lower than one foot above the base year flood elevation shall be: -- 1) anchored to prevent flotation, collapse, or lateral movement and shall be installed or constructed using materials, methods, and practices that minimize flood damage and 2) certified by a registered professional engineer or architect as meeting or exceeding FEMA floodproofing standards (general floodproofing standards listed in 11.060):~~

Approval may be granted for new construction, including substantial improvements and manufactured homes to locate lower than one foot above the base flood level provided a Type III Variance is obtained as per Section 11.050(6). Furthermore, these improvements shall be:

- 1) Anchored to prevent flotation, collapse, or lateral movement and shall be installed or constructed using

materials, methods, and practices, that minimize flood damage, and:

- 2) Certified by a registered professional engineer or architect as meeting or exceeding FEMA floodproofing standards as per Section 11.060.

Documentation

- (15) Property owners or developers shall file with the City a certificate signed approved by the local community permit official, a registered surveyor or professional engineer, architect or surveyor stating: 1) the actual elevation (in relation to mean sea level) of the lowest floor including basement) of all new or substantially improve structures, 2) the elevation of any floodproofing, and 3) whether or not the structure contains a basement.
- (16) If floodproofing is required, the property owners or developers shall file with the City certification by a registered professional engineer or architect that the floodproofing methods meet or exceed FEMA standards.

Note: The information required in (14) and (15) above shall be maintained by the Director and made available to the public.

- (17) All land divisions or Planned Unit Developments in the floodplain district shall show the location of the base year flood contour line followed by the date the flood elevation was established. Where elevation data is not available, either through the Flood Insurance Study or from another authoritative source, and the development is four or more acres or results in four or more lots or structures, the elevation shall be determined and certified by a registered engineer. In addition, a statement located on or attached to the recorded map or plat shall read as follows: "Development of property within the 100-year floodplain as most currently established by the Federal Emergency Management Agency or City of Albany may be restricted and subject to special regulations by the City."

11.060 Floodproofing Standards All floodproofing must be certified as required in 11.050 (14) and (15) above to at least meet the following standards:

- (1) Fully enclosed areas below the lowest floor and lower than 1 foot above the base flood level must meet or exceed the following minimum criteria:
- (a) A minimum of two openings, having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding, shall be provided.
 - (b) The bottom of all openings shall be no higher than one foot above grade.
 - (c) Openings may be equipped with screens, louvers, or other

coverings or devices, provided that they permit the automatic entry and exit of floodwaters.

(2) Non-habitable construction meeting the exceptions listed in 11.050 (5) and the certification requirements of 11.050 (14) & (15) can have the lowest floor and attendant utility and sanitary facilities located lower than one foot above the base flood elevation if the structure:

- (a) Is floodproofed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water.
- (b) Has structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.
- (c) The applicant is notified that flood insurance premiums will be based on rates that are one foot below the floodproofed level.

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 manmade 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 or any officer or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made thereunder.

11.080 Storage of Material and Equipment. No storage of material or equipment is allowed within floodway areas. Storage within floodplain areas shall be approved only upon determination that the following criteria have been satisfied:

- (1) Site Plan approval has been received.
- (2) There is no storage or processing of material that are, in time of flooding, buoyant, flammable, toxic, explosive or otherwise could be injurious to human, animal, or plant life.
- (3) The material or equipment is not subject to major damage by floods and is firmly anchored to prevent flotation or is readily removable from the area within the time available after flood warning.

WETLAND AREA REGULATIONS

11.210 General Provisions. The wetland area regulations apply to those areas meeting Division of State Lands criteria, are identified as wetlands on the Comprehensive Plan wetlands map exhibit, and are designated as Open Space and-as-wetlands in the Comprehensive Plan. Precise wetland boundaries may vary from that shown on the Comprehensive Plan Map exhibit if on-site inspection and other City approved documentation indicate more accurate boundaries. Those more precise boundaries can be identified, mapped, and used for review and development without a change in the Comprehensive Plan Wetlands Map exhibit. All developments proposed within ~~15-feet~~ of a designated wetland area shall be subject to the provisions of ~~Site-Plan~~ Conditional Use Permit Review and the wetland area regulations. If the development area is within the floodplain district, then the floodplain district regulations of 11.000 to 11.070 shall also apply.

11.220 Restrictions on Development Within Wetlands. No development shall result in the elimination of a wetland area, result in eventual elimination of wetland characteristics, or be located totally within a wetland area without acquiring permit approval from federal and state regulatory agencies and the City of Albany and, where necessary, first-amending the open space plan and zoning designation. Development may not infringe upon ~~or locate closer than 15-feet to~~; any designated wetland unless the Approval Authority finds the following criteria have been met:

- (1) The development cannot be located outside the wetland area, or the wetland is proposed to be reconfigured such that the proposed total area is at least equal in size and quality to the wetland area existing prior to the proposed development. If the wetland area has not been substantially relocated, it is not necessary to remove the open space designation for such a modification.
- (2) The encroachment within the wetlands is the minimum required to complete the development.
- (3) Any encroachment or change in drainage which would adversely impact favorable wetland characteristics in the short or long term have been mitigated.
- (4) Development review is coordinated with the Oregon Division of State Lands and any other applicable agencies and other required permits have been obtained.
- (5) The applicable floodway or floodplain requirements of 11.000-11.070 have been met.
- (6) The open space, vegetation, and wildlife protection policies of the Comprehensive Plan have been addressed.

11.230 Floodplain District and Wetlands Density Calculation. Residential lands located in a Floodplain District or Wetland area shall not be used in calculating total project density except as follows: