

ORDINANCE NO. 5720

AN ORDINANCE AMENDING ORDINANCE NO. 4441, WHICH ADOPTED THE CITY OF ALBANY DEVELOPMENT CODE AND ZONING MAP BY AMENDING THE DEVELOPMENT CODE TEXT RELATED TO THE EXPIRATION OF HISTORIC REVIEW APPROVALS, LAND USE APPLICATION CONTENTS, VARIANCE AND ADJUSTMENT REVIEW CRITERIA, ON-SITE DEVELOPMENT AND ENVIRONMENTAL STANDARDS TO BE IN COMPLIANCE WITH OTHER CODES AND LAWS, ADOPTING FINDINGS, AND DECLARING AN EMERGENCY (FILE DC-02-09).

WHEREAS, from time to time it is appropriate to amend the Albany Development Code based on changing conditions, and to be in compliance with other state and federal laws; and

WHEREAS, the City has been collecting suggestions to the Code for several years and is developing an on-going, semi-annual process to evaluate changes to the Code; and

WHEREAS, these amendments are proposed as a part of the on-going process of evaluating and updating the Code; and

WHEREAS, on June 15, 2009, the Planning Commission held a public hearing on the proposed amendments and continued their hearing to June 29, 2009; and

WHEREAS, on June 29, 2009, the Planning Commission recommended these changes to the City Council, based on public testimony, their deliberation, and the staff report; and

WHEREAS, on July 8, 2009, the Albany City Council opened a public hearing on the proposed amendments; and on July 22, 2009 the Albany City Council continued a public hearing on the proposed amendments, reviewed the amendments recommended by the Planning Commission and any testimony presented at the public hearing and then deliberated.

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 through E for the articles listed below:

Exhibit A: Article 1, Administration and Procedures

Exhibit B: Article 2, Review Criteria (entire article)

Exhibit C: Article 9, On-site Development and Environmental Standards

Exhibit D: Article 11, Land Divisions

Exhibit E: Article 12, Public Improvements

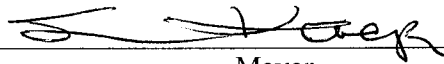
Section 2: The Findings and Conclusions found in the staff report, attached as Exhibit F, are hereby adopted in support of this decision.

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 effective immediately upon its passage by the Council and approval by the Mayor.

Passed by the Council: August 12, 2009

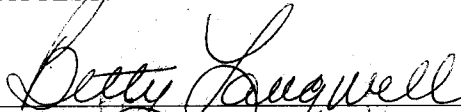
Approved by the Mayor: August 12, 2009

Effective Date: August 12, 2009



Mayor

ATTEST



City Clerk

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ARTICLE 1 ADMINISTRATION AND PROCEDURES

Staff Comment: The amendments and comments in red are proposed policy amendments. Other edits to clarify the existing regulations are proposed in black bold and strikethrough. Staff comments in italics are not amendments and will be removed.

1.000 Overview. This Article establishes the framework for the review of land use applications. It explains the processes the City follows for different types of reviews and how hearings and appeals are conducted. The list below is a summary of the topics covered in this chapter.

- General Administration
- Clarification of Land Use Decisions
- Administrative Process
- Limited Land Use Process
- Quasi-Judicial Process
- Legislative Process

These headings precede subtopics that can assist the user in locating information. The table of contents contains a complete listing of the material covered in this Article.

GENERAL ADMINISTRATION

No changes are proposed to 1.010 through 1.050, so they are not shown.

1.060 When Land Use Applications Are Required.

No changes are proposed to 1.060 (1) through (4) and 1.070, so these sections are not shown.

Staff Comments: The following changes are proposed:

- *Expiration of land use approvals is buried under the heading: "When Land Use Applications are Required" currently as 1.060 (5). We propose this content become its own section, 1.080.*
- *In 2001, the one-year expiration time period was extended to three years. This time period has been problematic for enforcing conditions of approval for Historic Review approvals. We propose restoring the one-year expiration to Historic Review approvals as outlined in 1.065 (2).*
- *Example: Plans for a new house received historic approval with conditions. The house was constructed but it didn't satisfy all of the conditions of approval or what was proposed and approved. They currently have three years to satisfy the approval. The "substantial construction" language in (1) below applies here, so the unfinished items can go on indefinitely.*

1.080 Expiration of Land Use Approvals.

- (51) Except as provided in (2) below, A**all land use approvals shall expire three years from the date of the approval, unless "substantial construction" of the project has been accomplished within that time. Substantial construction is defined in the "Definitions" section of this Code as "Any physical improvement of a property, the cost of which equals or exceeds fifty percent of the fair market value of the property before the improvement was started."

If substantial construction has been accomplished, development may continue to completion without a limit on the time allowed. The Development Code standards for development within these time periods are those in effect at the time the original approval was granted. [Ord. 5475, 4/11/01]

- (2) **Expiration of Historic Review Approvals.**
- (a) **Historic Review approvals not associated with a building permit shall expire one year from the date of approval; or**
 - (b) **Historic Review approvals associated with an approved building permit shall expire upon the expiration of the building permit.**
 - (c) **Expiration of a Historic Review approval shall require reapplication and payment of all application fees plus an administrative fee equal to the application fee. Applications that are the same as originally approved will be processed administratively.**

1.0850 Approval Runs with the Land. Approval of a land use decision runs with the land. The approval transfers to a new owner if the property is sold. [Ord. 5475, 4/11/01]

No changes are proposed to 1.090 through 1.130, so they are not shown.

Staff Comments: The following reference to Title 18 of the Municipal Code is necessary as it outlines the enforcement procedures.

1.140 Code Enforcement. The Director or designee may enforce the provisions of this ordinance **using the remedies provided in Sections 1.110 through 1.190 herein and in Title 18 of the Albany Municipal Code.** The enactment of this ordinance shall not invalidate any prior, existing, or future prosecutions for violation of the Development Code regulations committed under a previous ordinance.

No other changes are proposed to this Article.

ARTICLE 7 HISTORIC OVERLAY DISTRICT

The only change proposed in this Article is to add a reference to Article 1, Section 1.080, Expiration of Land Use Approvals.

7.015 Expiration of Historic Review Approval. See Article 1, Section 1.080 (2).

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ARTICLE 2 REVIEW CRITERIA

Staff Comment: The amendments and comments in red are proposed policy amendments. Other edits to clarify the existing regulations are proposed in black bold and strikethrough. Staff comments in italics are not amendments and will be removed.

2.010 Overview. The Development Code provides a ~~combination of~~ nondiscretionary and discretionary standards for the City to use in evaluating **how** land use proposals ~~comply 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~~ **for certainty in most situations**. Discretionary criteria provide ~~needed~~ flexibility by allowing more subjective standards and objectives, and ~~providing for the~~**allow** 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 **and Map** Amendments
- Conditional Uses
- Development Code Amendments
- Nonconforming Situations
- Site Plan Review
- Vacations
- Variances
- Zoning Map Amendments

[Ord. 5445, 4/12/2000]

Staff Comments: Research found that 2.020 came from Portland's Code. The current language is confusing because not all of the language from the Portland Code was included. The proposed additional text clarifies this section that explains the functions of review criteria.

2.020 Function of Review Criteria.

- (1) Review criteria ~~set the bounds for~~**describe** the issues ~~that must be addressed by the applicant~~ **must address** and that ~~may be raised by the City or affected parties~~ **may raise**. **A proposal that complies with all of the criteria will be approved. A proposal that can comply with the criteria with mitigation measures or limitations will be approved with conditions. A proposal that cannot comply with the criteria outright or with mitigation measures will be denied.**
- (2) The review criteria are derived from the Comprehensive Plan. Reviews against the goals and policies of the Comprehensive Plan are not required unless specifically stated. ~~Fulfillment of all requirements and review criteria means t~~The proposal ~~is in conformance with the Comprehensive Plan if it fulfills the review criteria.~~
- (3) When review criteria ~~refer to~~**require an application** ~~request~~ to meet a specific ~~threshold~~**standard**, such as adequate services or no significant detrimental environmental ~~negative~~**offsite** impacts, ~~the threshold includes any proposed improvements, mitigation measures, and limitations. A~~all proposed improvements **and**, mitigation measures ~~and limitations~~ must be identified ~~prior to a final decision by~~ **before the review body will make a final decision.**

2.030 Burden of Proof. The ~~burden of proof is on the applicant to~~**must** show that the review criteria are met. The burden **of proof** is not on the City or other parties to show that the criteria have **or have** not been met.

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- 2.040 Conditions of Approval. The City may attach conditions to the approval of a land use decision in order to ensure that the proposal will conform to the applicable review criteria.
- 2.050 Relationship to Other Regulations. ~~Approval of~~**When** a land use application **is approved** based on review criteria in this Code, **the applicant must still** ~~does not relieve the applicant of responsibility for~~ **compliance** with other applicable codes, ordinances, statutes, ~~and~~ **of** regulations.

ADJUSTMENTS

Staff Comments: (Note - Adjustments used to be Type I variances in Albany, so this discussion is also about variances.) Nationally and historically, variances were included in zoning ordinances to alleviate unnecessary hardship of denying the property owner all reasonable use of his or her property. Typically an "unusual" physical features or configuration of the lot must exist to approve a variance.

In 1991, the City changed Type I variances to adjustments, and created new criteria for adjustments. The City removed the requirement that there be some kind of unique circumstance or condition of the property for adjustments and variances. The staff comment was, "the proposed changes result in more realistic criteria."

Consequently, over the years adjustments have moved away from being used for unusual situations to an automatic approval of a 10% reduction from a standard. This is in part due to the fact that the criteria do not require the applicant to address their unusual circumstance for needing the adjustment.

Without the unique or unusual circumstance criterion, the variance and adjustment criteria can be relatively easy to meet and may be too easy to meet if we intend for them to apply only to unusual situations as the purpose statement states. It is also hard to apply these standards equitably.

Staff feels the intent of the variance/adjustment sections have strayed from their original purpose and recommend the following revisions:

- *Rather than use the 10% threshold to determine whether an application is processed as an adjustment or a variance, this will be determined at the sole discretion of the Director. (Note: 10% of a large number can be a lot, and the goal is to allow for the minimum necessary adjustment.)*
- *Add review criteria to address the intent of providing limited flexibility in unusual situations.*

Public Comment: We received comments from Multi-Tech Engineering Services on June 10 and June 15, 2009, on the proposed changes to the variance and adjustment review criteria. The letter states, "'Unusual situation' is subjective criteria and make it difficult for an applicant to prove that one exists on the site. What is determined to be an unusual situation or hardship for the applicant may not be interpreted as a hardship by the City."

2.060 Purpose. ~~The adjustment review process provides a mechanism by which allows~~ the Director to ~~may~~ make limited modifications to the application of ~~regulations in the Development Code~~ **regulations**. Adjustment reviews provide **very** limited flexibility **from numeric standards** for unusual situations, while still providing certainty and rapid processing for land use applications. ~~Requests for changes from a numerical development standard of 10 percent or less of the standard are processed as adjustments. Requests for changes to standards that are not numeric or which are for more than 10 percent of the standard are processed as variances. Adjustments will not be considered to avoid a review process or standard in this Code.~~

Staff Comments: This next sentence is currently in the preface to the review criteria and is being relocated.

Alternative setbacks in developed areas are addressed in Sections 3.240, 4.130, and 5.130.

2.070 Procedures. Adjustment ~~requests~~ **applications** are processed through a Type I procedure. **Variances are processed through a Type II procedure (Sections 2.660-2.690). The Director will determine whether an application is processed as an adjustment or a variance.**

2.080 Review Criteria. ~~Alternative setbacks in developed areas are addressed in Sections 3.240, 4.130, and 5.130. All other adjustment requests will be approved if the Director finds that~~ **The applicant has must** shown that the following criteria have been met:

- (1) ~~The requested adjustment is for 10 percent or less of the numerical development.~~ **The adjustment is not requested to avoid a land use review process or increase density.**

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- (2) The need for the adjustment is created by the **unusual** configuration of **the property, to protect natural features, or due to the location of** an existing or proposed structure on the site. [Ord. 5338, 1/28/1998]
- (3) **The adjustment is the minimum necessary to address the unusual circumstance and still be consistent with the purpose of the zoning district.**

ANNEXATIONS

- 2.090 Purpose. Annexation is the first step in converting ~~urbanizable lands in the Albany Urban Growth Boundary~~ 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 eCity 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.
- 2.095 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,~~ **the application meets the review criteria, the annexation will 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.
- 2.100 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 votes cast by the city electors approve the annexation.
- 2.105 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.
- 2.110 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 so~~ 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.

2.115 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.

2.120 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

2.125 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 part of the Code, except that the provisions of this Code shall supersede comparable provisions of the county zoning regulations.

2.130 Procedure. Applying initial City zoning to annexation territory is subject to the provisions of ADC 2.700 through 2.760.

2.135 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 2.710 to apply the initial City zoning to the 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 2.740. 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.

2.140 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 2.710 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.

[Ord. 5635, 1/11/2006]

COMPREHENSIVE PLAN AMENDMENTS

- 2.190 Purpose. The Comprehensive Plan is the City's official and controlling land use document ~~of the City, providing guidance to both~~ public and private activities that affect ~~the Albany's~~ growth, development, and livability ~~of the community~~. The Plan is intended to be a flexible document, reflecting changing circumstances and community attitudes through occasional amendments. This section provides a process ~~whereby~~ **for amending** the Comprehensive Plan ~~may be amended~~ without violating ~~the its~~ integrity ~~of the Plan~~ or frustrating its ~~basic~~ purposes. This process applies to proposed changes to the Comprehensive Plan Map designations, text and the Urban Growth Boundary.
- 2.200 Frequency of Plan Amendments. Applications for Comprehensive Plan amendments submitted by property owners shall be reviewed semi-annually in April and October by the Planning Commission. The City Council, Planning Commission, **Landmarks Advisory Commission**, or Director may also initiate Plan amendments. These initiations are made without prejudice towards the outcome.
- 2.210 Procedure. ~~Requests for Plan amendments~~ **If the Director determines by the Director a request for a Plan amendment to be** legislative, ~~in nature are the request will be~~ reviewed through the legislative procedures in Sections 1.580-1.660. Quasi-judicial requests are reviewed through the Type IV procedures of Section 1.370. Area specific amendments, including Map amendments outside of the City limits, are processed in accordance with the City-County Urban Growth Management Agreement.
- 2.220 Review Criteria. Amendments to the Comprehensive Plan will be approved if the Council finds that the application **meets** ~~it has shown that~~ the following applicable criteria ~~are met~~:
- (1) A legislative amendment is consistent with the goals and policies of the Comprehensive Plan, the statewide planning goals, and any relevant area plans adopted by the City Council.
 - (2) A legislative amendment is needed to meet changing conditions or new laws.
 - (3) The requested designation for a quasi-judicial map amendment meets all of the following tests:
 - (a) The requested designation for the site has been evaluated against relevant Comprehensive Plan policies and on balance is more supportive of the Comprehensive Plan as a whole than the old designation.
 - (b) The requested designation is consistent with any relevant area plans adopted by the City Council.
 - (c) The requested designation is consistent with the Comprehensive Plan Map pattern.
 - (d) The requested designation is consistent with the statewide planning goals.
- 2.225 Corrections to the Comprehensive Plan Map. The Director may initiate a review through the Type I procedure for these types of corrections to the Comprehensive Plan Map ~~listed below~~:
- (1) A map line that was intended to follow a topographical feature does not do so. Topographical features include the tops and bottoms of hillsides, the banks of water bodies, and center lines of creeks or drainage ditches;
 - (2) The line on the map does not match the legal description or the map shown or referenced in the ordinance that applied the designation; or
 - (3) There is a discrepancy between maps, and there is clear legislative intent for where the line should be.
 - (4) The map line is based on the location of a reference item that has since been moved. Reference items are rights-of-way, tentative rights-of-way, utility easements and similar items. Map line changes in these cases must not be more than a minor change to the map pattern and must not

| ~~result in any significantly affect impacts to abutting lots.~~

CONDITIONAL USES

2.230 Purpose. ~~Certain uses are conditional uses instead of being a~~ **The City does not** allowed ~~some uses~~ outright, although they may have beneficial effects and serve important public interests. ~~Theyse uses~~ **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 review process provides an opportunity to allow the use when ~~there are~~ **it will have** 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 as requiring conditional use approval may be permitted, enlarged or altered ~~in accordance with~~ **to** the provisions of this section. In addition, when a use is not authorized in any district or when ~~it is unclear how to classify re 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. A Conditional Use application is reviewed as either a Type II or a Type III procedure, according to the Schedule of Permitted Uses. [Ord. 5446, 5/10/00, Ord. 5673, 6/27/2007]

2.250 Review Criteria. Requests for conditional uses will be approved if the review body finds that the ~~application~~ **meets** 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~~ **mitigates** ~~ion of~~ difference in appearance or scale through such means as setbacks, screening, landscaping or other design features.
- (3) The transportation system ~~is capable of~~ **can** 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~~ **can** ~~serve~~ **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, or hours of operation.
 - (b) Privacy and safety issues.
- (6) Special features of the site (such as topography, floodplains, wetlands, vegetation, historic sites) have been adequately considered and utilized. [Ord. 5265, 12/18/1996]

2.260 Conditions of Approval. The review body may attach conditions ~~to a conditional use of~~ approval to ensure that the proposal will conform to the applicable review criteria.

Some of the most frequently imposed conditions relate to the following: uses; special yards, and spaces; fences and walls; street dedications and improvement petitions (or bonds); ~~ingress-site entry~~ and ~~exit~~ **egress**; signs; building textures, colors, architectural features and height; landscaping, screening

EXHIBIT B

and buffering; noise, vibration, odors or other similar nuisances; hours for certain activities; time period within which the proposed use shall be developed; duration of use; and preservation of natural vegetation ~~and~~ growth and open space.

DEVELOPMENT CODE AMENDMENTS

- 2.270 Purpose. The Development Code ~~is designed to~~ implements the goals and policies of the Comprehensive Plan, which ~~is a reflection of~~ community values and needs. Because these values may change with time and because new techniques for implementing the Plan may become more appropriate, the Code must have some mechanism for response to those changes. Amendments to the Code should occur as needed ~~in order to~~ maintain a close relationship between ~~the Development Code~~ and the Comprehensive Plan.
- 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. [Ord. 5635, 1/11/2006]
- 2.290 Review Criteria. The request may be approved if the Council finds that the application **meets** ~~it has shown that all of the following criteria are met:~~
- (1) The proposed amendments better achieve the goals and policies of the Comprehensive Plan than the existing ~~regulatory~~ language.
 - (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.

NONCONFORMING SITUATIONS

2.300 ~~Within the City there are~~ **Purpose.** Some lots, developments, and uses in the City of Albany that were lawful before this Code was adopted or amended, but would no longer be allowed under the current terms of this Code. ~~It is the intent of t~~ These provisions **are intended** to permit such nonconforming ~~situations~~ **situations** to continue, but not to encourage their perpetuation. ~~All nonconformities are referred to as “nonconforming situations.”~~

2.310 **Status and Documentation of a Nonconforming Situation.** Nonconforming situation regulations apply only to situations that were allowed when established or that were approved through a land use review. Nonconforming situations that were not allowed when established have no grandfather rights and must be removed. ~~The burden of proof is on the property owner or applicant to~~ **must** document that a nonconforming situation was allowed when established and was maintained over time. ~~Satisfactory evidence of the nonconforming situation must be provided by the applicant.~~ Evidence might consist of building permits, utility hookups, tax records, business licenses, or telephone directory listings.

2.320 **Types of Nonconforming Situations.** A lot of record may be nonconforming because it does not meet the dimensional or area standards currently required in a particular zoning district. A specific site may be nonconforming because it contains either a nonconforming use, an allowed residential use that exceeds the allowed density, a nonconforming development, or a combination of these. [Ord. 5338, 1/28/1998]

2.325 **Certain Residential Uses Granted Special Status.** Special status has been granted to existing single-family dwellings in commercial, office and industrial zones. Special status has been granted for two or more units constructed prior to November 20, 1996, in the Hackleman Monteith zoning district. Notwithstanding the restrictions or terms of any other section of this Code, these properties shall be deemed to be conforming to the base zoning district. See Sections 3.080, 4.075, and 5.080. [Ord. 5555, 2/7/2003]

2.330 **Regulations That Apply to All Nonconforming Situations.**

- (1) ~~Their status of a nonconforming situation~~ is not affected by changes in ownership.
- (2) ~~A nonconforming situation~~ **They** may be changed to conforming situations by right. Once a conforming situation occupies a site, the nonconforming rights are lost and a nonconforming situation may not be re-established.
- (3) ~~A nonconforming use~~ **They** may change to a conditional use if approved through a conditional use review. Once a conditional use occupies the site, the nonconforming rights are lost and a nonconforming use may not be re-established.
- (4) Normal maintenance and repair ~~of nonconforming situations~~ is allowed.

2.340 **Loss of Nonconforming Status.**

- (1) A nonconforming use of a building, structure, or land shall be deemed to have terminated if the building, structure, or land ~~ceases to be~~ **is not** occupied by a permitted or legally nonconforming use for ~~any reason for a continuous period of one~~ **continuous** year. Extensions of up to two additional years may be granted under the Type II procedure if the Director finds that:
 - (a) ~~Conversion to any~~ **Conversion** to any conforming use will result in a substantial economic loss, and the proposed use will result in greater conformance with the development standards of the zone;
 - OR
 - (b) Immediately surrounding land uses are similarly nonconforming, and the proposed use will

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be compatible with both the nonconforming and conforming uses in the review area.

- (2) Nonconformance with any development standard or condition other than building setback, coverage, or height ~~shall be deemed terminated~~ if the building, structure, or land ceases for any reason to be occupied by a permitted or legally nonconforming use for ~~a one~~ continuous ~~period of one~~ year.
- (3) Any nonconforming use or development dependent upon a building or structure that is ~~substantially damaged or becomes deteriorated to the extent that it has been declared a "dangerous building" and ordered demolished pursuant to the Albany Dangerous Building Code (AMC Title 18) shall be deemed~~ **will be considered** terminated upon ~~such destruction or that~~ declaration and order.
- (4) Any nonconforming use or development dependent upon a building or structure that has been substantially damaged ~~or destroyed by any cause~~ to the extent that ~~the cost of repair or restoration of the building or structure would exceed~~ **cost more than** 70 percent of its fair market value ~~shall be deemed~~ **will be considered** terminated.
 - (a) Cost of repair or restoration shall be determined by the Building Official. Fair market value shall be determined by ~~an independent professional appraisal in a form satisfactory~~ **acceptable** to the City. ~~The owner or applicant may appeal these~~ **Such** determinations of value and cost ~~are appealable to the Building Board of Appeals, or may apply for an E~~ exceptions to this standard ~~may be applied for~~ under the Type II procedure.
 - (b) The Director may allow additional reconstruction upon finding that:
 - (i) Conversion to ~~any~~ conforming use will result in ~~a~~ substantial economic loss, and
 - (ii) The proposed use will result in greater conformance with the development standards, or
 - (iii) Immediately surrounding land uses are similarly nonconforming and the reconstructed use will be compatible with both the nonconforming and conforming uses in the review area.
- (5) Rebuilding structures ~~that have been intentionally destroyed and~~ that contained nonconforming uses ~~and which have been intentionally destroyed~~ is prohibited.

2.345 Nonconforming Lots of Record. Lots of record that do not meet the dimensional or area requirements of the zoning district in which they are located may be developed. Any new structure built on the lot must conform with the development standards (**such as setbacks, lot coverage, etc.**) for that zoning district ~~in which the lot is located (such as setbacks, lot coverage, etc.)~~. [Ord. 5338, 1/28/1998]

2.350 Nonconforming Uses.

- (1) Nonconforming uses may continue to operate. Changes in operations are allowed. However, nonconforming uses in residential zones may not extend their hours of operation into the period between 11 p.m. and 6 a.m.
- (2) A change to another use in the same use category is allowed. A change to a use in a use category prohibited by the base zone may be allowed through a nonconforming use review.
- (3) Structural expansions shall be limited to the following:

<u>Existing Gross Floor Area</u>	<u>% of Expansion Allowed</u>
Buildings under 4,000 sq. ft.	25%
Buildings under between 4,000 and 10,000 sq. ft.	20%
Buildings larger than 10,000 sq. ft.	15%

- (4) Nonconforming uses and buildings may expand one time only.
- (5) Expansion of a nonconforming use onto another site is prohibited, except ~~in the following situations~~**when:**
 - (a) The **expansion** site ~~is abutting~~ the site of the nonconforming use; and
 - (b) The **expansion** site was in the same ownership as the nonconforming site when it became nonconforming; and
 - (c) ~~The~~**P**rior zoning regulations on the expansion site would have allowed the use; and
 - (d) The expansion is approved through a nonconforming use review.
- (6) ~~The~~**A**ddition of new residential units to a nonconforming residential use is prohibited.

2.360 Nonconforming Residential Densities. Existing dwelling units may continue, may be removed or enlarged, and amenities may be added to the site. There may not be a net increase in the number of dwelling units and the building may not move further out of compliance with the base zone development standards.

2.370 Nonconforming Development. This section is ~~primarily aimed at~~**promotes** upgrading ~~to features of~~ nonconforming development ~~elements~~ that affect ~~a site's~~ the appearance and impacts ~~of a site.~~ Nonconforming developments may continue unless specifically limited by Subsection (2) below or by other regulations in this Title.

- (1) Changes ~~may be made to the site that are in conformance with~~ to the base zone development standards **of the site may be made.**

Staff Comment: Design standards for new buildings were added to the Code after this section was last evaluated. Commercial and multi-family design standards are being added to this list since buildings are considered "development" as used in this section of the Code.

- (2) Development **that does** not complying with the following standards must be brought into compliance with the base zone standards to an extent commensurate with the proposed changes.
 - (a) Landscaped setbacks for surface parking and exterior development areas;
 - (b) Interior parking lot landscaping;
 - (c) Landscaping in existing building setbacks;
 - (d) Minimum landscaped area (where land is not used for structures, parking, or exterior improvements);
 - (e) Screening; ~~and~~
 - (f) Paving of surface parking and exterior storage and display areas; **and**
 - ~~(g)~~**(g) Commercial and multi-family design standards.**

2.380 Sites That Are Nonconforming in Parking Spaces. When a site is nonconforming in the number of required parking spaces and changes to a use or building are made that increase the number of required parking spaces, only the number of spaces relating to the increase ~~need to~~**must** be provided.

2.390 Procedure. A nonconforming situation is reviewed through a Type II procedure.

2.400 Review Criteria. ~~The~~**A** request will be approved if the review body finds that the application ~~nt has shown that~~ **meets** all of the following criteria ~~are met:~~

- (1) The nonconforming situation was not created unlawfully. See Section 2.310.

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- (2) With mitigation measures, there will be a net decrease in overall detrimental impacts (over the impacts of the previous use or development) on the surrounding area taking into account factors such as:
 - (a) The hours of operation;
 - (b) Vehicle trips to the site and impact on surrounding on-street parking;
 - (c) Noise, vibration, dust, odor, fumes, glare, and smoke;
 - (d) Potential for increased litter; and
 - (e) The amount, location, and nature of any outside displays, storage, or activities; and either (3) or (4) below.

- (3) If the nonconforming use is in a residential zone, and if any changes are proposed to the site, the appearance of the new use or development will not lessen the residential character of the area. This is based on taking into account factors such as:
 - (a) Building scale, placement, and facade;
 - (b) Parking area placement;
 - (c) Buffering and the potential loss of privacy to abutting residential uses; and
 - (d) Lighting and signs.

- (4) If the nonconforming use is in a commercial or industrial zone, and if any changes are proposed to the site, the appearance of the new use or development will not detract from the desired function and character of the zone.

SITE PLAN REVIEW

- 2.400 Purpose. Site Plan Review is intended to promote functional, safe, and attractive developments that maximize compatibility with surrounding developments and uses and with the natural environment. ~~Site Plan Review~~ It mitigates potential land use conflicts ~~resulting from proposed development~~ through specific conditions attached by the review body. Site Plan Review is not intended to evaluate the proposed use or ~~the structural design of the proposal~~. Rather, the review focuses on the layout of a proposed development, including building placement, setbacks, parking areas, external storage areas, open areas, and landscaping. [Ord. 5445, 4/12/2000]
- 2.410 Levels of Review. ~~These sections establish three levels of Site Plan Review.~~ **A site plan is reviewed at one of three levels**, with the degree of detail required ~~for submittal and review criteria~~ based on ~~the~~ its projected land use impacts. Option A review is primarily for new development and is subject to the greatest scrutiny. Option B **review** is primarily for ~~review of those projects which are~~ expansions of existing development and **for projects that** which will generally result in fewer impacts on the surrounding area than a new development. Option C review is used ~~when the proposal is for a change in use or another modification to a developed site that will not result in a greater impact on the neighborhood or on public facilities.~~ [Ord. 5445, 4/12/2000]
- 2.420 Relationship to Other Regulations. ~~Approval of~~ **When a land use application is approved** based on review criteria in this Code, ~~does not relieve the applicant~~ **must still of responsibility for compliance** with other applicable codes, ordinances, statutes, ~~and~~ or regulations. [Ord. 5445, 4/12/2000]
- 2.430 When Site Plan Review is Required. In general, a Site Plan Review covers all proposed exterior alterations included in the development proposal, but does not cover portions of the existing development that are not being modified. An exception to this is parking areas, where any proposed change to a parking lot will result in the entire parking area being reviewed. Site Plan Review is required in all of the following instances:
- (1) New development.
 - (2) Building expansions of 500 square feet or more, or any expansion that results in a reduction of parking spaces.
 - (3) Parking area expansions of 1,000 square feet or more.
 - (4) Any development listed in Articles 3, 4, or 5 that specifically requires Site Plan Review. [Ord. 5445, 4/12/2000]
- 2.440 When Site Plan Review is not Required. Activities and developments listed below ~~are excluded from the requirement for~~ **do not require** Site Plan Review, ~~land use application~~ but are nevertheless **still** subject to the **applicable** provisions of the Code ~~when applicable~~:
- (1) Agricultural uses permitted outright in any zone.
 - (2) ~~A~~ **Detached single-family dwellings or one duplex two-unit dwellings.**
 - (3) Accessory buildings and building additions of less than 500 square feet that conform to the provisions of this Code and the adopted building code.
 - (4) Accessory buildings in residential districts that meet the following standards. ~~(Information must be submitted that shows the standards are met. The applicant must submit~~ The information ~~shall be submitted at the time the applicant~~ **when he or she** applies for building permits **showing that the standards are met.** The Community Development Director or his/her designee will determine

whether the standards are met.)

- (a) The proposed building ~~does not exceed the height of~~ **is not taller than** the tallest building on adjacent property. Height here means the height of the building at its highest point.
- (b) The ~~square footage of the area enclosed by the foundation of the proposed building does not exceed the square footage of~~ **is not larger than** the area enclosed by the foundation of the largest building on adjacent property **(in square feet)**.
- (c) The amount of land that will be covered by buildings if the proposed building is constructed ~~does not exceed~~ **is not more than** the applicable lot coverage allowances of the Development Code.
- (d) The proposed building meets or exceeds the applicable setback requirements **in the Code** for the primary residential structure ~~listed in the Development Code~~.
- (e) The materials ~~that will be used on~~ of the proposed building (e.g. siding and roofing), and the color of those materials, are the same as those ~~used on~~ of the primary residential structure on the subject property.
- (f) If the proposed building is located in ~~any of the~~ special purpose districts listed in Articles 6 ~~and/or~~ 7 of the Development Code, ~~the building it~~ must also ~~be reviewed for conformance~~ with the requirements of ~~that applicable~~ district.

Staff Comment: The standard below is covered in (f) above.

~~Accessory buildings in floodplain districts are subject to the floodplain regulations of Article 6.~~

- (5) Landscaping and routine property maintenance.
- (6) Improvement of parking areas containing less than 1,000 square feet and otherwise meeting the provisions of this Code.
- (7) ~~A change in~~ **Internal changes** to a building, ~~or other structure, or use~~ of land that ~~does not constitute~~ a change of use.
- (8) A change in use inside an existing structure when the following criteria are satisfied:
 - a) No structural expansion ~~in excess of~~ **larger than** 500 feet or no additional exterior storage is proposed.
 - b) The use will not create additional adverse affects for abutting properties or the neighborhood (e.g. visual, noise, or air pollution, increased parking requirements, or improvements to public facilities.)
 - c) Any non-conformance with ~~the provisions of~~ this Code has been addressed, including compliance with sign, landscaping, and parking requirements except where restricted by building location or limiting site characteristics.
- (9) An emergency measure necessary for ~~the safety~~ or protection of property when authorized by the City Manager with written notice to the City Council.
- (10) Any temporary use of land of up to a 30-day duration (such as a promotional event, festival, carnival, or outdoor sale) that conforms with all other requirements of this Code and other applicable City regulations and public health and safety requirements, some of which may ~~further limit such uses in terms of~~ **the location, scope, and/or duration of the use**.
- (11) ~~The e~~ Establishment, construction, alteration, or maintenance of a public facility authorized by the Public Works Director including streets, highways, traffic control devices, drainage ways, sanitary and storm sewers, pump stations, water lines, electrical power or gas distribution lines, or telephone or television cable systems. This includes construction of staging areas of less than six

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months duration but does not include major substations, treatment facilities, storage tanks, reservoirs, or towers.

- (12) Excavation and fill for foundations and all other excavation or fill involving 50 cubic yards or less ~~which~~**that** does not adversely affect drainage patterns and is not located within a floodplain, or slope area. [Ord. 5381, 3/26/1997; Ord. 5445, 4/12/2000]

2.450 Review Criteria. A site plan approval will be granted if the review body finds that the application meets all of the following criteria that are applicable to the proposed development.

- (1) Public utilities can accommodate the proposed development.
- (2) The transportation system can safely and adequately accommodate the proposed development.
- (3) Parking areas and entrance-exit points are designed to facilitate traffic and pedestrian safety and avoid congestion.
- (4) 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.
- (5) Any special features of the site (such as floodplains, hillsides, wetlands, riparian corridors, topography, hazards, vegetation, wildlife habitat, archaeological sites, historic sites, etc.) have been adequately considered and utilized.

[Ord. 5445, 4/12/2000; Ord. 5635, 1/11/2006]

2.460 Conditions of Approval. The City may attach conditions to the approval of a Site Plan Review application in order to ensure that the proposal will conform to the applicable review criteria.
[Ord. 5445, 4/12/2000]

Staff Comments: We have had some projects built differently than what was on the approved plans. The proposed language references existing regulations for modifications to approved plans.

2.465 **Approved Plans are Final**. Projects shall be completed according to the approved site plan and landscape plan. Modifications to approved plans are subject to the standards in Section 1.226.

OPTION A REVIEW

2.470 Applicability. This level of review is intended for new development within the City. Any proposal that is not appropriately reviewed under Options B or C will be reviewed under Option A.
[Ord. 5445, 4/12/2000]

2.480 Procedure. A Type I-L limited land use procedure is followed for an Option A Site Plan Review with the Director acting as the review body. [Ord. 5445, 4/12/2000]

2.490 Application Contents. An application for Option A Site Plan Review ~~consists of the following~~**must include**:

- (1) A completed application form.
- (2) A mailing list of property owners within 100 feet ~~contiguous to~~**of** the entire site, except that a mailing list of property owners within 300 feet must be provided when a subdivision, manufactured home park, or multi-family development is proposed. The list ~~will~~**must** be compiled

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from the most recent property tax assessment roll. Notice shall also be provided to any neighborhood or community organization recognized by the governing body and whose boundaries include the site.

- (3) One set of conceptual drawings, including floor plans, **lighting details**, and building elevations **and materials**.
- (4) A conceptual landscape plan showing the type and location of proposed landscaping and screening.

Staff Comments: The following changes to application contents are being requested by Public Works so that they get enough information to adequately evaluate the project for natural and storm drainage patterns.

Example: Smart Centers is a good example of a recent project that required all of this information. Although each item wasn't specifically listed in the Development Code, the information was required in order for Public Work's to identify potential conflicts. Because of the size and location of the project, Smart Centers dealt with a wide range of issues such as fill in the floodplain, capacity concerns with the existing drainage system, drainage concerns between properties, private detention systems, public detention systems, sub-surface drainage concerns, filled in an existing pond, and it covered two drainage basins.

Reason for proposed language: Stormwater management is a critical element of most development proposals. The Public Works Department is tasked with reviewing the stormwater component of these development applications. As such, Public Works requires that enough information is provided to make an educated decision on the proposal. The requested changes reflect the type of information Public Works typically requires when engineering plans for a subdivision are submitted to the City. The updated list will better prepare applicants for what is actually required during review and should help reduce delays as a result of incompleteness.

Unlike a subdivision, when a project goes through Site Plan review, Engineering staff may not get another opportunity to review the stormwater system. Therefore, it is imperative that a comprehensive review be completed during the land use process.

It was noted that the Planning Commission would like to add the word "applicable" when defining what is required to be shown on the Site Plan. This addition is appropriate and provides some flexibility for the applicants and staff.

- (5) A site plan showing the following **applicable information**:
 - (a) Assessor's map and tax lot number and lot and block description or other legal description.
 - (b) Lot dimensions and total lot area.
 - (c) North arrow.
 - (d) Location of all existing and proposed structures, including minimum distances from all structures to ~~lot~~ **property** lines.
 - (e) Percentage of the lot covered by ~~any and~~ **all existing and proposed structures and paved areas**.
 - (f) Adjacent zoning designations and land uses including approximate location of buildings, accesses, streets, sidewalks, curbs, easements, and utilities.
 - (g) Locations and dimensions of rights-of-way of all abutting streets (whether public or private) and existing and proposed driveways.
 - (h) Size and location of all utilities.
 - (i) Locations, dimensions, and nature of any **existing and proposed** easements.
 - (j) Location of any non-access strips.
 - (k) Natural drainage patterns, **flow arrows showing existing and proposed drainage patterns, and existing and proposed finished grade contours at 1-foot intervals, or at a larger interval if approved by the City Engineer.** (~~existing contour lines at two-foot intervals if~~

required by Director.)

- (l) **Clearly identify any existing and proposed swales, ditches, or other drainage ways.**
- (m) Location, size, and capacity of the existing and proposed drainage system including pipe size, ~~and slope,~~ **detention facilities, and water quality facilities.** Show existing and proposed finished grade elevations at collection points and property lines. Include the location, size, and capacity of ~~facilities identified in the Drainage Master Plan~~ **the downstream drainage system** that would serve the proposed development. **Also provide any supporting calculations.**
- (n) ~~Proposed cuts and fills of more than two feet and any changes in elevations proposed at property lines.~~ **Typical cross sections at adjacent property boundaries showing pre-and post-development conditions and clearly identify any changes in elevation at the property line not captured in the typical section.**
- (o) Location and species of trees ~~greater~~ **larger** than 25 inches in circumference ~~when measured~~ at 4-1/2 feet above mean ground level from the base of the trunk.
- (p) Location and dimensions of delivery and loading areas.
- (q) Location and dimensions of parking and circulation areas.
- (r) Location and dimensions of trash disposal areas.
- (s) Location of proposed signs. [Ord. 5338, 1/28/1998; Ord. 5445, 4/12/2000]

Staff Comments: The following additional application contents are necessary for Planning staff to evaluate the application against the review criteria. This list comes from application content required for land divisions.

- (t) **Location and type of proposed pedestrian amenities and common areas (when applicable).**
- (u) **Location of airport height restrictions.**
- (v) **Location of floodplains.**
- (w) **Location of hillsides with slopes greater than 12 percent.**
- (x) **Location of wetlands.**
- (y) **Location of riparian corridors.**
- (z) **Location of Willamette Greenway.**
- (aa) **Location of historic districts, structures and sites on the City's adopted Local Historic Inventory, including individually designated National Register Historic Landmarks and archaeological sites.**

2.500 Appeals. An Option A Site Plan Review decision is a limited land use decision and may be appealed in accordance with Section 1.330. [Ord. 5445, 4/12/2000]

OPTION B REVIEW

2.510 Applicability. This level of review is intended for expansion of existing structures or development that 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~~ **larger than** 500 square feet) to an existing structure.
- (2) Parking lot additions of over 1000 square feet.
- (3) A change in occupancy to a more intensive use in an existing building.
- (4) 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. [Ord. 5265, 12/18/1996; Ord. 5445, 4/12/2000]

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- 2.520 Procedure. A Type I-L limited land use procedure is followed for the Option B Site Plan Review with the Director acting as the review body. [Ord. 5445, 4/12/2000]
- 2.530 Application Contents. The Director may require any of the information listed for Option A Site Plan Review in Section 2.490. In many cases, not all of this information will be ~~required due to lack of~~ applicable. [Ord. 5445, 4/12/2000]
- 2.540 Appeals. An Option B Site Plan Review decision is a limited land use decision and may be appealed in accordance with Section 1.330. [Ord. 5445, 4/12/2000]

OPTION C REVIEW

- 2.550 Applicability. An Option C Site Plan Review is intended for review of development in existing buildings. It is appropriate for the following types of development proposals:
- (1) A change in occupancy to a use which is not more intense in off-site impacts.
 - (2) Resurfacing of nonconforming parking lots.
 - (3) Other development with similar impacts. [Ord. 5445, 4/12/2000]
- 2.560 Procedure. A Type I procedure is followed for the Option C Site Plan Review. [Ord. 5445, 4/12/2000]
- 2.570 Application Contents. An Option C Site Plan Review requires submittal of only the completed application form. [Ord. 5445, 4/12/2000]
- 2.580 Review Criteria. The following criteria must be met in order for the Director to approve the proposed development.
- (1) Off-street parking is adequate to serve the proposed use.
 - (2) The proposed use will not generate more traffic than the previous use.
 - (3) The site is in, or can be brought into, compliance with the spirit of the Code regarding landscaping, screening and buffering.
 - (4) Any applicable criteria from Section 2.450.
- [Ord. 5445, 4/12/2000]

VACATIONS

- 2.600 Purpose. This section states the procedures and review criteria for vacation of an easement, right-of-way, or plat.
- 2.610 Initiation. A vacation proposal may be initiated by the City Council or by petition of adjoining and area owners in accordance with Oregon Revised Statutes (ORS) 271.080.
- 2.620 Procedure. Type IV procedures as outlined in Section 1.370 shall be used as supplemented by the provisions of ORS Chapter 271. State law defines the affected area and mandates notice requirements that are more stringent than the City's Type IV procedure.
- 2.630 Review Criteria. A vacation request may be approved if the review body finds that the applicant has shown that all of the following review criteria are met:
- (1) The requested vacation is consistent with relevant Comprehensive Plan policies and with any street plan, city transportation or public facility plan.
 - (2) The requested vacation will not have a negative effect on access between public rights-of-way or to existing properties, potential lots, public facilities or utilities.
 - (3) The requested vacation will not have a negative effect on traffic circulation or emergency service protection.
 - (4) The portion of the right-of-way that is to be vacated will be brought into compliance with Code requirements, such as landscaping, driveway access, and reconstruction of access for fire safety.
 - (5) The public interest, present and future, will be best served by approval of the proposed vacation.
- 2.640 Zoning of Vacated Rights-of-Way. Except as otherwise provided in the vacation ordinance or when the official City Zoning Map is not clear as to the zoning of vacated right-of-way, the zoning of ~~each parcel of~~ the vacated territory shall be the same as the adjoining property to which the ownership of the parcel automatically reverts.
- 2.650 Conditions of Approval. The City may attach conditions to the approval of a vacation request to ensure that the proposal will conform to the review criteria.

VARIANCES

Staff Comments: Note: Nationally and historically, variances were included in zoning ordinances to address unusual circumstances or alleviate unnecessary hardship due to unusual sites or circumstances. In 1991, the City removed the requirement that there be some kind of unique circumstance or condition of the property. The staff comment was, "the proposed changes result in more realistic criteria."

Without the unique or unusual circumstance criterion, the variance criteria can be relatively easy to meet and may be too easy to meet if we intend for them to apply only to unusual situations as the purpose statement in 2.470 states. It is also hard to apply these standards equitably.

The original "unusual circumstance" variance criterion is proposed to be reinstated in the Code as well as former purpose statement language.

Public Comment: We received comments from Multi-Tech Engineering Services on June 10 and June 15, 2009 on the proposed changes to the variance and adjustment review criteria. The letter states, "'Unusual situation' is subjective criteria and make it difficult for an applicant to prove that one exists on the site. What is determined to be an unusual situation or hardship for the applicant may not be interpreted as a hardship by the City."

2.660 Purpose. **When a practical difficulty, unusual hardship, or the literal interpretation of a provision of this Code results in rendering a property incapable of reasonable economic use or causes specific hardships unintended by the Comprehensive Plan or this Code, a variance may be granted as provided in this article.** ~~Variantees provide flexibility for unusual situations, while continuing to provide certainty and rapid processing for land use applications. Variantees are necessary when the applicant requests afor deviation from numerical standards of more than 10 percent, or a for variation from non numerical development standards. Requests for changes of 10 percent or less of a numeric standard are processed as adjustments.~~

2.670 Procedure. A variance request shall be reviewed as a Type II procedure. **The Director will determine whether applications for minor changes from a numeric standard may be processed as adjustments through the Type I procedure.**

2.680 Regulations That May and May Not Be Varied.

- (1) Unless listed in Subsection (2) below, all regulations in this ~~Title-Code~~ may be modified using the variance process.
- (2) Variances are prohibited for the following items:
 - (a) To allow a primary or accessory use that is not allowed by the regulations.
 - (b) As an exception to any restrictions on uses or development that contain the word "prohibited."
 - (c) As an exception to **going through a review process or meeting standards required by a review process in this Code, such as minimum lot size** ~~a threshold for a review, such as the size of accessory structures.~~
 - (d) As an exception to a definition or classification.
 - (e) As an exception to the ~~procedural~~ steps of a procedure or to change assigned procedures.

2.690 Review Criteria. The review criteria for sign variances are stated in Sections 13.710 and 13.711 of the Sign Code. All other variance requests will be approved if the review body finds that the applicant has shown that all of the following criteria have been met:

- (1) **The property has unique or peculiar physical circumstances or conditions such as, irregular shape, width or depth; or exceptional natural or physical conditions such as topography,**

trees, wetlands, or drainage ways.

- (3)(2) The proposal will be consistent with the ~~desired character of the area~~ **purpose, overview, and description for the zone in which the property is located**; and
- (4)(3) If more than one variance is requested, the cumulative effect of the variances results in a project that is still consistent with the ~~overall~~ **purpose, overview and description** of the zone; and
- (5)(4) The requested variance is the minimum necessary to ~~allow the proposed use~~ **address the peculiar or unusual conditions** of the site; and
- (6)(5) Any impacts resulting from the variance are mitigated to the extent practical; or
- (7)(6) Application of the regulation in question would preclude all reasonable economic use of the site.

ZONING MAP AMENDMENTS

No changes are proposed to this last section, so 2.700 through 2.760 are not shown.

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ARTICLE 9

ON-SITE DEVELOPMENT AND ENVIRONMENTAL STANDARDS

Staff Comment: The amendments and comments in red are proposed policy amendments. Other edits to clarify the existing regulations are proposed in black bold and strikethrough. Staff comments in italics are not amendments and will be removed.

9.010 Overview. The City of Albany has established standards for on-site improvements and environmental protection. These standards are intended to foster high quality development throughout the City and to minimize adverse effects on surrounding property owners or the general public. This article contains the following standards:

- Off-Street Parking
- Landscaping
- Street Trees
- Tree Felling
- Buffering and Screening
- Environmental

[Ord. 5445, 4/12/2000]

OFF-STREET PARKING

No changes are proposed to Sections 9.020 through 9.110, so they are not shown.

9.120 Parking Area Improvement Standards. All public or private parking areas, loading areas and outdoor vehicle sales areas must be improved based on the following standards:

- (1) General. ~~Required~~ All parking spaces must be improved in accordance with these standards and available for use at the time of project completion.
- (2) Other Requirements. All parking areas shall conform to the setback, clear vision, landscaping, and buffering/screening provisions of this Code.
- (3) Surfacing. All **areas of a parking areaslot, including travel aisles and access**, shall have a durable, dust-free surfaceing of asphalt, cement concrete, or other materials approved by the Director of Public Works. Parking lot surfacing shall not encroach upon the public right-of-way except ~~when~~ it abuts a concrete public sidewalk, or has been otherwise approved by the Director of Public Works.
- (4) Drainage. **All parking lots must provide a drainage system** ~~Adequate drainage shall be provided to dispose of the runoff generated by the impervious surface area of the parking area.~~ Provisions shall be made for the on-site collection of drainage waters to eliminate sheet flow of such waters onto sidewalks, public rights-of-way, and abutting private property. All drainage systems must be approved by the Director of Public Works.
- (5) Perimeter Curb. Perimeter curbing is required for protection of landscaped areas, **and** pedestrian walkways, and to prevent runoff onto adjacent properties. All parking areas except those required in conjunction with a single- or two-family dwelling shall provide a curb at least 6 inches high along the perimeter of all parking areas.

Staff Comments: The proposed changes are recommended by the disability access coordinator to make the Code more compliant with ADA standards. There is concern that if the wheel bumper is setback too far from the front of the stall, that there will not be enough room for parking the car.

- (6) Wheel Bumper. All parking stalls fronting a sidewalk, alleyway, street or property line, except for

EXHIBIT C

those required in conjunction with a single- or two-family dwelling, shall provide a secured wheel bumper at least 6 inches high and at least 6 feet long, set back from the front of the stall a ~~minimum of at least~~ **2-1/2 feet, but no more than 3 feet**. If the sidewalk is widened to 7 feet 6 inches to allow for vehicle encroachment, no wheel bumpers are required.

- (7) Turnaround. Except for ~~single~~ **single**-family and duplex dwellings, groups of more than two (2) parking spaces must be located and served by an aisle or turnaround so that their use will require no backing movements or other maneuvering in a street right-of-way other than an alley.
- (8) Striping. Lots containing more than two (2) parking spaces must have all required spaces permanently and clearly ~~striped~~ **marked**. **Stripes must be at least four inches wide**. ~~If parking spaces are provided for~~ **When motorcycle parking, compact, or handicapped parking spaces are provided, they shall be so-designated within the stall.**
- (9) Connecting to Adjacent Parking Areas. Where a proposed parking area is adjacent to a developed or undeveloped site within the same zoning district, the proposed parking area must be designed to connect to the existing or future adjacent parking area. This requirement may be waived by the Director when it is deemed impractical or inappropriate due to the nature of the adjoining uses.
- (10) Parking Lot Landscaping. Parking lots shall be landscaped ~~in accordance with~~ **to** the standards ~~listed~~ in Section 9.150.

Staff Comments: The dimensions are in Section 9.130 so the sentence is being deleted here.

- (11) Compact Car Parking. Not more than 40% of ~~the total~~ parking spaces ~~in a parking lot~~ **provided** may be designated for compact cars. ~~The minimum dimensions for a compact space are 8 feet by 16 feet. Such~~ **Compact** spaces must be signed and/or the space painted with the words "Compact Car Only."
- (12) Handicapped Parking. All parking areas must provide handicapped parking spaces in conformance with the Oregon State Structural Specialty Code.
- (13) Bicycle Parking. Bicycle parking space requirements are as follows:
 - (a) For multiple-family dwellings (three or more units) – one space per four units.
 - (b) For industrial development – one space for every 10 automobile spaces required.
 - (c) For commercial or office development - at least two spaces, ~~and~~ **plus** one space for every 10 automobile spaces required. Up to two motor-vehicle parking spaces may be deleted if additional sheltered bicycle parking is provided at a rate of five bicycle spaces to one motor-vehicle space.
 - (d) Exemptions -- the Director may allow exemptions to or reductions in required bicycle spaces in connection with temporary uses or uses that are not likely to need bicycle parking.

Bicycle parking spaces shall meet the following standards:

- (e) Required spaces should be visible and not hidden, and must be located as near as possible to building entrances used by automobile occupants.
- (f) Each required bicycle parking space must have a parking rack securely fastened to the ground. Parking racks must support each bicycle at a minimum of two points, including at least one point on the frame, and must allow the frame and at least one wheel to be locked with a U-type lock.
- (g) Bicycle parking areas must provide at least 3 feet of clearance around all 3 sides of a fully-loaded bicycle rack and have an overhead clearance of at least 7 feet.
- (h) At least one-half of required bicycle parking spaces must be sheltered. Spaces must be protected from precipitation by a roof overhang or a separate roof at least 7 feet tall. Bicycle

parking spaces within roofed buildings and bike lockers are considered sheltered spaces.

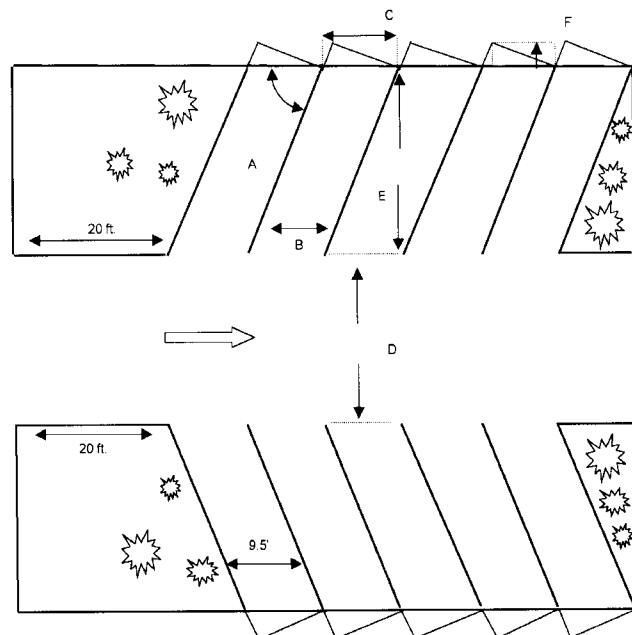
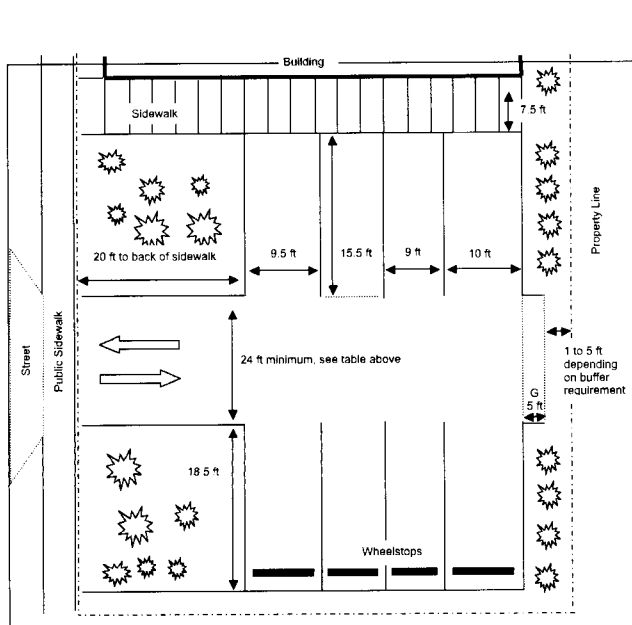
[Ord. 5673, 6/27/2007]

- (14) **Lighting.** Any lights provided to illuminate any public or private parking area or vehicle sales area must be arranged to reflect the light away from any abutting or adjacent residential district properties.
- (15) **Pedestrian Access.** Walkways and accessways shall be provided in all new off-street parking lots and additions to connect sidewalks adjacent to new development to the entrances of new buildings. **All new public walkways and handicapped accessible parking spaces must meet the minimum requirements of the Oregon Structural Specialty Code.**
- (16) **Where** employee parking is designated in new developments, parking for carpools and vanpools shall be provided and located nearest the employee entrances to buildings.

9.130 **Off-Street Parking Lot Design.** All off-street parking lots must be designed in accordance with City standards for stalls and aisles as set forth in Table 1: Parking Lot Design and supplemental drawings. **Stall dimensions are measured from inside the stripes.**

Table 1: PARKING LOT DESIGN (in feet)

A Parking Angle	B Stall Width	C Curb Width	D Aisle Width	E Stall Depth	F Bumper Overhang	G Dead-end Back-up
(Parallel)	8.0 feet	8.0 feet	N/A	25.0 feet	N/A	N/A
45°	8.5	12.0	13.0	17.5	2.0	5.0
	9.0	12.7	12.0	17.5	2.0	5.0
	9.5	13.4	11.0	17.5	2.0	5.0
	10.0	14.1	11.0	17.5	2.0	5.0
60°	8.5	9.8	18.0	19.0	2.5	5.0
	9.0	10.4	16.0	19.0	2.5	5.0
	9.5	11.0	15.0	19.0	2.5	5.0
	10.0	11.6	14.0	19.0	2.5	5.0
Compact	8.0 C	8.0 C	26.0 C	16.0 C	3.0	5.0
90°	8.5	8.5	26.0	18.5	3.0	5.0
	9.0	9.0	26.0	18.5	3.0	5.0
	9.5	9.5	26.0	18.5	3.0	5.0
	10.0	10.0	24.0	18.5	3.0	5.0



NOTES:

- (1) For one row of stalls, use "D" plus "E" as the minimum width.
- ~~(2) The dimensions for compact car spaces shall be 8 feet by 16 feet.~~
- ~~(3) For estimating available parking area, use 350 square feet per vehicle for stall, aisle, and access areas.~~
- ~~(4) The stall width for self parking of long duration is 8.5 feet; for higher turnover, self parking is 9.0 feet; and for supermarkets and similar facilities (shoppers with packages), it is 9.5-10 feet.~~
- ~~(5) The minimum aisle width for two-way traffic and for emergency vehicle operations area is 24 feet. The minimum aisle width for one-way emergency vehicle access is 20 feet.~~
- ~~(6) Where appropriate bumper overhang area is provided (extruded curbs), "F" can be subtracted from "E" to determine stall depth.~~
- ~~(7) All handicapped spaces shall be 15 feet wide. Back-up areas identified as "G" must be at least 5 feet from the property line and are excluded from required setback areas or buffer yards.~~

Staff Comments: Some of the parking standards get lost in the notes under Table 1. Several are proposed to become their own subsections. (2) is being updated to reflect the current standards for handicapped spaces.

- (1) **Compact spaces shall be at least 8 feet wide by 16 feet long.**
- (2) **Handicapped spaces shall be a minimum of 9 feet wide and 17 feet long and designed in accordance with the Oregon Structural Specialty Code (OSSC). An adjacent access aisle must be provided that is at least 8 feet wide and 17 feet long for a van-accessible space, and 6 feet wide for a standard accessible space.**
- (3) **Stall Width. Long-term parking spaces must be at least 8.5 feet wide. Parking stalls for grocery stores or adjacent to planter islands must be at least 9.5 feet wide.**
- ~~(4)~~(4) **Minimum Aisle Widths. Aisles for two-way traffic and emergency vehicle operations must be at least 24 feet wide. One-way aisles and one-way emergency vehicle access must be at least 20 feet wide.**

Staff Comments: The illustrations above show 20 feet of "stacking" room, but are not written as a standard.

- (5) **The design of driveways and on-site maneuvering and loading areas for commercial and industrial developments shall include 20 feet of storage length for entering and exiting vehicles, in order to prevent vehicles from backing into the flow of traffic on the public street or causing unsafe conflicts with on-site circulation.**

LANDSCAPING

9.140 General Requirements. Landscaping requirements by type of use are listed below:

- (1) Landscaping Required – Residential. All front **setback** yards (exclusive of access-ways and other permitted intrusions) are required to be landscaped ~~prior to issuance of~~ **before** an occupancy permit **will be issued** or final building permit approved. In all residential districts except Rural Residential (RR), **the** minimum landscaping acceptable ~~per~~ **for every** 50 lineal feet of **street frontage** (or portion thereof, deducting the width of the driveway) ~~of street frontage~~ is:
 - (a) One tree at least 6 feet tall.
 - (b) Four ~~(4)~~ 1-gallon shrubs or accent plants.
 - (c) The remaining area treated with attractive ground cover (e.g., lawn, bark, rock, ivy, and evergreen shrubs).
- (2) Landscaping Required — Commercial and Industrial **Non-Residential**. All required front and interior setback yards, exclusive of access-ways and other permitted intrusions, must be landscaped ~~prior to issuance of~~ **before** an occupancy permit **will be issued**. Minimum landscaping acceptable ~~per~~ **for every** 1,000 square feet of required setback yards ~~areas~~ in all commercial

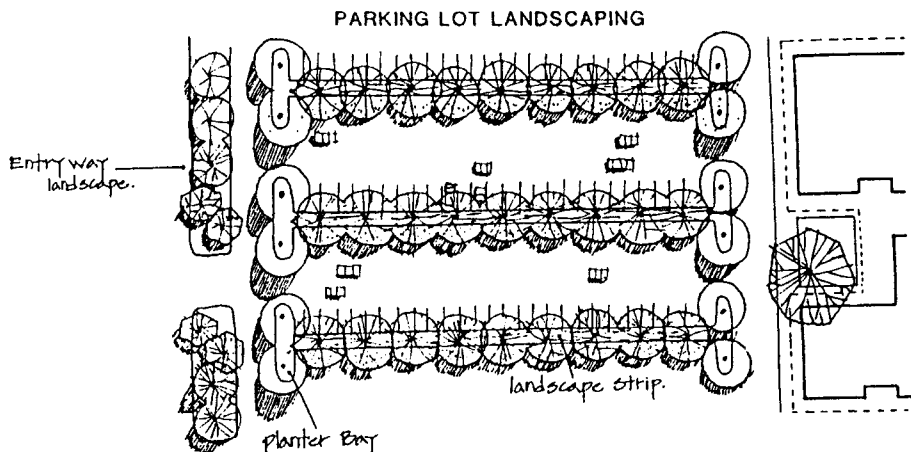
industrial districts is as follows:

- (a) One tree at least 6 feet tall ~~is required~~ for every 30 feet of street frontage.
- (b) Five 5-gallon or eight 1-gallon shrubs, trees or accent plants.
- (c) The remaining area treated with suitable living ground cover, lawn, or decorative treatment of bark, rock, or other attractive ground cover.
- (d) ~~Whenre~~ the yard adjacent to a street of an industrially zoned property is across a right-of-way from other industrially or commercially zoned property, only 30 percent of such yard area must be landscaped.

9.150 Parking Lot Landscaping. **The purpose of landscaping in parking lots is to provide shade, reduce storm water runoff, and direct traffic.** Parking lots must be landscaped in accordance with the following minimum standards:

Staff Comments: The last sentence is proposed to ensure handicapped walkways are clear of vegetation.

- (1) Planter Bays. Parking areas shall be divided into bays of not more than 12 parking spaces. ~~Between or a~~ **At the both** ends of each parking bay there shall be curbed planters at least 5 feet wide, **excluding the curb.** Each planter shall contain one **canopy** tree at least 10 feet high and decorative ground cover containing at least two shrubs for every 100 square feet of landscape area. **Neither planter bays nor their contents may impede access on required public sidewalks or paths, or handicapped-accessible parking spaces.**
- (2) Entryway Landscaping. **Both sides of a parking lot entrance** ~~Entryways into parking lots shall be~~ bordered by a minimum 5-foot ~~foot-~~wide landscape planter strip meeting the same landscaping provisions as ~~for~~ planter bays, except that no ~~sight~~ **sight-**obscuring trees or shrubs are permitted.
- (3) Parking Space Buffers. Parking areas shall be separated from the exterior wall of a structure by pedestrian ~~entrance~~ **walkways** or loading areas or by a 5-foot strip of landscaping materials.
- (4) Alternate Plan. An alternate plan may be submitted that provides landscaping of at least five percent of the total parking area exclusive of required landscaped yard areas and that separates parking areas of more than 100 spaces into clusters divided by landscape strips. Each planter area shall contain 1 tree at least 10 feet tall and decorative ground cover containing at least 2 shrubs for every 100 square feet of landscape area. **Landscaping may not impede access on required public sidewalks or paths, or handicapped-accessible parking spaces.**
- (5) Landscape Protection. Required landscaped areas adjacent to graveled areas must be protected, either by railroad ties secured by rebar driven 18 inches into the ground, by large boulders, or by another acceptable means of ~~providing~~ protection.



No changes are proposed to Sections 9.130 through 9.330, so they are not shown.

ENVIRONMENTAL

- 9.400 Purpose. These regulations are designed to protect all uses in all zones from certain objectionable off-site impacts associated with nonresidential uses. These impacts include noise, vibration, odors, and glare. The standards ensure that uses provide adequate control measures or locate in areas where the community is protected from health hazards or nuisances. ~~The use~~ Use of objective standards provides a measurable means of determining specified off-site impacts. This method protects specific industries or firms from exclusion in a zone based solely on the general characteristics of similar industries in the past. [Ord. 5555, 2/7/2003]
- 9.405 Exemptions. The off-site impact standards do not apply to machinery, equipment, and facilities that were at the site and in compliance with existing regulations at the effective date of these regulations. Any new or additional machinery, equipment, and facilities must comply with the standards of this chapter. Documentation is the responsibility of the proprietor of the use if there is any question about when the equipment was brought to the site. [Ord. 5555, 2/7/2003]
- 9.410 Relationship to Other Regulations. The environmental standards are in addition to all other regulations of the Albany Municipal Code. These standards do not replace or supersede regulations of the Department of Environmental Quality (DEQ), relevant county regulations, or standards such as the Uniform Building Code or Uniform Fire Code. [Ord. 5555, 2/7/2003]
- 9.420 Evidence of Compliance. ~~Prior to~~ **Before** approving a development application, the Director may require submission of evidence demonstrating compliance with state, federal and local environmental regulations and receipt of necessary permits.
- 9.425 Responsibility. Compliance with state, federal and local environmental regulations is the continuing obligation of the property owner and operator.
- 9.430 Measurements. Measurements for compliance with these standards are made from the property line or within the property of the affected site. Measurements may be made at ground level or at habitable levels of buildings.
- If the City does not have the equipment or expertise to measure and evaluate a specific complaint, it may request assistance from another agency or may contract with an independent expert to perform such measurements. The City may accept measurements made by an independent expert hired by the owner or operator of the off-site impact source. If the City contracts to have measurements made and no violation is found, the City will bear the expense, if any, of the measurements. If a violation is found, City expenses will be charged to the violator. Nonpayment of the costs is a violation of the Code. [Ord. 5555, 2/7/2003]
- 9.435 Neighborhood Compatibility. If a site is located within 300 feet of residentially-zoned property and environmental impacts regulated by this article have not been adequately determined, the Community Development Director may require that a proposed use be considered under the Conditional Use process to provide an opportunity for public review and comment and to establish conditions to mitigate potential impacts. [Ord. 5555, 2/7/2003]

Staff Comments: The City attorney recommends adopting the state's noise standards for industry and commerce in our Code for enforcement purposes. These standards are adopted by reference.

- 9.440 Noise. The City noise standards are stated in Albany Municipal Code Title 7, Public Peace, Morals and Safety. **Oregon Administrative Rules (OAR) 340-035-0035, Noise Control Regulations for Industry and Commerce**, is adopted here in its entirety, and as may be subsequently amended by

the State of Oregon. Tables 7, 8, and 9 referenced in OAR are included here for reference only. In addition, the Department of Environmental Quality (DEQ) has regulations that apply to firms adjacent to or near noise-sensitive uses such as dwellings, religious institutions, schools, and hospitals.

TABLES 7 & 8 (OAR 340-035-0035) New and Existing Industrial and Commercial Noise Source Standards Allowable Statistical Noise Levels in Any One Hour	
7 am – 10 pm	10 pm – 7 am
L ₅₀ – 55 dBA	L ₅₀ – 50 dBA
L ₁₀ – 60 dBA	L ₁₀ – 55 dBA
L ₀₁ – 75 dBA	L ₀₁ – 60 dBA

TABLE 9 (OAR 340-035-0035) Industrial and Commercial Noise Source Standards for Quiet Areas Allowable Statistical Noise Levels in Any One Hour	
7 am – 10 pm	10 pm – 7 am
L ₅₀ – 50 dBA	L ₅₀ – 45 dBA
L ₁₀ – 55 dBA	L ₁₀ – 50 dBA
L ₀₁ – 60 dBA	L ₀₁ – 55 dBA

- (6) Additional City Standards. The following restrictions are in addition to the State DEQ standards for purposes of City noise regulation:
 - (a) For purposes of measuring permitted sound levels from ~~noise-noise~~-generating sources under the provisions of DEQ rules, any point where a ~~noise-noise~~-sensitive building could be constructed under the provisions of this Code shall apply as if such point contained a noise sensitive building.
 - (b) Within the Industrial Park (IP) and Waterfront (WF) zoning districts, each property or building under separate ownership shall be considered a ~~noise-noise~~-sensitive property under the provision of DEQ rules, with the exception that the allowable noise levels shall be increased by 5 db.

- (7) Expert Evaluation. A noise analysis may be required in the development review process to show that a proposed activity can meet the noise standards or that residential uses are adequately buffered from noise sources.

- (8) Mitigation Measures. The following noise mitigation measures may be required through development review:
 - (a) increased building setbacks;
 - (b) special berms and heavy vegetation areas;
 - (c) site layout to establish buffer areas or locate low-noise buildings to serve as buffer between the noise-sensitive areas and the sound source;
 - (d) special sound insulation construction techniques;
 - (e) improvements as recommended by the DEQ or a qualified noise consultant;
 - (f) posting a bond or other financial agreement to ensure that the required noise reduction features are installed.

[Ord. 5555, 2/7/2003]

No other changes are proposed to the rest of this article, so the rest is not included.

ARTICLE 11 LAND DIVISIONS AND PLANNED DEVELOPMENTS

Staff Comment: The amendments and comments in red are proposed policy amendments. Staff comments in italics are not amendments and will be removed.

11.000 Overview. The most permanent feature of a community is the way land is divided into parcels. This article describes the process of converting raw land into building sites. The primary goals of this design review are to better ensure that natural features have been taken into account; that roads and utilities are properly designed and installed, and that adequate open space has been provided. This article establishes the standards and procedures for property line adjustments, partitions, subdivisions, planned developments, and condominiums.

The following is a list of the main headings in this article.

- General Provisions
- Lot and Block Arrangement
- Property Line Adjustments
- Subdivisions and Partitions
- Planned Developments
- Condominiums
- Cluster Development

[Ord. 5668, 4/11/07]

Staff Comments: Public Works has requested additional language be added to the Tentative Plat Submittal Section, (9) to clarify what needs to be shown on the plat. No other changes are proposed, so the rest of the Article is not shown.

11.210 Tentative Plat Submittal. All applications for tentative partition or subdivision approval must include a complete application form and copies of a plat showing the following details. The tentative plat need not be a finished drawing but it should show all pertinent information to scale.

- (9) The location on the site and in the adjoining streets or property of existing and proposed **sanitary sewers, storm sewers**, and water mains and services, culverts, ditches and drain pipes, **all other utilities such as** electric, gas and telephone conduits with invert elevations of **sanitary and storm sewers** at points of proposed connections.

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**ARTICLE 12
PUBLIC IMPROVEMENTS**

Staff Comment: The amendments and comments in red are proposed policy amendments. Other edits to clarify the existing regulations are proposed in black bold and strikethrough. Staff comments in italics are not amendments and will be removed.

12.000 Overview. This article contains the City’s standards for public improvements that relate to the development process.

The following is a list of the main headings in this article.

- General Provisions
- Streets
- Sidewalks
- Street Trees
- Bikeways
- Utilities—General
- Water
- Sanitary Sewer
- Storm Drainage
- Improvement Assurances
- Addresses and Street Names

[Ord. 5673, 6/27/2007]

GENERAL PROVISIONS

- 12.010 Purpose. The provisions ~~in this article~~ for new public improvements **in this article** are intended to address the City’s concerns relative to public health, safety, and welfare.
- 12.020 Relationship to Other Local Regulations. This article supplements other municipal ordinances. ~~In the event of a conflict between~~**If a provision of this article and conflicts with** another City ordinance, ~~that~~**the** ordinance that most specifically deals with the issue in question shall control. Whenever possible, the two provisions shall be interpreted in a manner that renders the provisions of both ordinances consistent. Only when such interpretation is impossible will one provision be deemed to supersede the other.
- 12.030 Relationship to Specialty Codes or State Law. This article ~~is intended to~~supplements other existing state and local codes. Examples of these codes include, but are not limited to, the adopted building, fire, and plumbing codes. ~~In the event of a conflict between~~**If any provision of this article and conflicts with** a specialty code, the specialty code shall control.
- 12.040 Conditions of Approval. Development approval may be conditioned upon the provision and/or guarantee of public improvements called for in an adopted ~~Public Facilities~~**Master Plan**, or any other public improvements necessitated by the development. Development approval may likewise be conditioned ~~when~~private facilities are proposed to be shared by two or more parcels. Construction of off-site improvements may be required ~~when necessary~~to mitigate impacts resulting from development that relates to capacity deficiencies and public safety; and/or ~~when necessary~~to upgrade or construct public facilities to City standards.

All development decisions shall be consistent with constitutional limitations concerning the taking of private property for public use.

To provide an adequate transportation system, development approvals may include conditions that

require facilities ~~that accommodate~~ for safe and convenient pedestrian and bicycle access within and from new subdivisions, multi-family developments, planned developments, shopping centers and commercial districts to adjacent residential areas and transit stops, and to neighborhood activity centers within one-half mile of the development.

- (1) “Neighborhood activity centers” includes, but is not limited to, existing or planned schools, parks, shopping areas, transit stops or employment centers;
- (2) “Safe, convenient and adequate” means bicycle and pedestrian routes, facilities and improvements that:
 - (a) Are reasonably free from hazards, particularly types or levels of automobile traffic which would interfere with or discourage pedestrian or cycle travel for short trips;
 - (b) Provide a reasonably direct route of travel between destinations, such as between a transit stop and a store; and
 - (c) Meet ~~travel~~ needs of cyclists and pedestrians, considering destination and length of trip, and considering that the optimum trip length of pedestrians is generally 1/4 to 1/2 mile. [Ord. 5281, 3/26/1997; Ord. 5339, 1/28/1998]

12.045 Relationship to Other Development Code Articles. This article provides the public improvements standards to be used ~~in conjunction~~ with the procedural and design requirements contained in the articles on land divisions, site plan review, and manufactured home parks.

12.050 Relationship to Construction Standards. Public improvements shall be designed to comply with adopted facility master plans ~~to the greatest extent as~~ **much as** possible. Unless otherwise approved by the City Engineer, public improvements shall be constructed according to the standard construction specifications. The standard specifications for construction, reconstruction or repair of streets, sidewalks, curbs, gutters and other public improvements within the City are ~~as~~ contained in the City’s “Standard Construction Specifications.” The City Engineer may make changes to the standard specifications consistent with the application of engineering principles to the conditions ~~in Albany.~~ [Ord. 5339, 1/28/1998]

STREETS

12.060 General Provisions. No development may occur unless ~~the development~~ **it** has frontage on or approved access to a public street currently open to traffic. A currently non-opened public right-of-way may be opened by improving it to City standards.

Streets shall be ~~inter~~connected to reduce travel distance, provide multiple travel routes, and promote the use of alternative modes. Street patterns have a **greater** long-range effect on land use patterns, ~~greater than~~ **do** parcelization patterns or building location.

Streets (including alleys) within and adjacent to a development shall be improved in accordance with the standards in this Article. In addition, any new street or additional street width planned as a portion of an approved street plan shall be dedicated and improved in accordance with this Article.

~~When~~ the City Engineer determines that a required street improvement would not be timely, the City Engineer may accept a Petition for Improvement/Waiver of Remonstrance for a future assessment district. [Ord. 5445, 4/12/2000]

12.070 Creation of Streets. Streets are usually created ~~through the~~ **by** approval of a subdivision or partition plat. However, the City Council may also approve ~~the~~ creation of a street by acceptance of a deed. If ~~the~~ **the** creating ~~of~~ a street unintentionally results in a land partition, the owner is not required to apply for

partition approval as long as the resulting parcels comply with Code standards.

12.080 Classification of Streets. Arterial and collector streets are designated in the Transportation System Plan. [Ord. 5445, 4/12/2000]

12.090 Creation of Access Easements. In general, ~~the creation of~~ access easements between property owners is discouraged. However, ~~there are some instances where~~ sometimes an access easement is the only viable ~~method of way to providing~~ access to a developable lot. The review body will approve an access easement when the applicant has demonstrated that all of the following criteria have been met:

- (1) No more than two parcels or uses ~~are to~~ will be served by the proposed access easement;
- (2) There is ~~insufficient~~ **not enough** room for a public right-of-way due to topography, lot configuration, or placement of existing buildings; and,
- (3) The City Engineer has determined that there is ~~not a~~ need for a public street in this location.

12.100 Access to Public Streets. With the exceptions noted in Section 1.070, the location and improvement of an access point onto a public street shall be included in the review of a development proposal. In addition, the following specific requirements shall apply to all access points, curb cuts, and driveways:

Staff Comments: The proposed language most often relates to "flag" lots, although shared driveways are sometimes required to limit access to arterial and collector streets. Access and maintenance easements are required to be recorded at the land division stage.

- (1) Approaches and driveways to City streets and alleys must be paved and constructed in accordance with the Standard Construction Specifications. **Driveways serving more than one property shall be paved the full length of the shared portion.**
- (2) Driveways for single- and two-family dwellings must have a minimum width of 10 feet, **and a** maximum width of 24 feet (not to exceed the width of the driveway curb cut) and minimum separation of 5 feet.

Up to four multiple-family units that front on a public street may have separate driveways. The driveways shall meet the same standards as **for** single- and two-family dwellings.

Driveways for all other uses must have widths of 12-16 feet for one-lane (one-way) driveways, 24-32 feet for two-lane driveways, and 36 feet for three-lane driveways. Three-lane driveways must have designated lanes and turning movements. Industrial driveways shall have a width of 24-48 feet. There must be a minimum separation of 22 feet between all driveways except for single- and two-family dwellings. The width of a driveway will be determined by measuring at the curb line and will exclude the transitions which must conform to standards fixed by the City Engineer.

- (3) All driveways must be located ~~the maximum distance as far as~~ **as far as** practical from a street intersection, and in no instance shall the distance from an intersection be ~~closer~~ **less** than the following, as measured from the nearest curb return radius:

Arterial Street	40 feet
Collector Street	20 feet
Local Street	10 feet

When ~~streets of different functional classification~~ **different classes of streets** intersect, the distance required is ~~that of the classification that requires the greatest distance~~ **between the an** access point and the intersection **is that of the street type that requires the greater distance.**

- (4) The location, width, and number of accesses to a public street may be limited for developments that are subject to site plan review ~~provisions of this Code~~. All development that proposes access to an arterial street is subject to site plan review ~~procedures~~ and the design requirements of 12.230.

Staff Comments: The last two sentences are confusing at best. The first sentence contains the intent of this regulation, so the last two sentences are proposed to be removed.

- (5) Access points to a public street shall be the minimum necessary to provide reasonable access while not inhibiting the safe circulation and carrying capacity of the street. ~~Except as further restricted by this Article, local street access to properties of less than 100 feet of frontage is limited to two access lanes per frontage, which may be together or separate and properties exceeding 100 feet of frontage are limited to two access lanes per each 100 feet of frontage.~~
- (6) Properties with frontage on more than one street may be restricted to access on the street(s) of a lower classification through site plan, land division, or other review procedures.
- (7) A common access point at a property line is encouraged and, ~~in some instances,~~ may be required in order to reduce the number of access points to streets. Construction of common access points must be preceded by recording of joint access and maintenance easements.
- (8) With the exception of single-family residential development, approach grades must not exceed 10 percent slope within 20 feet of a public street. Driveways for single-family residential development shall comply with applicable fire and building codes.
- (9) Access to designated state highways is subject to the provisions of this Article in addition to requirements of the State Highway Division, **and** State Department of Transportation. When regulations of the City and State ~~may~~ conflict, the more restrictive requirements apply.
- (10) For developments on ~~parcels~~ **property larger than five acres in** contiguous ownership ~~exceeding five acres in size which~~ **fronting** on an arterial street or limited access highway, a frontage road may be required in order to provide a single access determined by the review body to be the most appropriate location for safety and convenience.
- (11) When access is allowed on an arterial street, efforts shall be made to locate ~~the accessit~~ adjacent to the interior property line where ~~such accessit~~ could be shared by the adjacent property. [Ord. 5338, 1/28/1998; Ord. 5445, 4/12/2000]

12.110 Street Location, Width and Grade. The location, width, and grade of all streets must conform to any approved transportation master plan or recorded subdivision plat. When location of a street is not shown in an approved street plan, the arrangement of streets in a development shall either provide for the continuation or appropriate projection of existing principal streets in the surrounding areas or conform to a plan for the neighborhood approved or adopted by the City to meet a particular situation where topographical or other conditions made continuance **of** or conformance to existing streets impractical or where no plan has been previously adopted.

In addition, new streets may be required to be located where the City Engineer determines that additional access is needed to relieve or avoid access deficiencies on adjacent or nearby properties. In determining the location of new streets in a development or street plan, consideration shall be given to maximizing available solar access for adjoining development sites.

Street grades must be approved by the City Engineer, who will consider drainage and traffic safety.

12.120 Rights-of-Way and Roadway Widths. Unless otherwise indicated on an approved street plan or in

Section 12.130, the street right-of-way and roadway widths shall not be less than the minimum width in feet-shown in the following table. Where a range is indicated, the width shall be determined by the City Engineer.

Staff Comments: The sentence below the table was accidentally removed in 2000 and is being restored. In addition, we propose adding "unless waived" by the City Engineer," to the end incase the City Engineer determines the easements are not needed.

Type of Street	Minimum Rights-of-Way Width	Minimum Roadway Width
Arterial	{70-120} feet	{40-70} feet
Collector	{60-80} feet	{36-48} feet
Local*	{42-56} feet	{22-32} feet
Radius for turnaround at end of cul-de-sac	{43} feet	{36} feet
Alley	{14-20} feet	{12-20} feet

*** When street rights-of-way are less than 60 feet wide, a parallel public utility easement 7-feet-wide shall be dedicated on both sides of the right-of-way unless waived by the City Engineer.**

[Ord. 5445, 4/12/2000]

12.122 Local Residential Streets. There are two classifications of local streets, based on projected traffic volumes. The applicant is responsible for demonstrating that each proposed street is designed for the appropriate traffic volume.

(1) Minor Local Streets. The minor local street design is intended to be the predominant street type in residential neighborhoods. A minor local street will have fewer than 1,000 average trips per day (ADT) when all future street connections are made. The standard design is a 30-foot wide paved surface with curb and gutter, a 6-foot landscape strip, and a 5-foot sidewalk on each side within a 54-foot right-of-way. ~~There is a~~ parallel 7-foot public utility easement is dedicated on each side of the street **unless waived by the City Engineer**. Parking is allowed on both sides of the street. See Figure 1.

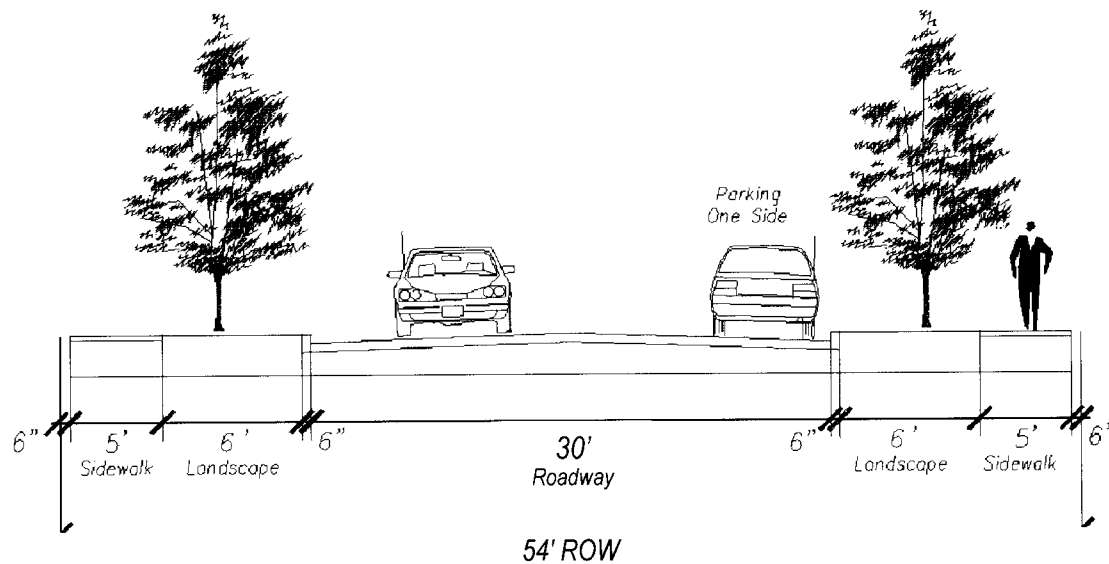


Figure 1: Minor Local Street

(2) Optional Design for Minor Local Streets. In lieu of the standard design in subsection (1), a **minor**

local street may have a 28-foot-wide paved surface within a 52-foot right-of-way, with parking on both sides, ~~for minor local streets is allowed~~ when the following performance standards are met:

- (a) Provisions are made to ensure **that** emergency response vehicles have adequate access to all ~~parcels-properties~~ on the street. A 40-foot-long clear area must be provided ~~at a rate of one~~ **perfor every** two ~~lots-properties~~ along each side of the street. The clear area may be created with parking restrictions created by adjoining driveways or other method approved by the City Engineer.
 - (b) The street will have fewer than 1,000 average **daily** trips per day (ADT) when all future street connections are made.
- (3) Network Local Streets. A network local street will have ~~greater~~**more** than 1,000 ADT. The standard design is a 28-foot-wide paved surface with curb and gutter, a 6-foot landscape strip, and a 5-foot sidewalk on each side within a 52-foot right-of-way. ~~There is a~~ parallel 7-foot public utility easement **is** dedicated on each side of the street **unless waived by the City Engineer**. Parking is restricted to one side of the street. See Figure 2.

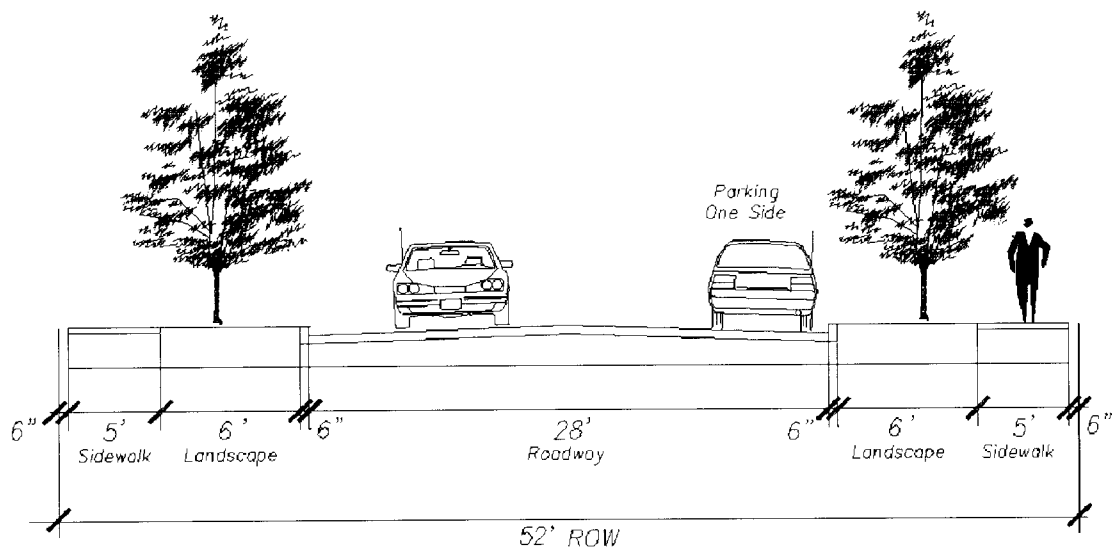


Figure 2: Network Local Street

- (4) Alley Option. ~~Use of a~~Alleys ~~is~~**are** encouraged in residential neighborhood design. A narrower minor local street (22-foot paved surface) will be allowed with alley access because the alley will reduce some of the parking and access functions usually found on the frontage street. All private utilities must be located in the alley, and no curb cuts will be permitted along the ~~frontage~~ street. The standard ~~six~~6-foot planter strip and ~~five~~5-foot setback sidewalks are required along the frontage street. See Figure 3. As an incentive, lots with alley access may be up to 10 percent smaller than the minimum lot size of the zone. See Table 1, Article 3.

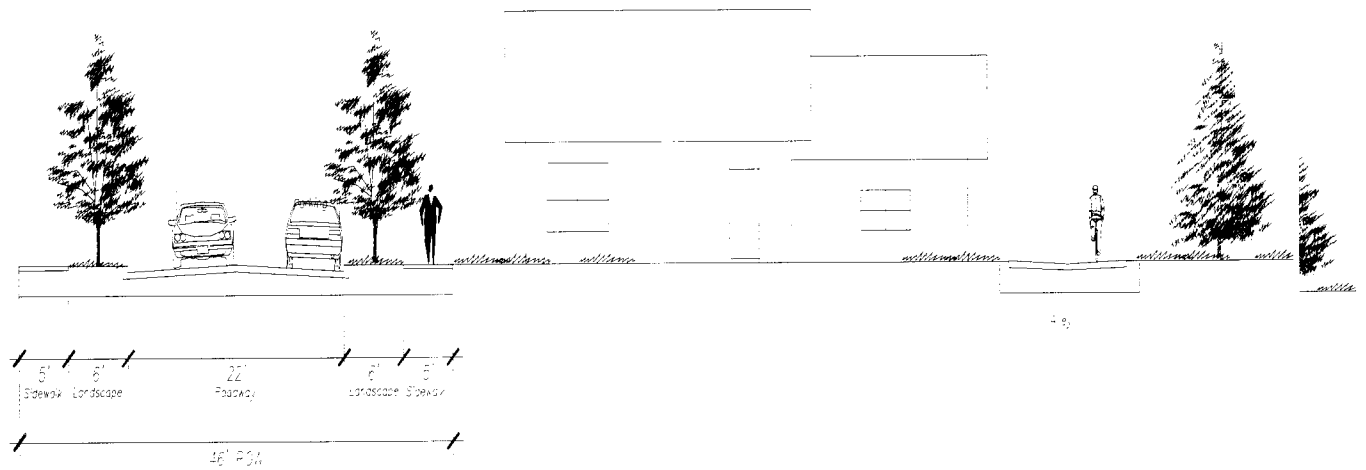
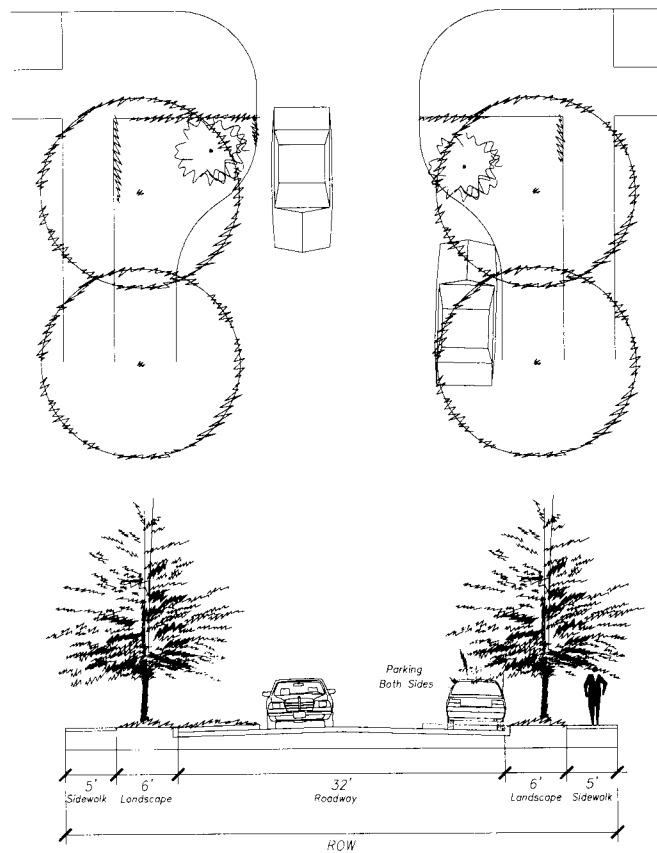


Figure 3: Alley Option

- (5) Wide Local Street Option. A wider local street (32-foot paved surface) may be proposed to accommodate ~~on-street~~ parking on both sides of the street. Additional pedestrian amenities, such as ~~bulb~~ **bulb**-outs at intersections and larger street trees, will be required as a condition of the subdivision or planned development approval to offset the wider street section. See Figure 4.

Figure 4: Wide Local Street Option



- (6) Residential Street Design for Constrained Sites. ~~There are instances where a development is proposed on land that has a~~ Natural features ~~that~~ may constrain the standard local street design. Examples of such natural features include floodplains, steep slopes, drainageways, wetlands, riparian corridors, and tree groves. Through the subdivision or planned development review

process, the City will consider a narrower street section that does not compromise the goals for street design in a great neighborhood. For example, the sidewalks may be placed curbside and parking may be removed from the street in order to narrow the street paving and preserve natural areas. See Figure 5.

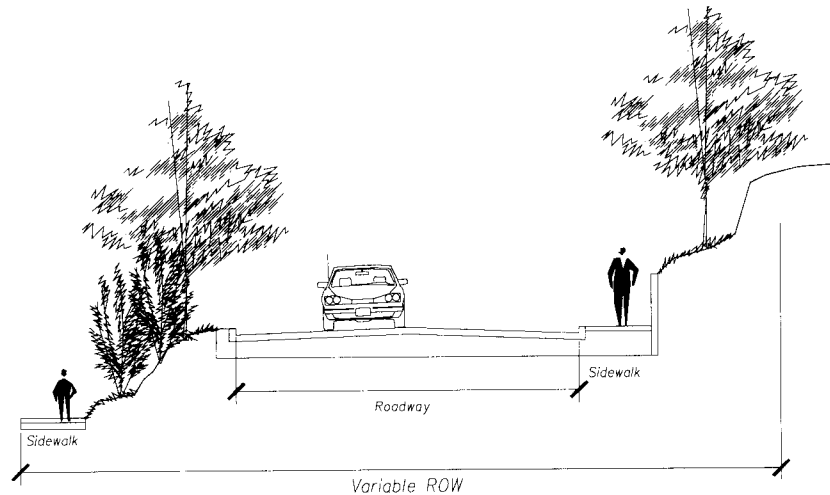


Figure 5: Residential Street Design (Constrained)

(7) Alternate Street Standard for Cluster Development. (Reserved)

SUMMARY OF STREET DESIGN STANDARDS	SINGLE-FAMILY DEVELOPMENT				MULTI-FAMILY DEVELOPMENT
	MINOR LOCAL STREETS		NETWORK LOCAL STREETS	WIDE OPTION	
Design Elements	Standard Design	Street with Alley Option	Standard Design	Wide Option	Standard Design
Right-of-way	54' ³	46'	52'	56'	56'
Pavement width	30' ³	22'	28'	32'	32'
On-street parking	Both sides	One side	One side	Both sides	Both sides
Bike lanes	No	No	No	No	No
Curb & gutter	Yes	Yes	Yes	Yes	Yes
Sidewalks ¹	5' setback	5' setback	5' setback	5' setback	5' setback
Planter strip	6' planter	6' planter	6' planter	6' planter	6' planter
Examples of "add backs" ²	None	14-20' rear alley with all private utilities	None	Traffic calming, taller street trees	Traffic calming, taller street trees

¹ Curbside sidewalks are allowed on cul-de-sac bulbs. See Section 12.300(2).
² In exchange for building a street that does not meet the standard design, additional design features are required to more than compensate for the loss of one or more design objectives.
³ A 28-foot street in a 52-foot right-of-way is allowed subject to the provisions of Section 12.122(2).

[Ord. 5445, 4/12/2000; Ord. 5562, 10/10/2003]

12.130 Mini-Subdivision Street and Rights-of-Way Standards. The standards listed in this section are intended for use in developing residential infill parcels. The review body will approve variations to the standards listed in Section 12.120 above, when the following criteria are met:

- (1) The property to be divided is less than two acres in size and no more than eight lots will be created or served by the street; and
- (2) The proposed land division, as a whole, meets the standards for lot size and configuration for the zoning district; and

- (3) Surrounding parcels are developed or are so physically incapable of being developed so that combining the proposed land division with adjoining properties in a conventional land division is not feasible.
- (4) The property is not needed for a continuation of continuing the adjacent public street pattern. However, pedestrian connections may be required for the continuation of continuing the pedestrian circulation system.

The review body may also modify other standards in this Code as indicated below:

Dedication & Maintenance	Paved Width (b) Street/Cul-de-sac	On-Street		Rights-of-Way (c)	
		Curbs	Parking	Sidewalk	Street/Cul-de-sac
Public (a)	22' / 25' (radius)	Yes	no	4' (1 side)	30' / 35' (radius)
Public (a)	28' / NA	Yes	one side	4' (1 side)	36' / NA

- (a) A 7-foot public utility easement may be required on each side of the right-of-way.
- (b) Maximum street length is 400 feet.
- (c) A “hammerhead” turnaround may be allowed only if no more than four residential lots are created, and the City Engineer determines that no other options exist and no traffic hazards will be created. [Ord. 5445, 4/12/2000]

12.140 Additional Rights-of-Way. A development project requiring land use approval is required to dedicate additional right-of-way if an existing street abutting or within the development does not meet the widths designated in Section 12.120. This provision does not apply to property line adjustments or historic review. While not required to dedicate additional right-of-way, single- and two-family dwellings (and related accessory buildings) are subject to being setbacks from future street rights-of-way as provided in Section 3.190.

Staff Comment: We have the ability to restrict access to public right-of-way through the use of barricades, so reserve strips do not provide any additional deterrent. Public Works has not been requiring the strips for over 10 years and they have had no problems. Therefore, the “reserve strip” sentence is proposed to be deleted because the requirement is not necessary.

12.150 Future Extensions of Streets and Reserve Strips. When it is necessary to give access to or permit a future division of adjoining land, streets shall be extended to the adjoining tract. ~~A reserve strip across the end of a dedicated street shall be deeded to the City. In addition, a~~ A barricade at the end of the street shall be installed and paid for by the property owners. It shall not be removed until authorized by the City Engineer.

12.160 Street Alignment. As far as practical, streets shall be dedicated and constructed in alignment with existing streets ~~by continuing the centerlines thereof.~~ Arterial and collector streets shall have continuous alignments without offset or staggered intersections. In no case shall ~~the staggering of~~ streets be designed ~~where so that~~ jogs of less than 300 feet are created as measured from the centerline of any intersection involving an arterial or collector street. [Ord. 5338, 1/28/1998]

12.170 Intersections. Streets must ~~be laid out so as~~ intersect as nearly as possible at right angles. Proposed intersection of two streets at an acute angle of less than 75 degrees is not allowed. An oblique street should be curved approaching an intersection to provide at least 100 feet of street at right angles with the intersection. Not more than two streets shall intersect at any one point.

12.180 Clear Vision Area. A clear vision area must be maintained at each access to a public street and on each corner of property at the intersection of two streets or a street and a railroad. No fence, wall, hedge, sign, or other planting or structure that would impede visibility between the heights of 2 ~~and~~ 8 feet

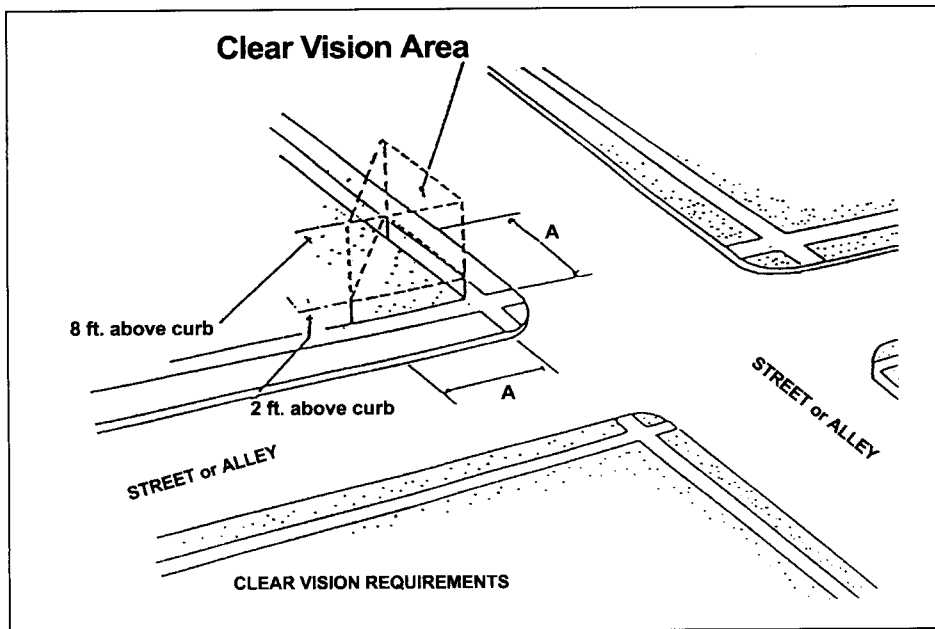
EXHIBIT E

shall be established in the clear vision area. Visibility is not considered impeded by a fence where materials are 35 percent or less of the surface area of that portion of the fence above 2 feet. Fence posts spaced at 8 feet or more apart are not counted as part of the fence surface area. Height measurements shall be made from the top of the curb or, when no curb exists, from the established street center line grade.

- (1) The clear vision area provisions do not apply to the following:
- (a) a public utility pole,
 - (b) a tree trimmed (to the trunk) to a line at least eight feet above the level of the intersection,
 - (c) another plant species of open growth habit that is not planted in the form of a hedge and that is planted and trimmed to leave at all seasons a clear and unobstructed cross-view,
 - (d) a supporting member or appurtenance to a permanent building lawfully existing on the date this standard becomes effective,
 - (e) an official warning sign or signal,
 - (f) the post section of a pole sign when there are no more than two posts and any post is less than eight inches in diameter, and
 - (g) existing or new buildings that meet the minimum setbacks.
- (2) A clear vision area consists of a triangular area, two sides of which are lot lines or a driveway and a lot line for a distance specified in this section, or, where the lot lines have rounded corners, the lot lines extended in a straight line to a point of intersection and so measured, and the third side of which is a line across the corner of the lot joining the non-intersecting ends of the other two sides (See illustration below). The following measurements shall establish the clear vision areas:

<u>Type of Intersection</u>	<u>Measurement Along Each Lot Line or Drive Edge*</u>
Controlled Intersection (stop sign or signal)	20 feet
Uncontrolled Intersection (60' right of way)	30 feet
Uncontrolled Intersection (less than 60' right of way)	30 feet
Commercial and Industrial District driveways	20 feet
Residential District driveways	15 feet
Alley (less than 25 feet)	20 feet

** When ~~there is an intersection~~ of two or more streets of different right-of-way width **intersect**, the distance to be measured along the lot lines shall be the distance specified for each type street.*



- 12.190 Cul-de-sacs. The street pattern may include cul-de-sacs and bulbs only if connectivity and block length standards have been met. A cul-de-sac must be as short as possible and is not to exceed 400 feet. A cul-de-sac must terminate with ~~in~~ a circular turnaround, except as provided in 12.130 (4)(c). Dead-end streets longer than 400 feet may be approved by the City Engineer if no other means is available for development of the property.

A 10-foot-wide lighted concrete bikeway/pedestrian accessway shall be dedicated and constructed from the end of each cul-de-sac to the nearest street or property line of adjacent property, except where the cul-de-sac abuts developed property and/or the City Engineer determines there is no need for a connection. [Ord. 5338, 1/28/1998; Ord. 5445, 4/12/2000]

- 12.200 Street Abutting New Development. Sections of existing streets ~~not meeting that~~ directly abut a new development and do not meet City standards that directly abut new development shall be constructed to City standards. The City Engineer may approve construction of a ~~partial~~ partial-width street, provided the design is determined to be adequate to accommodate needed public facilities, storm drainage runoff, traffic volumes, and traffic loadings. The design of the improvement shall consider the ultimate design of the fully widened street. For purposes of this section, "development" means a land division, new commercial or industrial development, construction of multi-family residential units, or a manufactured home or recreational vehicle park.

A future improvement assurance, as described in Section 12.600, may be accepted by the City when the City Engineer determines that the street improvement would not be timely. [Ord. 5338, 1/28/1998]

- 12.210 Slope and Curves. Slope shall not exceed 6 percent on arterials, 10 percent on collector streets, or 12 percent on other streets. Center line radii or curves shall ~~not be~~ not less than 600 feet on arterials, 400 feet on collectors, or 200 feet on other streets. ~~When~~ existing conditions, particularly the topography, make it otherwise impractical to provide buildable sites, steeper grades and sharper curves may be approved by the review body. In flat areas, allowance shall be made for finished street grades having a minimum slope of at least 0.5 percent, when possible.

- 12.220 Street Adjacent to Railroad. Whenever a proposed development contains or is adjacent to a railroad right-of-way, provision may be required for a street approximately parallel to and on each side of the railroad right-of-way at a distance suitable for the appropriate use of the land between each street and

the railroad. The distance shall be determined with ~~due~~ consideration at each cross street of the minimum distance required for approach grades to a future grade separation and to provide sufficient depth to allow screen planting along the railroad right-of-way in non-industrial areas.

12.230 Access to Arterials. When a development abuts or contains an existing or proposed arterial street, the development design shall provide adequate protection for residential properties and shall separate residential access and through traffic; or if separation is not feasible, the design shall minimize the traffic conflicts. The design requirements may include any of the following:

- (1) A parallel access street along the arterial;
- (2) Lots **abutting the arterial** of suitable depth ~~abutting the arterial~~ to provide adequate buffering and having frontage along another street;
- (3) Screen planting at the rear or side property line to be contained in a non-access reservation along the arterial; or
- (4) Other treatment, as determined by the ~~City Engineer~~ **Director**, suitable to meet the objectives of this subsection.

12.240 Property Monuments. Upon completion of a street improvement and ~~prior to~~ **before** acceptance by the City, all property corners and other monuments disturbed or removed by the project shall be reestablished and protected by an ~~Oregon~~ **Oregon**-licensed surveyor retained by the developer.

12.250 Private Streets. Unless the review body determines that public streets are needed to provide for circulation and/or access to neighboring properties, private streets are permitted within ~~P~~planned ~~U~~unit ~~D~~developments, ~~M~~manufactured ~~H~~home ~~P~~parks, and ~~singly-ularly~~ owned developments of sufficient size to warrant interior circulation on private streets. Streets classified as arterials or collectors that run through these developments must be public streets. Local streets needed for connectivity purposes shall be public streets. Gated residential streets are prohibited. Private streets shall be designed and constructed with a 20-year design life. Plats for developments containing private streets must show that streets are private and **that** upkeep and maintenance **are** the responsibility of the abutting property owners. The review body may require legal assurances for the construction and continued maintenance of private streets. [Ord. 5338, 1/28/98; Ord. 5445, 4/12/00]

12.260 Traffic Signals. Where a single development or concurrent group of developments will create a need for a traffic signal at an intersection, such installation may be a condition of development approval.

12.270 Railroad Crossings. ~~When~~ **re** an adjacent development results in a need to install or improve a railroad crossing, such improvement may be a condition of development approval.

Staff Comments: The developer installs and pays for street signs. The proposed language clarifies the current process.

12.280 Street Signs. The City shall **approve the installation of** all street signs, relative to traffic control and street names, as specified by the City Engineer for any development. **The applicant shall provide and install all required street and traffic control signs.** ~~The cost of signs and installation shall be included in the developer's project costs.~~

SIDEWALKS

12.290 Requirement. All development for which land use applications are required by Section 1.060 must include sidewalks adjacent to public streets. This requirement also applies to new single-family houses

and duplexes if they are located on arterial or collector streets or on curbed local streets, if there is an existing sidewalk within 500 feet on the same side of the street.

Sidewalks shall be built ~~during when arterial and collector streets are their construction~~ and ~~considered at the discretion of the City Engineer~~ during their reconstruction. This provision shall also apply to local streets that serve commercial and multi-family development. Sidewalks are required on both sides of all streets. If an interim street standard is being constructed which does not include bike lanes or sidewalks, interim bikeways or walkways for pedestrians shall be provided ~~through construction of~~ paved roadway shoulders at least 8 feet ~~in width~~ wide on arterials and 6 feet on other streets. ~~The p~~Provision of sidewalks may be waived when the street serves a use or combination of uses that generate fewer than 50 trips a day (based on ITE standards) and cannot be continued or extended to other properties. [Ord. 5445, 4/12/2000]

12.300 Design, Width, and Location. All sidewalks must be constructed, replaced or repaired in accordance with the Standard Construction Specifications. The required width and location of sidewalks is as follows:

- (1) The required width for a sidewalk on an arterial or collector street is 7 feet. This ~~width~~ may be reduced to 6 feet if the sidewalk is separated from the curb by a landscaped planter strip at least 5 feet wide. ~~In those instances where~~ **When** there is inadequate right-of-way for additional width and no additional right-of-way can be obtained as a condition of development approval, the sidewalk width may be reduced to 5 feet. In all cases, any right-of-way remaining outside the sidewalk is to be landscaped and maintained by the adjoining property owner.
- (2) Sidewalks along residential and other local streets must be ~~a minimum of~~ **at least** 5 feet ~~in width~~ wide. A planter strip at least 6 feet wide shall separate the sidewalk from the street. Street trees shall be selected from the list of approved street trees established by the City. The planter strip shall be of permeable materials.
- (3) In the Historic Downtown and Central Business districts, as defined on the zoning map, sidewalks must be at least 10 feet ~~in width~~ wide and be installed adjacent to the curb.
- (4) Regardless of other provisions contained in this article, any sidewalk project that is less than 200 feet in length and connects on either end to an existing sidewalk may be designed to match the existing pattern with the approval of the City Engineer.
- (5) When obstructions exist or are proposed (including, but not limited to, mail-boxes, utility poles, trees, planters, fire hydrants, signs, benches, bus stops, etc.), provisions must be made to maintain a minimum of 4 feet of unobstructed sidewalk width on local streets, 5 feet on collector and arterial streets, and 6 feet in the Historic Downtown (HD) and Central Business (CB) districts.
- (6) Maintenance of sidewalks and planter strips shall be the continuing obligation of the adjacent property owner except when the lot backs onto an arterial. Planter strips shall be landscaped and maintained in like manner to the front yard setback requirements of Article 9.
- (7) Sidewalks shall be designed to parallel streets in line and grade and shall avoid unnecessary meandering from the curb line and elevation changes except as necessary to avoid significant trees or traverse topographic barriers.
- (8) ~~Public Pedestrian accessways~~ **paths** not adjacent to a public street shall be a minimum of 10 feet wide. [Ord. 5445, 4/12/2000]

12.310 Conformance to Street Grades. All sidewalks constructed adjacent to a street must be placed upon the street grade as established at the time of sidewalk construction. If a space is left between the property

line and the sidewalk and/or between the sidewalk and the curb, the space shall be filled and surfaced with earth or other approved material level with the sidewalk.

12.320 Timing of Sidewalk Construction. Sidewalk construction may be deferred until the proposed improvement on the property is completed. No occupancy permit shall be issued by the Building Official for a development until the provisions of this Article are satisfied.

The City Engineer may authorize a future improvement assurance (as described in Section 12.600) when, in his opinion, the construction of the sidewalk is impractical for one or more of the following reasons:

- (1) Sidewalk grades have not **been** and cannot be established for the property in question within a reasonable length of time;
- (2) Forthcoming installation of public utilities or street paving would be likely to cause severe damage to the new sidewalk;
- (3) Street right-of-way is insufficient to accommodate a sidewalk on one or both sides of the street; or
- (4) Topography or elevation of the sidewalk base area makes construction of a sidewalk impractical or economically infeasible.

STREET TREES

12.321 General Requirements. When a new public street is created in conjunction with development, street trees are required in accordance with the standards provided in the Standard Construction Specifications and the Urban Forestry Management Plan.

12.324 Street Tree Planting Options. The following options are available to meet this requirement:

- (1) Submit a street tree plan to the City for planting and establishing trees within the public rights-of-way that meets the ~~City tree planting~~ standards **in the Urban Forestry Management Plan**. The City Forester shall either approve or deny the plan based on the plan's compliance with these requirements.
- (2) Pay a fee to the City based upon a requirement for one tree per thirty linear feet (~~30'~~) of street frontage. This fee shall be deposited into the City's Urban Forestry Program Fees Fund. The City shall thereafter assume responsibility for the purchase, ~~installation~~**planting**, and establishment of street trees ~~with~~**within** the public right-of-way or **on** public lands maintained by the City within or abutting the specified development.

[Ord. 5673, 6/27/2007]

BIKEWAYS

12.330 Master Bikeways Plan. The City's adopted Master Bikeways Plan is in the Comprehensive Plan.

12.340 Provisions for Bikeways. Developments adjoining or containing proposed bikeways identified on the adopted Master Bikeways Plan shall include provisions for the future extension of such bikeways. Land use approvals issued for ~~P~~**planned** ~~D~~**developments**, ~~G~~**greenway** ~~C~~**conditional use** ~~P~~**permits**, subdivisions and other developments that will principally benefit from such bikeways may be conditioned to include bikeway improvements.

In the case of arterial or collector streets, bike lanes shall be built during their construction, and considered during their reconstruction. This provision shall also apply to local streets in other than ~~single~~ ~~single~~-family residential developments.

- 12.350 Bikeway Design. Where possible, bikeways should be separated from other modes of travel, including pedestrian. Minimum width for bikeways shall be 6 feet per travel lane when adjacent to a curb (one-way) and 10 feet when not on a roadway (two-way). A reduction in standards may be allowed when the City Engineer finds that no safety hazard will be created and other special circumstances (such as physical constraints) exist.

UTILITIES—GENERAL

- 12.360 Utility Easements. The developer shall make arrangements with the City of Albany and each utility franchise for the provision and dedication of utility easements necessary to provide full services to the development. All utility easements must be public easements.

- 12.370 Utility Easement Width. The standard width for public utility easements adjacent to street rights-of-way is 7 feet. The minimum width for all other public utility easements shall be 15 feet for water, 20 feet for sewer, and 15 feet for piped storm drainage unless otherwise specified by the utility company or City Engineer. ~~When~~ ~~re~~ feasible, utility easements shall be centered on a lot line.

- 12.380 Information on Development Plans. The developer must show easements for all utilities. Plans showing the location of all utilities shall be submitted to the City as part of the site plan review or land division process.

- 12.390 Requirement for Underground Utilities. Except as exempted in Section 12.400, all utility lines, cables, or wires (including but not limited to those used for electricity, communication, street lighting, and cable television) constructed upon, adjacent to, or within land subdivided or prepared for development after the effective date of this Code, must be placed underground. The intent of the City is that no poles, towers, or other structures associated with utility facilities shall be permitted on any street or lot within such a subdivision or development.

- 12.400 Exceptions. Overhead facilities are only permitted in the following instances:

- (1) Emergency installations, electric transmission lines, or through feeders operating at distribution voltages which act as a main source of supply to primary laterals and to direct connected distribution transformers and primary loads.

Should it be necessary to increase the capacity of major power transmission facilities for service to the area, ~~such~~ new or revised installations shall be made only on rights-of-way or easements on which overhead facilities exist at the time of ~~such~~ ~~the~~ capacity increase.

- (2) Appurtenances and associated equipment such as surface-mounted transformers, pedestal-mounted terminal boxes, meter cabinets, telephone cable closures, connection boxes, and the like.
- (3) Structures without overhead wires, used exclusively for fire alarm boxes, street lights, or municipal equipment installed under the supervision and with the approval of the City Engineer.
- (4) Power substations, pumping plants, and similar facilities necessary for transmission or distribution of utility services.
- (5) Television antennas and satellite dishes [See Section 3.080 (12)].

- (6) Industrial developments, except for ~~those~~ utility lines, cables, and/or wires providing service to an individual lot. Such lines must be placed underground from the nearest power pole to the facility ultimately being operated on the individual lot. Certain industries requiring exceptionally large power supplies may request direct overhead power as a condition of site plan approval. Underground utilities may be required in Industrial Park developments and planned developments in the Industrial Districts.
- (7) New development on existing individual lots of record in areas where service is currently by overhead utilities.
- 12.405 Property Monuments. Upon completion of a utility project and ~~prior to~~**before** acceptance by the City, all property corners and other monuments disturbed or removed by the project shall be reestablished and protected by an ~~Oregon~~**Oregon**-licensed surveyor retained by the developer.

WATER

- 12.410 When Public Water is Available. All new development, including a ~~single~~**single**-family residence, must extend and connect to the public water system when service is available within 150 feet of the property. Fire hydrants, mains, and related appurtenances shall be installed as required by the City Fire Marshal.
- 12.420 When Public Water is Not Available. No new development is allowed on private well systems, except for construction of one ~~single~~**single**-family dwelling on an existing lot of record. Residential lots created by a land partition may be served by private wells if approved by the City, and provided the new lots are subject to a Petition for Improvement/Waiver of Remonstrance for a future assessment district for public water. If a second partition plat is filed on the same parcel, the application will be subject to the subdivision requirement that the development be served by public water.
- 12.430 Extension Along Property Frontage and Within Interior. Water distribution mains must be extended along the full length of the property's frontage along the right-of-way or to a point identified by the City Engineer as necessary to accommodate likely system expansion. Main extensions may be required through the interior ~~of~~**of** properties when necessary to provide ~~for~~**for** service to other properties or to provide looping for fire flows.

Staff Comments: The proposed changes to 12.440, 12.500, and 12.530 relate to providing only enough information with applications and plans for Public Works to conduct an adequate and timely review.

Reason for language: Based on the LUBA remand for Fabian Estates, the existing language requires more of an applicant than what was intended, or than has been required in past practice. The revisions will clarify the requirements and not result in any process changes when compared to typical past practices.

The intent of the Code is to have applicants demonstrate to the City's satisfaction that their proposed development is feasible. Engineered construction drawings are not necessary at this stage and are required through the Site Improvement (SI) process, after land use approval. If the existing language were to remain, developers would be required to submit fully engineered drawings for the land use application before they knew if they had land use approval. This would be an unnecessary, and costly, requirement for the developer.

- 12.440 Water Plan Approval. **Preliminary water plans and systems must be submitted to the City Engineer as part of the tentative plat or site plan review application. These plans must provide**

enough information to enable the City Engineer to determine that the proposed development is feasible, but are not required to be detailed construction level documents. The City's Engineering Standards, while not land use criteria, may be used, in whole or in part, by the City Engineer to determine the feasibility of a proposed plan. ~~All proposed water plans and systems must be approved by the City Engineer as part of the tentative plat or site plan review process.~~

- 12.450 Design Requirements for New Development. All new development within the City must, when appropriate, make provisions for the continuation or appropriate projection of existing principal water lines serving surrounding areas.
- 12.460 Restriction of Development. The review body may restrict development approvals when a deficiency exists in the water system or portion thereof which cannot be corrected as a part of the development improvements.

SANITARY SEWERS

- 12.470 When Public Sewer is Available. All new development must extend and connect to the public sewer system when service is available within 300 feet of the property.
- 12.480 When Public Sewer is Not Available. Where sewer is not available within 300 feet of the property, no development is allowed on private septic systems, except for construction of one ~~single~~ **single**-family dwelling on an existing lot of record or on a parcel no smaller than five acres created through the land division process. Any private on-site system allowed by this section must be approved by the county.
- 12.490 Extension Along Property Frontage and Within Interior. Sewer collection mains must be extended along the full length of the property's frontage along the right-of-way or to a point identified by the City Engineer as necessary to accommodate likely system expansion. When private sanitary sewer services will exceed 100 feet ~~in length~~ **long**, as measured from the public main to the structure, the City Engineer may require extension of public sewers into the interior of the property.

Staff Comments: The proposed change relates to providing enough information with applications and plans for Public Works to conduct an adequate and timely review. See comments before 12.440.

- 12.500 Sewer Plan Approval. **Preliminary sewer plans and systems must be submitted to the City Engineer as part of the tentative plat or site plan review application. These plans must provide enough information to enable the City Engineer to determine that the proposed development is feasible, but are not required to be detailed construction level documents. The City's Engineering Standards, while not land use criteria, may be used, in whole or in part, by the City Engineer to determine the feasibility of a proposed plan.** ~~All proposed sewer plans and systems must be approved by the City Engineer as part of the tentative plat or site plan review process.~~
- 12.510 Design Requirements for New Developments. All new development within the City must, where appropriate, make provisions for the continuation or appropriate projection of existing sewer lines serving surrounding areas. Line extensions may be required through the interior of a property to the developed when the City Engineer determines that the extension is needed to provide service to upstream properties.
- 12.520 Restriction of Development. The review body may restrict development approvals where a deficiency exists in the sewer system or portion thereof that cannot be corrected as a part of the development improvements.

STORM DRAINAGE

Staff Comments: The proposed change relates to providing enough information with applications and plans for Public Works to conduct an adequate and timely review. See comments before 12.440.

12.530 General Provisions. The review body will approve a development request only when adequate provisions for storm and flood water run-off have been made as determined by the City Engineer. The storm water drainage system must be separate **from** and independent of any sanitary sewer system. When possible, inlets should be provided so surface water is not carried across any intersection or allowed to flood any street. Surface water drainage patterns and proposed storm drainage must be shown on every development proposal plan. All proposed storm sewer plans and systems must be approved by the City Engineer as part of the tentative plat or site plan review process.

Preliminary storm sewer plans and systems must be submitted to the City Engineer as part of the tentative plat or site plan review application. These plans must provide enough information to enable the City Engineer to determine that the proposed development is feasible, but are not required to be detailed construction level documents. The City's Engineering Standards, while not land use criteria, may be used, in whole or in part, by the City Engineer to determine the feasibility of a proposed plan.

~~Ditches are not allowed without specific approval of the City Engineer. Open natural drainageways of sufficient width and capacity to provide for flow and maintenance may be permitted. For the purposes of this article, an open natural drainageway is defined as a natural path that has the specific function of transmitting natural stream water or storm water run-off from a point of higher elevation to a point of lower elevation.~~

12.540 Easements. When a subdivision is traversed by a water-course, drainageway, channel or stream, a public storm water easement or drainage right-of-way conforming substantially ~~with~~**to** the lines of ~~such~~**the** water-course and ~~such~~ further width as the City Engineer determines will be adequate for conveyance and maintenance shall be provided. Improvements to the drainageway, streets, or parkways parallel to water-courses may be required.

12.550 Accommodation of Upstream Drainage. A culvert or other drainage facility shall be large enough to accommodate potential run-off from its entire upstream drainage area, whether inside or outside of the development. The City Engineer must review and approve the necessary size of the facility, based on the provisions of the Storm Drainage Master Plans, and sound engineering principles, and assuming conditions of maximum potential watershed development permitted by the Comprehensive Plan.

12.560 Effect on Downstream Drainage. ~~When it is anticipated by the City Engineer~~ **anticipates** that the additional run-off resulting from the development will overload an existing drainage facility, the review body will withhold approval of the development until provisions have been made for improvement of said potential condition.

12.570 Drainage Management Practices. Development must employ drainage management practices approved by the City Engineer that minimize the amount and rate of surface water run-off into receiving streams or drainage facilities or onto adjoining properties. Drainage management practices must include, but are not limited to, one or more of the following practices:

- (1) Temporary ponding or detention of water;
- (2) Permanent storage basins;
- (3) Minimization of impervious surfaces;
- (4) Emphasis on natural drainageways;
- (5) Prevention of **uncontrolled** water flowing from the development ~~in an uncontrolled fashion~~;

- (6) Stabilization of natural drainageways as necessary below drainage and culvert discharge points for a distance sufficient to convey the discharge without channel erosion;
- (7) **Collection of R**runoff from impervious surfaces ~~must be collected and transportationed~~ to a natural drainage facility with sufficient capacity to accept the discharge; and
- (8) Other practices and facilities designed to transport storm water and improve water quality.

12.580 Design Requirements for New Development. All new development within the City must, when appropriate, ~~make provisions~~ for the continuation or appropriate projection of existing storm sewer lines or drainageways serving surrounding areas. Extensions may be required through the interior of a property to be developed when the City Engineer determines that the extension is needed to provide service to upstream properties.

Staff Comment: This requirement was reduced to one acre. The proposed change is needed to be consistent with the Department of Environmental Quality's standards.

12.585 NPDES Permit Required. A National Pollutant Discharge Elimination System (NPDES) permit must be obtained from the Department of Environmental Quality (DEQ) for construction activities (including clearing, grading, and excavation) that disturb ~~five (5)~~**one** or more acres of land, **or whatever the current standard is at the time the application is submitted.**

IMPROVEMENT ASSURANCES

12.590 Purpose. The purpose of improvement assurances is to provide the City with a guarantee that the improvements called for in this article, **whether public or private**, will be made. The type of guarantee will be determined by the City. Before issuing or renewing a development approval when the applicant has an obligation to design and construct improvements shown on the development plan, the review body may require that the applicant acknowledge the obligation.

12.600 Form and Contents. The assurance shall contain the time within which the obligation is to be met. It may take the form of a surety or performance bond, cash, a negotiable security deposit, a mutual improvement agreement, a monetary contribution to a fund for future improvements if established by a separate city ordinance, or other guarantees approved by the City Attorney sufficient to cover the cost of the work as estimated by the City. The bond shall be conditioned upon the developer's carrying out the obligation and fulfilling the other requirements of this Title that bear on the approval of the development. The deposit or bond shall be forfeited to the City if the developer does not fulfill the requirements. The bond or deposit shall remain in the custody of the City until the obligation is completed or the bond or deposit is forfeited, or shall be placed in an escrow account subject to City control.

12.610 Noncompliance with Provisions Under Obligation. If the Director finds that a developer is not fulfilling an obligation, the Director shall, in written notice to the developer and the developer's surety, specify the details of noncompliance. Unless the Director allows more time for compliance because of circumstances beyond the developer's control, within 30 days after receiving the notice, the developer or the developer's surety shall ~~commence the~~**begin** compliance and proceed diligently to complete fulfillment of the obligation.

- (1) If the developer or the developer's surety does not ~~commence the~~**begin** compliance within the 30 days or the additional time allowed by the Director, or has ~~commenced~~**begun** but fails to diligently ~~to~~ complete the compliance, or the compliance is otherwise not completed within the time specified in granting the development approval, the City may take the following action:

EXHIBIT E

- (a) Enter upon the site of the development and carry out the obligation in accordance with the provisions agreed upon under the acknowledgement;
 - (b) Notify the developer and the developer's surety of the developer's failure to perform as required by this Code;
 - (c) Demand payment from the developer's for the unfulfilled obligation;
 - (d) If the security for the obligation is a bond, notify the surety that has furnished the bond that reimbursement for the expense for fulfillment of the obligation is due and payable to the City or, if the security is a deposit of cash or other assets, appropriate as much of the deposit as is necessary to recoup the expense; or
 - (e) Void all approvals granted in reliance on the improvement assurance.
- (2) If a bond or other required security is not sufficient to compensate the City for expenses necessary to fulfill the obligation, the amount due to the City for the obligation is a lien in favor of the City and upon the entire contiguous real property of the owner of the land subject to the obligation.
 - (3) The lien attaches upon the filing with the City Recorder of notice of the claim for the amount due for the fulfillment of the obligation. The notice shall demand the amount due, allege the insufficiency of the bond or other security to compensate the City fully for the expense of the fulfillment of the obligation, and allege the developer's failure to do the required obligation.
 - (4) The lien may be foreclosed in the manner prescribed by law for foreclosing other liens on real property.
 - (5) The remedies set forth for non-compliance are cumulative. In addition to the remedies set forth above, non-compliance by the developer or his surety with any term of a performance guarantee shall entitle the city to pursue any civil remedy permitted by law.

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