

AN ORDINANCE AMENDING ORDINANCE NO. 4441, WHICH ADOPTED THE CITY OF ALBANY DEVELOPMENT CODE BY AMENDING THE TEXT OF THE DEVELOPMENT CODE, REPEALING ORDINANCES 5007 AND 5158, AND AMENDING TITLE 18 OF THE ALBANY MUNICIPAL CODE BY ADDING NEW TEXT, ADOPTING FINDINGS, AND DECLARING AN EMERGENCY.

WHEREAS, it is the purpose of this ordinance to: 1) protect life and property from natural disasters and hazards, 2) minimize future drainage problems, and 3) ensure that development is reviewed expeditiously and thoroughly, commensurate with its size and complexity, by applying clear and objective standards; and

WHEREAS, existing Albany Municipal Code language found in Title 18, Building and Construction, and Title 20, Development Code, has been found to be ambiguous and insufficient to accomplish the purposes listed above; and

WHEREAS, the Planning Commission has held the public hearing required by local and state law; and

WHEREAS, the Planning Commission recommended approval of the proposed changes, based on evidence presented in the staff report and at the public hearing for Planning Division File No. DC-03-96; and

WHEREAS, the Albany City Council has caused notice to be given as required by law and has held a public hearing concerning the proposed amendments to Titles 18 and 20 of the Albany Municipal Code;

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

Section 1: Article 6 of the Albany Development Code (ADC) text is hereby amended as shown on the attached Exhibits A-D, and summarized as follows:

Subsection 1(a): Amend ADC 6.071 to delete "excavation and fill" from the definition of development for the purposes of Article 6, as shown on Exhibit A.

Subsection 1(b): Amend ADC 6.132 by deleting it, as shown on Exhibit B.

Subsection 1(c): Amend ADC 6.220 by deleting the first two sentences and deleting one word from the third sentence, as shown on Exhibit C.

Subsection 1(d): Amend ADC 2.250 by adding subsection (6) to the review criteria for Conditional Uses, as shown on Exhibit D.

Section 2: Article 8 of the Albany Development Code text is hereby amended as shown on the attached Exhibit E, and summarized as follows:

Subsection 2(a): Amend ADC 8.140 by deleting subsection (3) which requires site plan review of "excavation and fill" permits.

Section 3: Sections 18.04.015 - 18.04.045 of Title 18 of the Albany Municipal Code are hereby deleted, as shown on Exhibit F, by repealing Ordinances 5007 and 5158.

Section 4: Title 18 of the Albany Municipal Code is hereby amended to include new text pertaining to regulation of grading as Sections 18.04.015 - 18.04.070, as shown on Exhibit G.

Section 5: The findings of fact contained in the staff report and attached as Exhibit H are hereby adopted in support of this decision.

Section 6: A copy of this ordinance will be forwarded to the Department of Land Conservation and Development.

IT IS HEREBY adjudged and declared that this Ordinance is necessary for the immediate preservation of the public peace, health, and safety of the City of Albany, and an emergency is hereby declared to exist, and this Ordinance shall take effect and be in full force and effect when signed by the Mayor.

Passed by City Council: December 18, 1996

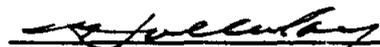
Approved by the Mayor: December 18, 1996

Effective Date: December 18, 1996



Mayor

ATTEST:



City Recorder

EXHIBIT A

(4) **Conical Area.** Slopes 20 feet outward for each foot upward beginning at the periphery of the horizontal zone and at 150 feet above the airport elevation and extending to a height of 350 feet above the airport elevation.

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

6.060 **Noise Construction Standards.** Within the designated airport noise contours indicated in Figure 6-2, the following regulations shall apply:

(1) In the 55 to 60 Day-Night Sound Level (ldn) area, a declaration of anticipated noise levels shall be attached to any land use application and recording of such declaration may be required for approval on each parcel within such area.

(2) Development of "noise sensitive property" (e.g. residentially zoned areas, group quarters used for sleeping, motels, hotels, schools, churches, hospitals, libraries) within the 55 to 60 ldn area and above shall be subject to the provisions of Site Plan Review outlined in Article 8 and may be required to include additional sound buffering features within the development as a condition of approval.

FLOODPLAIN

6.070 **Purpose.** It is the purpose of these regulations to promote the public health, safety and general welfare, and to minimize public and private losses due to flood conditions in specific areas.

6.071 **Development to Which These Regulations Apply.** "Development", as defined in Article 22, includes, but is not limited to, ~~excavation and fill~~, residential and non-residential construction, manufactured housing, and land divisions. **Excavation and fill (grading) is specifically excluded from the definition of development as used in this section. Grading is regulated by Albany Municipal Code Title 18.**

Comment: Excavation and fill will be regulated by Title 18 of the Albany Municipal Code.

6.080 **Lands to Which These Regulations Apply.** These regulations shall apply to all areas within the City of Albany that are subject to inundation from a 100-year flood. These areas are depicted on federal Flood Insurance Rate Maps (FIRMs) and Floodway Maps by the letter A, AE, or AO.

These areas have been identified by the Federal Emergency Management Agency (FEMA) in the Flood Insurance Study for Albany (March 16, 1989), for Benton County (August 5, 1986), and for Linn County (September 29, 1986). In addition, the City Council may adopt by resolution more current studies or boundary information approved by the Federal Emergency Management Agency (FEMA).

EXHIBIT B

and subdivisions in Article 10, application for such within the floodplain district shall include an evacuation plan indicating alternate vehicular access and escape routes.

~~6.132 **Fill Standards.** Application for fill permits in the floodplain district shall be reviewed by the Building Official using Uniform Building Code Appendix 70. In addition to those standards set forth in UBC Appendix 70, all fill in the floodplain district shall be subject to the following standards:~~

- ~~(1) No fill shall be permitted in the floodway, except that which is allowed in Section 6.100 **Floodway Restrictions**:~~
- ~~(2) Fill in the flood fringe shall not be subject to additional regulation beyond those applicable outside of the floodplain district unless such fill is specifically precluded by Title 18 (Building and Construction) and other sections of this code.~~

Comment: Fill in floodplain districts will no longer be regulated by UBC Appendix Chapter 70. Appendix Chapter 70 contains requirements that are not necessarily applicable to fill in the floodplain, and provisions that require work beyond what is necessary. Fill in floodplains, including floodways and flood fringes, will be regulated in Title 18 of the Municipal Code. The Municipal Code language includes that required by the Federal Emergency Management Agency (FEMA). ADC 6.100 will still apply to all other proposed development in floodways.

6.133 **Building Standards.** Applications for building permits in the floodplain district shall be reviewed by the Building Official pursuant to locally adopted state building codes. In addition to building code criteria, all development in the floodplain district shall be subject to the following building standards:

- (1) 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 100-year flood as determined by the latest Federal Insurance Study.
- (2) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
- (3) All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.
- (4) Electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities shall be designed and/or otherwise elevated or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
- (5) All manufactured homes shall be on an adequately anchored, permanent foundation and be anchored to prevent flotation, collapse or lateral movement, and shall be installed using methods and practices that minimize flood damage. Anchoring methods may include, but are not limited to, the use of over-the-top or frame ties to ground anchors (reference FEMA's "Manufactured Home Installation in Flood Hazard Areas" guidebook for additional details).
- (6) All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement and shall be installed or constructed using materials, methods, and

EXHIBIT C

- 6.210 **Density Standards.** Areas with average slopes of greater than 25% prior to grading shall not be subdivided or partitioned further. However, open space, greenways and recreational trails may be developed in these areas. For those lots of record which have an average slope of 25% or greater, the maximum residential development shall be one dwelling unit per lot of record. Density transfers are permitted in order to utilize the more buildable portions of a site. When density is transferred from areas in excess of 25% slope, density shall be allowed at a rate of two dwelling units per acre. In slope areas of 12-25%, the minimum lot size shall be 15,000 sq. ft.
- 6.220 **Grading, Cut and Fill Standards.** ~~When possible, grading shall be kept to a minimum in all hillside areas. Contour grading practices must be used whenever possible.~~ All cut and fill slopes generally must not exceed a two (horizontal) to one (vertical) ratio. Slopes which are steeper (i.e. 1:1-1/2 or 1:1) may be conditionally approved by the Public Works Director upon certification, by a qualified soils engineer or geologist, that the slope will remain stable under foreseeable conditions. The certification must delineate any specific stabilization measures deemed necessary by the soils engineer or geologist.
- Comment: The first two sentences of this section are too subjective to be useful in evaluating proposed grading, so they should be deleted. The rest of the paragraph will be included in Title 18 of the Municipal Code.*
- 6.230 **Drainage.** In all slope areas, impervious surface drainage from roofs, driveways, and parking areas must be directed to a City storm drain or other City-approved drainage system. Development ~~and grading~~ activities must not block the flow of stormwater in natural drainageways without prior approval from the Public Works Director.
- Comment: The deleted provision will be applied to grading in Title 18 of the Municipal Code.*
- 6.240 **Street and Driveway Standards.** Street grades shall generally be 12% or less. Grades on Arterial or Collector streets must be no more than 6% and 10% respectively (see Section 10.140). Street grades of up to 15% may be permitted for a distance of no more than 200 feet. No intersections are permitted where street grades exceed 12%. Where practical, streets must be contoured to hillside areas in order to minimize environmental and scenic disruption. Driveways must have a grade of 15% or less, unless the of Public Works Director approves a greater slope.
- 6.250 **Reports Required.** When one acre or more of the land to be developed exceeds 12% average slope, the Director may require reports to address possible hazards to life, property, and adverse impacts to the natural environment. These reports might relate to soils, geology, grading, and verification of slopes and grade percentages. These regulations do not apply to construction of a single family house.
- 6.260 **Modification of Standards.** If the Director determines that the applicant's plan adequately implements the policies of the Comprehensive Plan, the Director may modify the standards of this Code as they apply to the entire proposed development, within the following limitations:
- (1) Front, side and rear yards may be reduced to zero (when in conformance with the Building Safety Codes); provided, however, where attached dwellings are proposed there shall not be more than 5 dwelling units in any group.

CONDITIONAL USES

2.230 **Purpose.** Certain uses are conditional uses instead of being allowed outright, although they may have beneficial effects and serve important public interests. They are subject to the conditional use regulations because they may, but not necessarily do, have significant adverse effects on the environment, overburden public services, change the desired character of an area, or create major nuisances. A review of these proposed uses is necessary due to the potential individual or cumulative impacts they may have on the surrounding area or neighborhood. The conditional use process provides an opportunity to allow the use when there are minimal impacts, to allow the use but impose conditions to address identified concerns, or to deny the use if the concerns cannot be resolved.

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

2.240 **Procedure.** Conditional Use applications are reviewed as a Type II procedure.

2.250 **Review Criteria.** Requests for Conditional Uses will be approved if the review body finds that the applicant has shown that all of the following criteria have been met, either outright, or with conditions that bring the proposal into compliance:

- (1) The proposed use is consistent with the intended character of the base zone and the operating characteristics of the neighborhood.
- (2) The proposed use will be compatible with existing or anticipated uses in terms of size, building scale and style, intensity, setbacks, and landscaping or the proposal calls for mitigation of difference in appearance or scale through such means as setbacks, screening, landscaping or other design features.
- (3) The transportation system is capable of supporting the proposed use in addition to the existing uses in the area. Evaluation factors include street capacity and level of service, on-street parking impacts, access requirements, neighborhood impacts and pedestrian safety.
- (4) Public services for water, sanitary and storm sewer, water management and for fire and police protection are capable of servicing the proposed use.
- (5) The proposal will not have significant adverse impacts on the livability of nearby residentially zoned lands due to:
 - (a) Noise, glare, odor, litter, and hours of operation.
 - (b) Privacy and safety issues.
- (6) **Any special features of the site (such as topography, floodplains, wetlands, vegetation, historic sites) have been adequately considered and utilized.**

Comment: This criterion is needed so that we can evaluate the impact of proposed conditional uses on topographic features such as drainageways and floodplains, and condition development if necessary to protect these features. Land division and site plan review criteria already include this criterion.

EXHIBIT E

- (k) Natural drainage patterns (existing contour lines at two-foot intervals if required by Director.)
- (l) Existing and proposed drainage system, including pipe sizes and elevations at collection points and property lines.
- (m) Proposed cuts and fills of more than two feet and any changes in elevations proposed at property lines.
- n) Location and species of trees greater than 8 inches in diameter when measured three feet above the ground.
- (o) Location and dimensions of delivery and loading areas.
- (p) Location and dimensions of parking and circulation areas.
- (q) Location and dimensions of trash disposal areas.
- (r) Location of proposed signs.

8.130 **Appeals.** An Option A site plan review decision is a limited land use decision and appealable to the Land Use Board of Appeals.

OPTION B REVIEW

8.140 **Applicability.** This level of review is intended for expansion of existing structures or development which will have a minimal impact on the surrounding area. An Option B site plan review must be filed when the following developmental activities are proposed:

- (1) An addition (exceeding 500 square feet) to an existing structure.
- (2) Parking lot additions of over 1000 square feet.
- ~~(3) Excavation or fill permits involving more than 50 cubic yards of material or which is located within a floodplain or slope area.~~

Comment: The requirement that excavation and fill be reviewed using site plan review criteria is left over from before the Development Code was revised to require review under UBC Appendix Chapter 70 (1992). Site plan review criteria are not relevant to review of excavation and fill. This section should have been deleted in 1992, but it is only now that we discover it is still included in the code. It is appropriate that it be deleted now.

- ~~(3)~~ ~~(4)~~ A change in occupancy to a more intensive use in an existing building.
- (4) ~~(5)~~ Reduction in the number of parking spaces. Any development consistent in scope and impact with those listed here may also be reviewed under an Option B review, at the Director's discretion.

8.150 **Procedure.** A Type I-L limited land use procedure is followed for Option B site plan reviews, with the Director acting as review body.

8.160 **Application Contents.** The Director may require any of the information listed for Option A Site Plan Review in Section 8.120. In many cases, not all of this information will be required due to lack of applicability.

Chapter 18.04

BUILDING CODES

Sections:

- 18.04.010 Adoption of the Oregon Structural Specialty Code.
- 18.04.015 Adoption of Chapter 70 of the Uniform Building Code.
- 18.04.020 Excavation, grading – General provisions.
- 18.04.030 Excavation, grading – Permit procedure.
- 18.04.035 Excavation, grading – Definitions.
- 18.04.040 Excavation, grading – Drainageways.
- 18.04.045 Excavation, grading – Appeal procedure.
- 18.04.046 Excavation, grading – Fees.
- 18.04.050 Special permit fees.
- 18.04.060 Adoption of the Oregon Mechanical Specialty Code.
- 18.04.070 Adoption of the One and Two Family Dwelling Specialty Code.
- 18.04.080 Inspections.
- 18.04.090 Roof drains and gutters.
- 18.04.110 Unsafe buildings.
- 18.04.210 Demolition – Permit – Expiration.
- 18.04.220 Demolition – Permit – Suspension or revocation.
- 18.04.230 Demolition – Protection of public utilities.
- 18.04.240 Demolition – Protection for pedestrians.
- 18.04.250 Demolition – Protection of public sidewalks.
- 18.04.260 Demolition – Replacement and repair of streets and sidewalks.
- 18.04.270 Demolition – Notification of utilities.
- 18.04.280 Demolition – Basement or cellar walls.
- 18.04.290 Demolition – Fences.
- 18.04.300 Demolition – Cleanup.
- 18.04.310 Demolition – Sewer laterals.
- 18.04.320 Building Board of Appeals.
- 18.04.330 Unlawful acts.

18.04.010 Adoption of the Oregon Structural Specialty Code.

The Oregon Structural Specialty Code effective January 1, 1993, with its appendices and separate bound standards, except Table No. 3-A, Building Permit Fees, is adopted as part of this code of ordinances. The foregoing is referred to as the "Structural Code" and is composed of the 1991 Edition of the Uniform Building Code with appendices and standards published by the International Confer-

ence of Building Officials and modified by the Administrator of the Oregon Building Codes Agency. (Ord. 5026 § 1, 1993; Ord. 4758 § 1, 1987; Ord. 4661 § 1, 1984; Ord. 4374 § 1, 1980; Ord. 4207 § 1, 1978; Ord. 4106 § 1, 1978).

~~18.04.015 Adoption of Chapter 70 of the Uniform Building Code.~~

~~All standards, regulations, procedures and administrative policies set forth in the 1991 Edition of Appendix Chapter 70, and as amended hereafter are adopted as a part of this code of ordinances. (Ord. 5007 § 1, 1992).~~

~~18.04.020 Excavation, grading – General provisions.~~

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

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

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

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

~~(4) Warning and Disclaimer of Liability. The issuance of a permit by the City of Albany under this chapter constitutes a determination that the applicant has met the minimum requirements for the city's regulatory purposes. Issuance of a permit does not relieve the permit holder from any responsibilities of liabilities that grading, excavation or fill activities may create if third parties are damaged or injured by such actions. (Ord. 5007 § 2, 1992).~~

~~18.04.030 Excavation, grading – Permit procedure.~~

~~Application for an excavation and grading "fill" permit shall be made to the Building Official on forms furnished by him/her and will include but~~

18.04.035

~~not be limited to the requirement as set forth in Section 7006 of the Uniform Building Code as amended or hereafter amended. (Ord. 5007 § 3, 1992).~~

~~18.04.035 Excavation, grading—Definitions.~~

~~The following definition shall be added to Section 7005, as amended or hereafter amended, of the Uniform Building Code:~~

~~“Drainageway.” A natural or man-made path which has the specific function of transmitting natural stream water or storm runoff water from a point of higher elevation to a point of lower elevation.~~

~~(Ord. 5007 § 4, 1992).~~

~~18.04.040 Excavation, grading—
Drainageways.~~

~~The following standards shall also be adopted as part of the engineering standards:~~

~~(1) Grading operations will not be permitted in open drainageways, nor on land adjacent to a drainageway, without detailed engineering calculations submitted by the applicant to the Building Official upon which the Building Official finds that such an operation will not adversely affect the existing and ultimate developments or land adjacent to drainageway.~~

~~(2) Any grading operation which takes place in an open drainageway or on the land adjacent to the drainageway must be found by the Building Official to have some beneficial purpose and the amount thereof not greater than is necessary to achieve that purpose. (Ord. 5007 § 5, 1992).~~

~~18.04.045 Excavation, grading—Appeal procedure.~~

~~Appeals shall be as provided in Chapter 204 of the Uniform Building Code. (Ord. 5007 § 6, 1992).~~

~~18.04.046 Excavation, grading—Fees.~~

~~(1) In addition to the grading plan review fees required by Table No. 70 A of Uniform Building Code, Appendix Chapter 70, a minimum plan review fee, applicable to all excavation and grading permits, in the amount of \$_____ is hereby established.~~

~~(2) In addition to the grading permit fees required by Table No. 70 B of Uniform Building Code, Appendix Chapter 70, a minimum grading permit fee, applicable to all excavation and grading permits, in the amount of \$_____ is hereby established.~~

~~(3) In addition to the minimum fees called for in subsections (1) and (2) of this section, excavation and grading fees shall also include any cost incurred by the City and shall include overhead and any costs of outside consultants, inspectors or plan review required by the Building Official. When services by outside consultants, inspectors or plan reviewers are required by the Building Official, an approximate cost of those services shall be collected at either the time of application for the plan review or at the time of issuance of the permit for inspection services. If the fees initially collected are not sufficient to cover the cost incurred by the City, adjustments to the fees owed the City may be made at the time of permit issuance or prior to final approval of the permitted work. (Ord. 5158 §§ 1-3, 1994).~~

18.04.050 Special permit fees.

In addition to the fees specified in Section 303(a) and (b) of the Uniform Building Code, the following fees shall be paid for each permit listed:

(1) Moving of buildings or structures: [_____] each.

(2) Demolition of building or structure: [_____] each except that a fee shall not be required for small, detached accessory buildings of 600 square feet in area or less.

(3) Issuance of a certificate of occupancy at request of the owner: [_____] each. (Ord. 5026 § 1, 1993; Ord. 4106 § 3, 1978; Ord. 3825 § 2.11, 1974).

18.04.060 Adoption of the Oregon Mechanical Specialty Code.

The Oregon Mechanical Specialty Code effective January 1, 1993, with its appendices and separately bound standards, except Table No. 3-A, Mechanical Permit Fees, is adopted as part of this code of ordinances. The foregoing is referred to as the “Mechanical Code” and is composed of the 1991 Edition of the Uniform Mechanical Code with appendices and standards published by the International Conference of Building Officials and modified by the Administrator of the Oregon Building Codes Agency. (Ord. 4758 § 1, 1987; Ord. 4661 § 1, 1984; Ord. 4374 § 2, 1980; Ord. 4206 § 1, 1978).

18.04.070 Adoption of the One and Two Family Dwelling Specialty Code.

The Oregon One and Two Family Development Code effective April 1, 1990. The foregoing is referenced to as the “Dwelling Code” and is composed of the 1989 Edition of the CABO One and

18.04.015 Grading - When permits are required.

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

- (1) When any grading is proposed in floodplains. Floodplains are those areas subject to inundation from a 100-year flood, and identified on federal Flood Insurance Rate Maps (FIRMS) and Floodway Maps by the letter A, A1-A30, AE, or AO.
- (2) When any grading is proposed in any watercourse shown in the City of Albany Drainage Master Plan, in any watercourse receiving drainage from a public roadway, or in any watercourse lying within a public easement or right-of-way. A watercourse is any natural or artificial stream, river, creek, ditch, drainageway, channel, canal, conduit, culvert, drain, waterway, gully, ravine or wash in which water flows in a definite direction or course, either continuously or intermittently, and has a definite channel, bed and banks, and includes any area adjacent thereto subject to inundation by reason of overflow or flood water.
- (3) When placement of a structure is proposed in a watercourse shown in the City of Albany Drainage Master Plan, or within a public easement or right-of-way.
- (4) When grading involving more than 50 cubic yards is proposed in areas that have an average slope of 12 percent or greater.
- (5) When grading is proposed over an existing public storm drain, sanitary sewer, or waterline. This does not include grading authorized under a Public Works contract awarded by the City of Albany, grading approved as part of a Permit to Construct Public Facilities as provided in Chapter 15.06 of the Albany Municipal Code, or grading conducted by City of Albany maintenance forces.

18.04.020 Grading - General provisions.

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

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

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

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

(4) Warning and Disclaimer of Liability. The issuance of a permit by the City of Albany under this chapter constitutes a determination that the applicant has met the minimum requirements for the city's regulatory purposes. Issuance of a permit does not relieve the permit holder from any responsibilities or liabilities that grading, excavation or fill activities may create if third parties are damaged or injured by such actions.

18.04.030 Grading - Permit procedure.

Application for a grading permit shall be made to the Building Official. The Building Official shall provide the application forms.

18.04.035 Grading - Notification of Adjacent Property Owners

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

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

- (a) Provide a 14-day period for submission of written comments prior to the decision of the Building Official concerning whether the grading permit should be issued.
 - (b) State that issues which may provide the basis for an appeal shall be raised in writing prior to the expiration of the comment period. Issues shall be raised with sufficient detail that the Building Official will be able to respond to the issue.
 - (c) List the approval standards of AMC 18.04.040.
 - (d) Set forth the street address or other easily understood geographical reference to the subject property.
 - (e) State the place, date and time that comments are due.
 - (f) State that copies of all information submitted by the applicant is available for review, and that copies can be obtained at cost.
 - (g) Include the name and phone number of the City representative to contact for information about the permit application.
 - (h) Provide that any person who submits comments during the 14-day period referenced above shall receive a notice of the decision of the Building Official. The notice of decision will include an explanation of appeal procedures.
 - (i) Include such other information as the Building Official deems appropriate.
- (2) The Building Official's decision on a grading permit application may be appealed as set forth in AMC 18.04.055.

18.04.040 Grading - Approval standards.

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

- (1) Provisions have been made to maintain adequate flood carrying capacity of existing watercourses, including future maintenance of that capacity.
- (2) No grading will be permitted over an existing public storm drain, sanitary sewer, or water line unless it can be demonstrated to the satisfaction of the City Engineer that the proposed grading will not be detrimental to the anticipated service life, operation and maintenance of the existing utility.
- (3) In floodplain areas, where no floodway is shown on the applicable map, grading will not be permitted unless it is demonstrated by the applicant that the cumulative effect of the proposed grading, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.
- (4) No grading will be permitted in a floodway, except where the applicant has supplied evidence prepared by a professional engineer that demonstrates the proposal will not result in any increase in flood levels during the occurrence of the 100-year flood.
- (5) The applicant shall notify the City of Albany, any adjacent community, and the Natural Hazards Mitigation Office of the Oregon Department of Land Conservation and Development of any proposed grading activity that will result in alteration or relocation of a watercourse.
- (6) All drainage facilities shall be designed to carry waters to the nearest practicable watercourse approved by the Building Official as a safe place to deposit such waters. Erosion of ground in the area of discharge shall be prevented by installation of non-erosive downdrains or other devices.
- (7) Building pads shall have a drainage gradient of 2 percent toward approved drainage facilities, unless waived by the Building Official; except the gradient from the building pad may be 1 percent if all of the following conditions exist throughout the permit area:
 - (a) No proposed fills are greater than 10 feet in maximum depth.
 - (b) No proposed finished cut or fill slope faces have a vertical height in excess of 10 feet.
 - (c) No existing slope faces, which have a slope face steeper than 10 horizontal to 1 vertical, have a vertical height in excess of 10 feet.
- (8) In areas that have an average slope of 12 percent or greater, the following requirements also apply:

- (a) Cut and fill slopes shall not exceed a two (horizontal) to one (vertical) ratio. Slopes which are steeper (e.g., 1-1/2:1, or 1:1) may be approved by the Building Official, upon certification by a qualified soils engineer or geologist, that the slope will remain stable under foreseeable conditions. The certification must delineate any specific stabilization measures deemed necessary by the soils engineer or geologist.

18.04.045 Grading - Permits shall be tentative pending resolution of appeals

Grading permits, if approved, shall be "tentative" permits and shall not permit grading action until the permit has become "final." A grading permit shall become "final" when the time for appeal has passed with no appeal made, or in the event of an appeal, until the appeal has been resolved by the City.

18.04.050 Grading - Standing to appeal

Only those persons who own property adjacent to the premises on which grading is proposed and who have previously submitted comments in writing to the Building Official as provided in AMC 18.04.035(1) shall have standing to appeal the issuance of a grading permit.

18.04.055 Grading - Appeal procedure.

- (1) An appeal of the Building Official's decision on a grading permit application shall be to the City Council. No appeal shall be timely unless a notice of appeal is actually received at the office of the Building Official not later than 14 days after the notice of decision is mailed. The notice of appeal shall contain:
 - (a) An identification of the decision sought to be reviewed, including the date of the decision.
 - (b) A statement of the standing of the person seeking review and that he/she submitted written comments to the Building Official during the period allowed in AMC 18.04.035(1)(a).
 - (c) The specific approval standard on which the appeal is based.
 - (d) If a de novo review is requested, a statement summarizing the new evidence which will be offered and the approval standard to which it will relate.
- (2) The person who appeals the Building Official's decision has the burden of proof to show that the decision is in error.
- (3) The City Council will determine the scope of review on appeal to be one of the following:
 - (a) Restricted to the record.
 - (b) Limited to such issues as the Board determines necessary for a proper resolution of the matter.
 - (c) A de novo hearing.
- (4) The City Council may affirm, remand, reverse, or modify the Building Official's decision.
- (5) The decision of the City Council shall be final.

18.04.060 Grading - Fees

- (1) A minimum grading plan review fee, applicable to all grading permits, in the amount of \$___ is hereby established.
- (2) A minimum grading permit fee, applicable to all grading permits, in the amount of \$___ is hereby established.
- (3) In addition to the minimum fees called for in subsections (1) and (2) of this section, grading fees shall also include any cost incurred by the City and shall include overhead and any costs of outside consultants, inspectors or plan review by the Building Official. When services by outside consultants, inspectors or plan reviewers are required by the Building Official, an approximate cost of those services shall be collected at either the time of application for the plan review or at the time of issuance of the permit for inspection services. If the fees initially collected are not sufficient to cover the cost incurred by the City, adjustments to the fees owed the City may be made at the time of permit issuance or prior to final approval of the permitted work.
- (4) An appeal fee in the amount of \$___ is hereby established.

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

If the Building Official determines that any excavation, embankment, or fill on private property has become a hazard, he may order the hazard abated by the owner or responsible party. The owner of the property upon which the excavation or fill is located, or the responsible party, upon receipt of notice in writing, shall repair or eliminate such excavation or embankment so as to eliminate the hazard.

FINDINGS OF FACT

DC-03-96, DEVELOPMENT CODE AMENDMENTS

Albany Development Code (ADC) Section 2.290 lists the following review criteria for Development Code Amendments. Amendments will be approved if the Planning Commission and City Council find that all of these criteria are met. Review criteria are written in *bold italic*, followed by proposed findings and conclusions.

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

Findings of Fact

1.1 The following Comprehensive Plan goals and policies have been found to be relevant to the proposed amendments.

a. **Goal 7: Flood Hazards & Hillside.**

Goal: Protect life and property from natural disasters and hazards.

Policy 15: Within the city limits portion of the Urban Growth Boundary, maintain regulations pertaining to excavation and grading.

b. **Goal 11: Public Facilities and Services, Storm Drainage.**

Goal: Work toward elimination of existing drainage problems and minimize future drainage problems within the Albany Urban Growth Boundary area.

Policy 1: Protect existing drainage systems and easements, allowing modification to existing open drainageways upon approval and upon conformance with other Comprehensive Plan policies.

c. **Goal 14: Urbanization, Development Review.** Goal: Ensure that all new developments are reviewed expeditiously and thoroughly and result in compliance with Comprehensive Plan goals and policies and ordinance standards.

Policy 5: Ensure that the City's land use planning process and its policy framework is workable and understandable for local officials, staff, and the public. Ensure that the degree of application and review is commensurate with the size and complexity of various development requests.

1.2 The proposed amendments would delete Development Code Sections 6.132 and 6.220 pertaining to excavation and grading, and Section 6.230 pertaining to watercourses and drainageways. Similar, but more clear, language will be included in Title 18 of the Municipal Code.

1.3 The Development Code sections that will be deleted are found in the Floodplain and Hillside Development sections of the Code. Much of the language is subjective, that is, subject to varying interpretations depending on who reads it. For example, Section 6.220 requires certain grading practices "when possible."

In addition, language pertaining to drainageways found in Albany Municipal Code (AMC) Section 18.04.040 has also been found to be ambiguous by staff, and others. We propose to delete this language from the Municipal Code, and replace it with language that is more clear. The new language will be included in AMC Title 18.

- 1.4 The proposed amendments would also delete Development Code Section 8.140(3), which requires site plan review of “excavation or fill permits...”. This requirement is left over from before the Development Code was revised to require review under UBC Appendix Chapter 70 (in 1992).
- 1.5 Development other than grading in floodplain and hillside areas will continue to be regulated by all other existing requirements of Development Code Article 6.

Conclusions

- 1.1 The proposed Development Code amendments better achieve the goals and policies of the Comprehensive Plan than the existing regulatory language, because:
 - a. ADC Sections 6.132, 6.220, and 6.230, pertaining to excavation, fill, grading, watercourses, and drainageways, contain language that is ambiguous.
 - b. If this language is deleted, and grading is subject to the clear and objective standards proposed to be included in the Municipal Code, the process by which grading is regulated will be more workable and understandable.
 - c. ADC Section 8.140(3) requires site plan review of grading. Site plan review criteria are not relevant to review of grading. This section should have been deleted in 1992. It is appropriate that it be deleted now.
 - d. Development other than grading in floodplain and hillside areas will continue to be regulated by all other existing requirements of Development Code Article 6.
 - e. Excavation and grading will still be regulated in accordance with Goal 7 goals and policies, and existing drainage systems and easements will still be protected, in accordance with Goal 11 goals and policies.
 - f. This criterion is met.

2.290 (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 of Fact

- 2.1 Development Code policies on purpose that are relevant to the proposed amendments are:
 - a. ADC 1.020 (3): Facilitate prompt review of development proposals and the application of clear and specific standards.
 - b. ADC 1.020 (8): Require that permitted uses and development designs provide reasonable protection from fire, flood, landslide, erosion, or other natural hazards as well as prevent the spread of blight, and aid in the prevention of crime.

- 2.2 The sections of the Development Code that we propose to delete are found in Article 6, Floodplain and Hillside Development.
- 2.3 The purpose of the Floodplain section of Article 6 is to "promote the public health, safety and general welfare, and to minimize public and private losses due to flood conditions in specific areas." (ADC 6.070)
- 2.4 The purpose of the Hillside Development section of the Code is to "protect the terrain in areas where steep slopes exist." (ADC 6.170)
- 2.5 The proposed amendments will delete language from the Code that is subjective, that is, subject to varying interpretations depending on who reads it. For example, Section 6.220 requires certain grading practices "when possible." Similar, but more clear, language will be included in Title 18 of the Municipal Code.
- 2.6 Development Code Section 8.140(3) requires site plan review of "excavation or fill permits." This section is left over from before the Development Code was revised to require review under UBC Appendix Chapter 70.
- 2.7 Grading permit applications in floodplain areas will be reviewed using the clear and objective standards proposed to be included in Title 18 of the Municipal Code.

In addition, Albany Municipal Code Section 18.04.040 pertaining to drainageways will be deleted.
- 2.8 Grading permit applications in hillside areas will be reviewed using the clear and objective standards proposed to be included in Title 18 of the Municipal Code.
- 2.9 Development other than grading in floodplain and hillside areas will continue to be regulated by all other existing requirements of Development Code Article 6.

Conclusions

- 2.1 The proposed amendments are consistent with Development Code policies on purpose and with the purpose statement for the development regulation where the amendments are proposed, because:
 - a. Review of grading permits in floodplain areas using the standards proposed for inclusion in the Municipal Code will continue to promote the public health, safety and general welfare, and to minimize public and private losses due to flood conditions in specific areas.
 - b. Review of grading permits in hillside areas using the standards proposed for inclusion in the Municipal Code will continue protect the terrain in areas where steep slopes exist.
 - c. ADC Section 8.140(3) requires site plan review of grading. Site plan review criteria are not relevant to review of grading. This section should have been deleted in 1992. It is appropriate that it be deleted now.
 - d. Development other than grading in floodplain and hillside areas will continue to be regulated by all other existing requirements of Development Code Article 6.
 - e. This criterion is met.

respective property lines adjacent to the existing condominium building owned by Stockton, A.A.S., Bakondi, and Ulric, as shown on the site plan revised August 30, 1996.

2. **Submit a revised Landscape Plan to the Planning Division for review and approval prior to occupancy of the building [ADC 9.180 revised].**

Minimum Landscaping required for a 25-foot wide strip adjacent to Waverly Drive [ADC 9.140 revised]:

- a. **Twelve (12)** street trees a minimum of 6 feet in height at time of planting and spaced a maximum distance of 45 feet on center.
- b. **Fifty-one (51)** one-gallon shrubs.
- c. The remaining area treated with attractive ground cover (lawn, bark, rock, ivy, evergreen shrubs, etc.).

Minimum Buffering/Screening required in a 10-foot wide strip adjacent to each interior property lines excluding street frontage on south and east lines [ADC 9.210 revised]:

- a. **Forty-five (45)** deciduous trees not less than 10 feet high at time of planting and spaced not more than 30 feet apart or **ninety-one (91)** evergreen trees not less than 5 feet in height at time of planting and spaced not more than 15 feet apart. **Trees planted adjoining Cedarwood (south and east interior lines) shall be evergreen trees.**
- b. At least **sixty-eight (68)** five-gallon shrubs or **one hundred thirty-six (136)** one-gallon shrubs.
- c. The remaining area treated with attractive ground cover (lawn, bark, rock, ivy, evergreen shrubs, etc.).
- d. In addition: a minimum of a five-foot wooden fence shall be constructed which shall provide uniform sight-obscuring screen. Fences must be located behind the required front yard planting area and outside of any vision clearance area.

Minimum Landscaping for parking lot Planter Bays: **one (1)** tree at least 10 feet high and decorative ground cover containing at least **two (2)** shrubs for every 100 square feet of landscape area [ADC 9.150(1) revised].

3. All required landscaped areas must be provided with a piped underground water supply irrigation system unless a licensed landscape architect or certified nurseryman submits written verification that the proposed plant materials do not require irrigation. Irrigations systems installed in the public right-of-way require an Encroachment Permit [ADC 9.160 revised].
4. Landscaping shall be installed **prior to a Final Occupancy Permit being issued for the building** or the applicant may submit a landscape completion guarantee equal to 110% of the estimated cost of the plant materials and labor as determined by the Director which shall be forfeited to the City of Albany if landscaping is not completed within nine months of issuance of the temporary occupancy permit. An extension of three months may be granted by the Director when circumstances beyond the control of the developer prevents earlier completion. [ADC 9.190 revised].
5. It shall be the continuing obligation of the property owner to maintain required landscaped areas in an attractive manner free of weeds and noxious vegetation. In addition, the minimum amount of required living landscape materials shall be maintained [ADC 9.200 revised].

"Building #3, which was 10' from the property line as prescribed by code, has been rotated away from the existing condo to a minimum of 18' and 30' at the furthest point. This will mean that the condo now will be at least 23' away (it was originally built 5' from the property line). This will afford the light, openness and security that it has had.

"Building #4, which was the required 10' off the property line, has been moved an additional 15' making it 31' from the existing condo. This condo was built approx. 6' from the property line, but with the movement of building #4 it will again have adequate light, and viewing of the pond.

"Studies have shown that only about 1/3 of the tenants in a given apartment complex use facilities such as play areas or recreation buildings. The play areas proposed for this complex are quite adequate and are placed in areas which will be beneficial to those using them.

"The project will be completely surrounded (except along Waverly) with a 6' high chain-link fence with slats. Adequate streets and landscaping have been proposed beyond this toward the apartment units to again give more buffering, and the units themselves, in most cases, have been set back greater distances than called for by the zoning code. It is felt that with these measures in place the complex will be very adequately separated from the neighbors."

"The amount of units for this complex meets the density requirements for this multifamily zone. All other aspects of the site have also been met, such as: vehicle parking, bicycle parking, handicap, open space, and play areas, landscaping and trash enclosures.

"The complex was designed with a free flowing traffic and pedestrian system. This allows good movement for those living within the complex, police and fire departments, as well as related services such as postal, garbage etc." Mark D. Grenz dba Multi/Tech Engineering Services Inc., August 28, 1996

Conclusions: The proposed apartment complex is a residential use permitted by site plan review in the RM-5 zoning district. Objections raised by affected property owners as to the use of the subject property for rental housing, architectural review of the proposed buildings, capacity of local libraries and schools, and law enforcement are outside the scope of site plan review. Rather, this review is limited to the physical elements of layout. As a residential use, the proposed apartments will function much the same as other nearby residences, providing enclosed private living space and outside amenities such as parking and yards. The applicant proposes a perimeter fence to prevent trespass to the Cedarwood pond or across the Gentsler Eye Center property to Albany Plaza. The proposed chain link fence with vinyl slats will provide a visual barrier, but slats will disappear and the color and materials does not match the siding of existing buildings. A condition of approval calls for a wooden fence. The applicant moved building #4 to the north approximately twenty feet and building #3 eight feet north in order to increase the amount of light to the Stockton, Aas, Bakondi, and Ulric residences. Evergreens planted to the buffer standard will screen them from view of each other as the trees mature. Revisions to the proposed landscape plan include a landscape island at the end of all parking rows and elimination of buffering and screening along the Cedarwood street stub so that a gate can be installed. Other on-site development standards set forth for outside lighting and signs will be adequate to offset those potential impacts. Building and parking lot coverage is 63 percent of the lot. This must be reduced to the maximum of 60 percent to meet open space objectives. This criterion can be met provided the following conditions are met:

1. Maintain a minimum setback for building #3 of 18.55 feet and 22.13 feet for building #4 to the