

ORDINANCE NO. 5768

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 LAND USE NOTIFICATION PROCEDURES, IRRIGATION, TEMPORARY BUSINESS DISPLAYS, DEFINITIONS, AND HOUSEKEEPING AMENDMENTS; ADOPTING FINDINGS, AND DECLARING AN EMERGENCY (FILE DC-03-11).

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

WHEREAS, the City has been collecting suggestions for revisions to the Code for several years and has developed 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 to ensure the regulations are clear and there are no inconsistencies; and

WHEREAS, on October 24, 2011, the Planning Commission held a work session on the proposed amendments; and

WHEREAS, on November 7, 2011, the Planning Commission held a public hearing and recommended these changes to the City Council, based on their deliberation, and the staff report; and

WHEREAS, on December 7, 2011, the Albany City Council held 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 Findings and Conclusions found in the staff report, attached as Exhibit A, are hereby adopted in support of this decision.

Section 2: The Albany Development Code text is hereby amended as shown in Exhibit B, attached. It includes revisions in the following articles:

Article 1, Administration and Procedures: Expiration of Land Use Approval, Land Use Notification

Article 3, Residential Zoning Districts: Lot Coverage

Article 4, Commercial and Industrial Zoning Districts: Lot Coverage

Article 5, Mixed Use Village Center Zoning Districts: Lot Coverage

Article 9, On-Site Development and Environmental Standards: Noise Standards, Irrigation and Landscaping Professionals

Article 11, Land Divisions and Planned Developments: Expiration of Approvals

Article 13, Signs: Temporary Promotional Business Displays

Article 22, Use Categories and Definitions: Lot Coverage, Triple Frontage Lot, Double Frontage Lot

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: December 7, 2011

Approved by the Mayor: December 7, 2011

Effective Date: December 7, 2011



Mayor

ATTEST:



City Clerk



Community Development Department

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STAFF REPORT FINDINGS AND CONCLUSIONS Development Code Amendments – DC-03-11

EXECUTIVE SUMMARY

The Albany Development Code (ADC) allows for the Community Development Director to initiate legislative amendments. The City has implemented a process to periodically evaluate and adopt changes to the Albany Development Code.

The purpose of these amendments is to: 1) clarify the intent of existing standards; 2) amend standards to follow current practices; and 3) streamline the land use notification process. Specifically, the proposed amendments would:

- clarify when a land use decision expires and forms of financial assurances besides bonding;
- amend who receives notification of land use applications;
- amend Type II land use process regarding notice;
- relax and improve standards for temporary promotional business displays;
- fix inconsistencies in definition and use of lot coverage;
- relax irrigation standards of required landscaping;
- add definitions for double frontage lots, and triple frontage lots for setback purposes; and
- fix a few housekeeping amendments.

The ordinance and Exhibit B, the proposed amendments to the Albany Development Code, are attached:

PLANNING COMMISSION RECOMMENDATION

Following their November 7 2011 public hearing on these amendments, the Planning Commission voted unanimously to recommend that the Council approve these amendments.

GENERAL INFORMATION

CITY COUNCIL HEARING	December 7, 2011
DATE OF REPORT:	November 30, 2011
FILE:	DC-03-11
TYPE OF APPLICATION:	Legislative amendments to Albany Development Code (Exhibit B): Article 1, Administration and Procedures: <ul style="list-style-type: none"> • 1.080 - Clarify when a land use approval expires; • 1.330, 1.350, 1.360, 1.370, 1.400 – notification of land use application; and • 1.350 and 1.520 - Type II process amendments

Article 11, Land Divisions and Planned Developments

- 11.060 - Clarify when a land use approval expires

Articles 3 - Residential Zoning Districts, 4 - Commercial and Industrial Zoning Districts, and 5 - Mixed Use Village Center Zoning Districts:

- Lot Coverage notes in Development Standards Tables in 3.190, 4.090, 5.090: Fix inconsistencies between development standards and the definition

Article 9, On-Site Development and Environmental Standards:

- 9.160, Irrigation of Required Landscaping –include landscape professionals; and
- 9.440, Environmental Standards, Noise – note that standards apply to all non-residential uses

Article 13, Temporary Promotional Business Displays :

- 13.680, clarify 60 days within a calendar year permitted under one permit, and A-frame signs in the downtown district

Article 22, Use Categories and Definitions

- 22.400, Add definitions for triple and double-frontage lots; and
- 22.400, Amend lot coverage definition.

REVIEW BODIES: Planning Commission and City Council
 APPLICANT: City of Albany, Planning Division
 APPLICANT REP: Anne Catlin, Planner II
 ADDRESS/LOCATION: Not Applicable

NOTICE INFORMATION

A notice of public hearing was published in the *Albany Democrat Herald* October 28, 2011. The Development Code amendments were posted on the City's web site. No comments have been received.

The Planning Commission held a public hearing on the proposed amendments on November 7, 2011. No one testified at the hearing.

CITY COUNCIL DECISION OPTIONS

The City Council may do one of the following:

- 1) Approve the proposed legislative amendments as specified in ordinance Exhibit B;
- 2) Approve as modified the proposed legislative amendments; or
- 3) Deny some or all of the proposed legislative amendments.

The City Council may also continue the public hearing to a specified date in order to receive testimony, review modified language, or continue deliberation.

APPEALS

A City Council decision can be appealed to the Oregon Land Use Board of Appeals by filing a Notice of Intent to Appeal within 21 days of the Council decision.

STAFF ANALYSIS

Development Code Amendment File DC-03-11

The Albany Development Code (ADC) contains the following review criteria that must be met for this Development Code amendment to be approved. Code criteria are written in *bold italics* and are followed by Findings and Conclusions.

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

Relevant Comprehensive Plan goals and policies are written in *italic* type and considered as a separate review criterion following the description of the major revisions.

FINDINGS OF FACT

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

Planning Goal 14, Urbanization, Development Review, Policy 5: Ensure the City's land use planning process and policy framework is workable and understandable for local officials, staff, and the public. Ensure the degree of application and review is commensurate with the size and complexity of various development requests.

- 1.1 Most of the proposed amendments clarify the intent of existing standards and inconsistencies within the Code. These clarifying amendments will help make the Code more understandable for the staff and the public.
- (a) Expiration of Land use Approvals, Sections 1.080, 11.060-11.080. The amendments clarify existing language when a land use approval or land division expires. There are no changes to the standards.
 - (b) Notification of Land Use Cases, Sections 1.330, 1.350, 1.370, 1.400. The amendments remove the requirement to mail notice to residents. Notice will be mailed to property owners only. In addition, the Type II process will be amended to mail the notice of decision to persons who participated in the process in writing.
 - (c) Temporary Signs, Section 13.680. A few amendments are proposed to relax the standards to reflect the current practice of where temporary signs are permitted, for how long, and the permit requirements. Staff proposes removing the requirement to set temporary A-frame signs back 10-foot from the right-of-way.
 - (d) Lot Coverage, Articles 3, 4, 5, and definition in Section 22.400. Amendments will fix the inconsistency between the definition of lot coverage and the development standards and lot coverage allowances. When the lot coverage percentages were calculated by zone, the assumption was for building and pavement. Staff recommends amending the Lot Coverage definition to be consistent with the development standards tables to include building and pavement, except for single-family detached development, which would include buildings and structures only.
 - (e) Building Setbacks for Triple Frontage and Double Frontage Lots, add definitions to Section 22.400. Triple frontage lots technically have three front lot lines, and double frontage lots have two front lot lines. Currently buildings must meet the front setbacks for all street frontages. It is challenging to locate accessory buildings or additions on many of Albany's triple frontage lots. Staff is proposing to allow one lot line to be considered an interior lot line for the purposes of determining building setbacks.

EXHIBIT A

- (f) Irrigation of Required Landscaping, Section 9.160. Staff proposes amending the language to no longer require all irrigation systems to be underground, and to add landscape construction professionals to the list of professionals qualified to determine whether or not an irrigation system is needed.
- (g) Miscellaneous Housekeeping Amendments. Several amendments are proposed to clarify the intent of existing Code language.

Planning Goal 6; Air, Water, and Land Resources Quality; Sound Quality, Goal: Reduce the adverse effects of noise on the Albany area.

Planning Goal 6; Air, Water, and Land Resources Quality; Sound Quality, Policy 2: As much as possible, separate noise-sensitive uses and noise-generating uses.

- 1.2 Environmental Standards for Noise, Section 9.440. The purpose of the environmental standards is to protect all uses in all zones from objectionable off-site impacts associated with non-residential uses. The noise standards are adopted from the Oregon Administrative Rules for industry and commerce in 9.440. These standards should apply to all non-residential noise-generating uses.

Planning Goal 14, Urbanization, Development Review, Policy 3: Give special attention to proposals in areas identified as in need of special review (greenway, floodplains, floodways, open space, airport, etc.0), ensuring that developments in these areas are specially designed in recognition of the particular concern for that area.

- 1.3 Temporary Promotional Business Displays Downtown. Amendments will allow A-frame signs in the right-of-way in the downtown area, when they are currently not permitted. This will codify standards drafted by former city manager Bill Barrons and that have been practiced since the 1980s. These amendments recognize that historic downtown Albany is a unique area where many historical buildings are built to the front property line.

CONCLUSIONS

- 1.1 The proposed Development Code amendments are consistent with the Comprehensive Plan goals and policies.
 - 1.2 The proposed amendments will make the Development Code easier to use by clarifying existing language and intent.
 - 1.3 This criterion is satisfied.
- (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.*

The applicable Development Code policies and purposes are identified in *italic* type and considered as a separate review criterion.

FINDINGS OF FACT

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

- 2.1 The Development Code should facilitate prompt review of development proposals and the application of clear and specific standards. The proposed amendments will make the Code easier to use.

EXHIBIT A

2.2 The proposed amendments better achieve the goals and policies of the Comprehensive Plan as identified in findings under criterion 1.

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

2.3 Most of the proposed amendments will make the existing standards clearer and more specific.

(4) Provide for public information, review, and comment on development proposals that may have a significant impact on the community.

(10) Protect constitutional property rights, provide the process of law, and give consideration in all matters to affected property owner interests in making land use decisions.

2.4 The proposed amendments related to who receives notification of a proposed land use application and who receives the notice of decision for Type II limited-land use decisions will ensure that public review and comment on development proposals is provided to all affected property owner interests.

CONCLUSIONS

2.1 The proposed Development Code amendments are consistent with the purposes of the Code.

2.2 This criterion is satisfied.

ALBANY DEVELOPMENT CODE AMENDMENTS

Planning File DC-03-11

Content in blue text are staff comments describing the proposed amendments.

Only the sections proposed to be amended are included in this Exhibit.

New Code language is shown in **bold** and removed language in ~~strikethrough~~.

**ARTICLE 1
ADMINISTRATION AND PROCEDURES**

ISSUE 1: EXPIRATION OF LAND USE APPROVALS

Staff Comments: This language is relocated from within 1.080, where it is hard to find. There are no changes to the wording.

1.075 Applicable Standards. The Development Code standards for development within these time periods are those in effect at the time the original approval was granted.

Staff Comments: Currently standards for expiration of land use approvals are in Article 1, Administration and Procedures. Expiration standards for land divisions are in Article 11, Land Divisions. Staff proposes the expiration information be located in one place, in Article 1. Staff is also recommending that projects be allowed to provide financial assurances rather than bonding as a means to ensure completion of all public improvements related to the development. This suggestion is supported by Lowes.

1.080 Expiration of Land Use Approvals.

(1) All land use approvals, except as provided in (2 and 3) below and ~~land divisions (see Article 11)~~, shall expire three years from the date of approval, unless:

- (a) The applicant has installed **all of the required public infrastructure related to the development and the infrastructure has been accepted by the city, or the applicant has and/or bonded provided financial assurance for all required public infrastructure per Section 12.600** ~~improvements related to the development~~ or the first phase, if the development was approved for phased construction. **This provision may also be applied to developments approved prior to December 7, 2011;** or

Staff Comments: The proposed language clarifies the intent of (b).

(b) **If the development did not require public infrastructure, aA valid building permit exists for new construction or improvements, and work has commenced.** ~~the approved development or for at least one building approved as part of the development;~~ or

(c) ~~If the final decision became effective between January 1, 2007, and June 30, 2008, any approval that would expire prior to June 30, 2011, will be extended to June 30, 2011. Either (a) or (b) of this section must be completed by the extended approval time period, or the approval expires.~~ *Staff Comments: This content is no longer needed because the extension of land use approvals has passed.*

Staff Comments: Expiration of land divisions and development found in Article 11 is moving here. Any new language is shown in bold.

(2) All approvals of land divisions and development contained in Article 11 shall expire three years from the date of tentative plat approval, unless:

- (a) The applicant has installed all of the required public infrastructure related to the development and the infrastructure has been accepted by the city, or the applicant has provided financial assurance for all required public infrastructure per Section 12.600. This provision may also be applied to developments approved prior to December 7, 2011.

Staff Comments: Content relocated here from Section 11.070.

- (b) Phased Subdivision Development. When an applicant wants to develop and record final subdivision plats covering portions of an approved tentative plat in phases, the City may authorize a time schedule for platting the phases in excess of three years.

In no case shall the total time period for City approval of all phases be greater than five years. Each **phase stage** that is platted shall conform to the applicable requirements of this title. Portions platted after three years may require modifications to avoid conflict with any changes in the Comprehensive Plan or implementing regulations at the local, state or federal level.

(23) 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.

ARTICLE 11 LAND DIVISIONS AND PLANNED DEVELOPMENTS

Staff Comments: Expiration information is located in Article 1. This information is being moved to Section 1.080 so that the expiration information is located in one place.

11.060 Expiration Dates. See Section 1.080 for expiration of land division approvals. ~~City approval of a tentative subdivision or partition plat will expire after three years if a final plat is not submitted for approval and the applicant has not installed and/or bonded for all public improvements related to the project.~~

~~———— If the final decision became effective between January 1, 2007, and June 30, 2008, any approval that would expire prior to June 30, 2011, will be extended to June 30, 2011.~~

11.065 Recording Final Plats. Once city approval is granted for a final plat, it must be recorded within 45 days with the Linn or Benton County Records Division unless an extension is approved by the City and the County Surveyor's Office. **If the final plat is not recorded within 45 days it expires.**

~~11.070 Phased Subdivision Development. When an applicant desires to develop and record final subdivision plats covering portions of an approved tentative plat in phases, the City may authorize a time schedule for platting and otherwise developing the various phases in periods of time in excess of three years.~~

~~In no case shall the total time period for all phases be greater than five years without resubmission of the tentative plat. Each stage that is platted and developed shall conform to the applicable requirements of this title. Portions platted after three years may be required to have modifications to avoid conflict with any changes in the Comprehensive Plan or implementing regulations. [Ord. 5728, 1/27/2010]~~

ISSUE 2: LAND USE NOTIFICATION

Staff Comments: A couple of years ago, we thought it would be a good idea to notify not only property owners within a notice area, but also the residents. The impact of this change is that it has added a lot more costs for postage, copying, and staff. A large amount of the "resident" mail is returned by the post office for various reasons, so the change in process has not been particularly effective. Staff proposes going back to just notifying property owners. Land use decisions that require public hearings often require the property to be posted. Neighborhood meetings are also required in advance of submitting applications.

Staff proposes to remove the mailing to residents in four locations: Remove "reside on or" – "The Director shall notify all persons who ~~reside on or~~ own property within..."

**ARTICLE 1
ADMINISTRATION AND PROCEDURES**

1.330 Type I-L Procedure.

(3) **Once the application is deemed complete,** ~~w~~Written notice will be provided to persons who ~~reside on or~~ own property within 300 feet of property on which applications are received for development of subdivisions, manufactured home parks, multi-family development, and Site Plan Option A or B development. For all other limited land use decisions, the City will provide written notice to persons who ~~reside on or~~ own property within 100 feet of the entire contiguous site for which the application is made. The Director shall have discretion to increase the notice area up to 1,000 feet due to land use or transportation patterns or an expected level of public interest. For purposes of review, this requirement shall be deemed met when the City can provide an affidavit or other certification that such notice was given. Notice shall also be provided to any neighborhood or community organization recognized by the City Council and whose boundaries include the site and to other neighborhood associations recognized by the City Council located within 300 feet of the site. [Ord. 5728, 1/27/10]

1.350 Type II Procedure. *See proposed changes under Issue 3.*

1.360 Type III Procedure.

(2) Under the Type III procedure, an application is scheduled for public hearing at the Director's discretion before the Hearings Board, the Planning Commission, or the Landmarks Advisory Commission. The Director shall notify all persons who ~~reside on or~~ own property within 300 feet of the subject property and any neighborhood association

recognized by the City and whose boundaries include the site and other neighborhood association recognized by the City within 300 feet of the site. The Director shall have discretion to increase the notice area up to 1,000 feet due to land use or transportation patterns or an expected level of public interest. The Director may require the applicant to post notices as set forth in Section 1.410.

1.370 Type IV Procedure.

- (2) Under the Type IV Procedure, an application is scheduled for public hearing before either the Hearings Board, **Landmarks Advisory Commission**, or the Planning Commission at the Director's discretion. If the application is quasi-judicial, the Director shall notify all persons who ~~reside on or~~ own property within 300 feet of the subject property and any neighborhood or community organization recognized by the City and whose boundaries include the site and to other organization recognized by the City within 400 feet of the site. The Director shall have discretion to increase the notice area up to 1,000 feet due to land use patterns or an expected level of public interest. The Director may require the applicant to post notices as set forth in Section 1.410.

1.400 Mailed Notice.

Addresses for a mailed notice required by this Code shall be provided by the applicants for land use applications. The mailing list must be certified by the applicants as accurate and complete as found on the most recent property tax assessment roll where the subject property is located. ~~When the property owner's address is different on the tax rolls than the site address within the notice area, the site address shall also be provided and notice mailed to the site resident.~~ A person whose name is not in the tax records at the time an application is filed may receive notice if the person provides the Community Development Department with the necessary address(es). Any deficiency in the form of notice prescribed in this section, or failure of a property owner to receive notice, shall not invalidate an action if a good faith attempt was made to comply with the requirements of this Code for notice.

ISSUE 3: TYPE II PROCESS

Staff Comments: The Type II process provides for a staff decision and the process allows for persons in the notice area to appeal the staff decision to a local review body (rather than to LUBA as in the Type I-L process). If there is no appeal (request for a public hearing), the staff decision stands.

In an effort to get neighborhood input prior to making the staff decision we amended the Type II process to include mailing a notice of filing upon receipt of the application as well as mailing the notice of decision, resulting in two notices. After 18 months of this process, we have found that mailing both the notice and the decision is confusing to the surrounding property owners. It also adds time and cost to the review process. Staff recommends modifying the process to mail notice of filing to all persons in the notice area, and only mail notice of decision to persons that provided written comments on the application. This option is similar to the Type I-L process, but with a local appeal rather than an appeal to LUBA.

1.350 Type II Procedure.

- (1) The purpose of the Type II procedure is ~~to provide~~ for the **Director** to review of certain applications **based on standards specified in this Code that may require limited discretion.** ~~by mailing~~ A notice of **filing** ~~a tentative staff decision is~~ mailed to the applicant and property owners within 200 feet of the property being reviewed to allow **the applicant**

or property owners an opportunity to comment on the proposal prior to the Director's Decision. Persons that provided written comment are mailed the notice of tentative decision and given a chance to appeal the decision at the local level. ~~The Director's decision shall be based on standards specified in this Code that are reasonably objective and may require limited discretion.~~

- (2) Once the application is deemed complete, a notice of filing shall be mailed to the applicant and persons who ~~reside on and/or own~~ property within 200 feet of proposed development site. Notice shall also be provided to any neighborhood association recognized by the City Council and whose boundaries include the site and to other neighborhood association recognized by the City Council within 300 feet of the site. The Director shall have discretion to increase the notice area up to 1,000 feet due to land use or transportation patterns or an expected level of public interest. The notice and procedures used by the City will:
- (a) Provide a 14-day period for submission of written comments before the decision;
 - (b) State that issues shall be raised with sufficient specificity to enable the decision maker to respond to the issue;
 - (c) State the applicable review criteria for the decision;
 - (d) Set forth the street address or other easily understood geographical reference to the subject property;
 - (e) State the place, date and time that comments are due;
 - (f) State that copies of all evidence relied upon by the applicant are available for review, and that copies can be obtained at cost;
 - (g) Include the name and phone number of a local government contact person;
 - (h) Provide notice of the decision to the applicant and persons entitled to notice. The notice of decision must include an explanation of appeal rights;
 - (i) Briefly summarize the local decision making process for the limited land use decision being made, and
 - (j) Include other information the Director deems appropriate.

[Ord. 5728, 1/27/10]

Staff Comments: The Director could determine that the proposal does not meet the review criteria and deny the request. Therefore, the language needs to be more general to address both approvals and denials. The bold language is relocated from the deleted text above.

- (3) ~~If the Director determines that the development proposal appears to meet the required standards,~~ **†The Director shall mail notice of the tentative decision to the applicant and any party who provided written comments on the proposal.** ~~all persons within the notice area as defined in 1.1.350(2).~~

The Director's notice shall list the relevant criteria **used to make the decision** and any conditions of approval **or findings for denial.** ~~The notice shall and invite persons to contact the Planning staff in writing within ten working days of notification to request a public hearing.~~ *Staff Comments: The word "working" is inconsistent with the definition of "days" in Article 22, which is calendar days.*

- ~~(4)~~ A public hearing may be requested **in writing ten days from notification,** if a person believes that the conditions of approval do not adequately address the established approval criteria or alleviate adverse impacts on the neighborhood.

If no one requests a public hearing, the tentative decision becomes final ten days after the notice of decision is mailed to affected parties.

- (5) If the applicant, the Director, or any party entitled to notice ~~may~~ initiates a public hearing on a Type II proposal, the Director shall, within 30 days of receiving a written request for a public hearing, set a date for a public hearing before either the Planning Commission, **Landmarks Advisory Commission**, or the Hearings Board. ~~and mail a~~ **The notice of such shall be mailed at least 20 days in advance of the hearing to those same persons specified in (2) above. The public hearing notice shall contain the information outlined in Section 1.400(4). The subject property shall be posted in accordance with Section 1.410.**

- (6) If a hearing is conducted, the Hearings Board; ~~or the~~ Planning Commission, **or the Landmarks Advisory Commission** shall review the request and any written comments and testimony; adopt findings based on the established criteria; and make a decision by approving, conditionally approving, or denying the application. Conditions and/or restrictions may be applied to the approval of any land use application granted under a Type II procedure in accordance with the relevant provisions of this Code.

Staff Comments: the Code does not specify that the appeal of a Type II limited land use decision made by the PC, LAC, or HB is to LUBA. The changes below clarify the appeal process.

1.520 Appeal Procedures.

- (1) See ADC 1.330(5) for appeals of Type I-L limited land use decisions.
- (2) ~~See ADC 1.350(5) for a~~ Appeals of a Type II land use decision made by the Director is to the Planning Commission (PC), Hearings Board (HB), or the Landmarks Advisory Commission (LAC). See Section 1.350(2) through (5). A Type II decision made by the PC, HB, or LAC may be appealed to the Land Use Board of Appeals (LUBA) when a person who participated in the land use process in writing or testimony files a Notice of Intent to Appeal with LUBA no later than 21 days after the hearing body's notice of decision is mailed.

ISSUE 4: TEMPORARY SIGNS

Staff Comments: Staff recommends relaxing some of the standards to allow temporary signs to be displayed for periods less than 7 days. The same sign can be displayed up to 60 days in a calendar year on the same permit. Staff proposes removing the requirement for the A-frame sign to be located 10-foot from the right-of-way in order to be more visible. In the downtown area, the proposed language codifies standards written by former city manager Bill Barrons to allow A-frame signs in the right-of-way downtown since buildings are often built to the property line. The standards also allow the open banners to be displayed in the downtown area.

**ARTICLE 13
SIGNS**

- 13.680 Temporary Promotional Business Displays. Temporary banner signs, A-frame signs, and inflatable signs may be used, but are limited to one sign on each street frontage for each separate business. The maximum total number of days for promotional display shall not exceed 60 days in any one calendar year. Each ~~display period~~ temporary sign requires a separate permit per calendar year that specifies the display dates for the year. ~~but the display duration can be from 7 days to 60 days.~~

All temporary signs must: be anchored/secured; may not be located within 10 feet of in any public right-of-way **except as provided below**; may not be attached to or placed inside a parked vehicle; may not be placed within any vision clearance area as defined in Section 12.180; may not block public entrances; and shall be maintained in a safe, neat, clean and attractive condition.

- (1) **Banners.** The area of temporary such banners shall not exceed 50 square feet in the CB, NC, HD, MUR, WF, MS, LE, ES, TD and OP zones and 75 square feet in all other non-residential zones, or in the case of inflatable signs, 500 cubic feet. Inflatable signs can be no higher than freestanding signs allowed in the particular zone. Open flag banners in the Downtown Parking Assessment District are permitted
- (2) **A-Frame Signs.** Any temporary A-frame, sandwich board or similar sign may be no larger than 16 square feet for one face or 32 square feet for two or more faces. If the sign is not attached to a building, the maximum height of the sign may not exceed 4 feet.

Staff Comments: Staff proposes that a conditional use permit is not necessary for reviewing a sign. It is costly and time consuming for staff and the applicant.

- (3) Pennants, flags, and streamers may be used as part of an opening or promotional event up to 60 days, subject to the above time constraints. Pennants and flags which ~~that have~~ are designed with no writing and have permanent mounting devices may be displayed for a longer period of time only upon approval of a conditional use sign permit. (The American and Oregon flags are exempted from Sign Code regulations.)
- (4) Temporary Displays within the Downtown Parking Assessment District. One A-frame sign per business is permitted in the right-of-way with an approved sign permit. It may not exceed 3 feet in width or 4 feet in height. Open banner flags up to 4 feet tall and 2 feet wide are permitted in the right of way with an approved permit if the design is approved by the Albany Downtown Association.

For all temporary displays in the Downtown Parking Assessment District, at least five feet of unobstructed sidewalk shall remain available for pedestrian use. Displays may not be located within 10 feet of a street or alley intersection. There is no limit on the number of display days per calendar year. (A map of the Downtown Parking Assessment District is located at the end of Article 5.)

[Ord. 5446, 5/10/00]

ISSUE 5. TRIPLE FRONTAGE AND DOUBLE FRONTAGE LOTS, SETBACKS

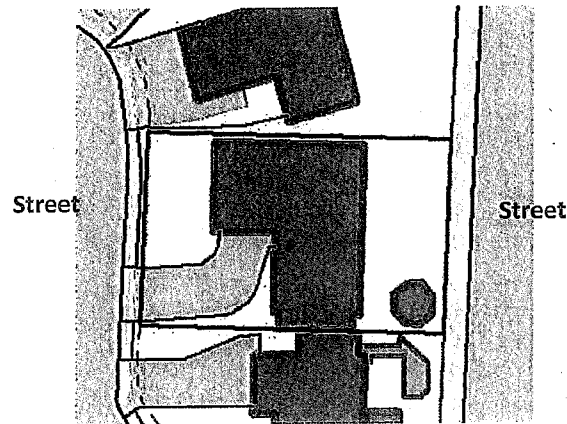
Staff Comments: Triple frontage lots technically have three frontages, and buildings must meet the front setbacks for all three frontages. Double frontage lots, excluding corner lots, have two frontages for determining front setback requirements. It is challenging to locate accessory buildings on many of Albany's triple frontage lots. Staff is proposing to 1) add definitions for triple and double frontage lots, and 2) allow one lot line to be considered an interior lot line for the purposes of determining building setbacks.

ARTICLE 22

USE CATEGORIES AND DEFINITIONS

Lot Line, Corner: A lot abutting two intersecting streets, other than an alley, provided that the streets do not intersect at an angle greater than 135 degrees. *Staff Comments: This definition is not for corner lot lines, just for corner lots.*

Lot, Double Frontage: A lot having frontage on two non-intersecting streets. See Example.



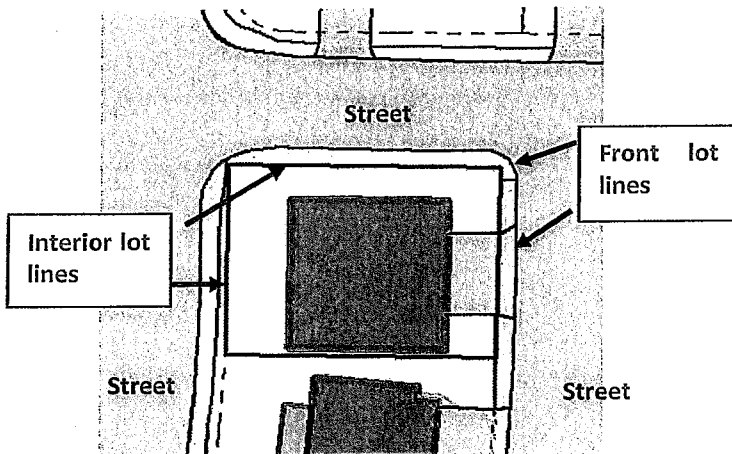
Lot, Frontage: The portion of a lot nearest the street. For the purpose of determining yard requirements, all sides of a lot adjacent to a street shall be considered frontage and yards shall be provided as required. *Staff Comments: This definition is similar to Lot Line, Front. Staff proposes removing this definition.*

Lot, Interior: A lot other than a corner lot or triple frontage lot.

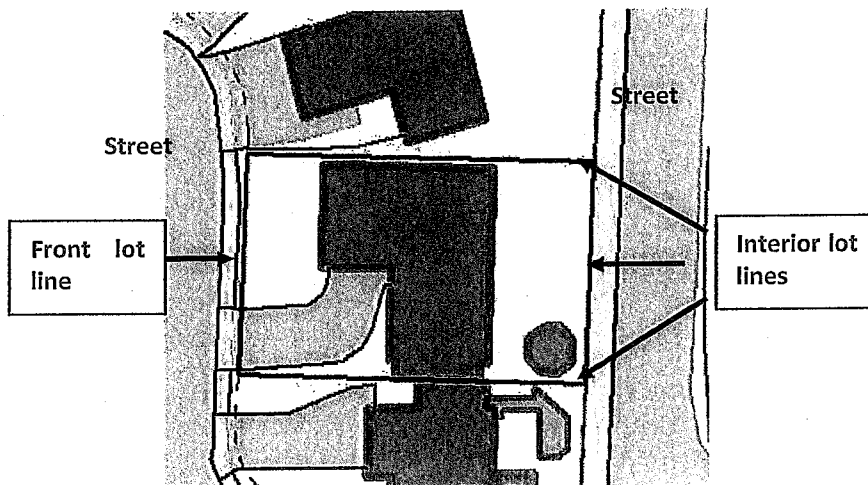
Lot, Triple Frontage: A lot abutting three streets.

Lot Line, Front: A lot line abutting any street line. For the purpose of determining setback yard requirements, all sides of an interior lot or corner lot adjacent to a street shall be considered frontage and yards setbacks shall be provided as required. For triple frontage lots, one frontage may be considered an interior lot line for calculating setbacks, as long as two frontage lines intersect. For double frontage lots, the lot line abutting the street on the back side of the house may be considered an interior lot line for setback purposes. See the following examples.

Example 1: Triple Frontage Lot



Example 2: Double Frontage Lot



Lot Line, Interior: Any lot line other than a front lot line.

ISSUE 6. HOUSEKEEPING – Clarify Lot Coverage

Staff Comments: The definition of lot coverage is inconsistent with the development standards for lot coverage in Sections 3.190(9), 4.090(7), and 5.090 (6). Lot Coverage definition only addresses buildings and not parking or other impervious surfaces. When the lot coverage percentages were calculated by zone, the assumption was for building and pavement. The Code has notes under the development standards tables that state that parking areas in the calculation for commercial, industrial and multi-family uses. Staff recommends:

- *Amend the Lot Coverage definition to be consistent with the development standards tables to include building and pavement, except for single-family detached development, which would include buildings and structures only.*
- *Enhance the Development Standards purpose statements in 3.190, 4.190, and 5.190.*
- *Change development standards table notes to reflect that s-f lot coverage only includes buildings and structures.*

ARTICLE 22 USE CATEGORIES & DEFINITIONS

22.400 Lot Coverage. That portion of a lot which, when viewed directly from above, would be covered by a building or structure, **pavement, or any area not vegetated or in a naturally permeable state.** any part thereof, except any area covered by a structure where fifty percent or more of the perimeter of such structure is open from grade. **Lot coverage for single-family detached development shall only include the area of the lot covered by buildings or structures.**

ARTICLE 3 RESIDENTIAL ZONING DISTRICTS

3.190 Purpose. Development standards are intended to promote site planning and design ~~which that~~ consider the natural environment, **site intensity, building mass, and open space.** ~~The standards also maintain the required dimensional standards while promoting~~ energy conservation, needed privacy, safe and efficient parking areas for new development, and improve the general living environment and economic life of a development. Table 1, on the following page, summarizes the basic development standards. It should be used in conjunction

with the sections immediately succeeding the table, which address special circumstances and exceptions. See Article 8 for design standards for single-family and multiple-family developments. [Ord. 5445, 4/12/00]

TABLE 1

STANDARD	RR	RS-10	RS-6.5	HM	RS-5	RM	RMA
Maximum Lot Coverage (9)	20%(11)	50%	60%	60%	60%	70% (9)	70% (9)

(9) ~~For multiple family developments, lot coverage includes buildings, parking, private streets and driveways. Lot coverage for single-family detached development shall only include the area of the lot covered by buildings or structures.~~

(11) Maximum lot coverage for parcels 20,000 square feet or less is 50%. The configuration of any development on a lot 20,000 square feet in size, or less, in an RR zoning district that covers more than 20 percent of the parcel on which it is proposed, should be located such that it does not preclude a later division of the parcel.

ARTICLE 4

COMMERCIAL AND INDUSTRIAL ZONING DISTRICTS

4.090 Purpose. Development standards are intended to promote site planning and design ~~which that~~ consider the natural environment, **site intensity, building mass, and open space.** ~~The standards also maintain the required dimensional standards while promoting~~ energy conservation, needed privacy, safe and efficient parking areas for new development, and improve the general living environment and economic life of a development. Table 1, on the following page, summarizes the basic development standards. It should be used in conjunction with the sections immediately succeeding the table, which address special circumstances and exceptions. See Article 8 for design standards for single-family and multiple-family developments.

TABLE 1

STANDARD	OP	NC	CC	RC	TD	IP	LI	HI
Lot Coverage (7)	70%	80%	90%	90%	None	80%	None	None

(7) ~~Includes building, parking, access, and sidewalk area coverage. Lot coverage for single-family detached development shall only include the area of the lot covered by buildings or structures.~~

ARTICLE 5

MIXED USE VILLAGE CENTER ZONING DISTRICTS

5.090 Purpose. Development standards are intended to promote site planning and design ~~which that~~ consider the natural environment, **site intensity, building mass, and open space.** ~~The standards also maintain the required dimensional standards while promoting~~ energy conservation, needed privacy, safe and efficient parking areas for new development, and improve the general living environment and economic life of a development. Table 1, on the following page, summarizes the basic development standards. It should be used in conjunction with the sections immediately succeeding the table, which address special circumstances and exceptions. See Article 8 for design standards for single-family and multiple-family developments.

TABLE 1

STANDARD	MUC	WF	HD	CB	LE	PB	MS	ES	MUR
Lot Coverage, maximum (6)	80%	80%	100%	(67)	100%	80%	90%	80%	70%

- (6) ~~Lot coverage includes building and parking area coverage.~~ Lot coverage for single-family detached development shall only include the area of the lot covered by buildings or structures.
- (7) See minimum floor area ratio requirements in ADC 5.120.

ISSUE 7. HOUSEKEEPING – Clarify one-year time period for Loss of Nonconforming Status

Staff Comments: Clarify that for non-conforming uses, the continuous one year vacancy “clock” would stop for a prospective new owner when their land use application is deemed complete.

**ARTICLE 2
REVIEW CRITERIA**

2.340 Loss of Non-Conforming Status

- (1) A nonconforming use of a building, structure, or land shall be deemed to have terminated if the building, structure, or land is not occupied by a permitted or legally nonconforming use for one continuous year. **The “vacancy clock” stops when a land use application on the property is deemed complete.**

ISSUE 8. HOUSEKEEPING – Striping On-Street Parking Spaces

Staff Comments: Requiring on-street parking spaces to be striped creates a few issues, primarily the efficient use of street parking. When on-street parking is allowed, it will not automatically be required to be striped.

**ARTICLE 3
RESIDENTIAL ZONING DISTRICTS**

3.080 Special Conditions.

- (7) Bed and Breakfast facilities shall:

- (d) Provide at least one off-street parking space for each rental room, except in the HM zone, where on-street parking along the frontage of the property line(s) may count toward the parking requirements. To count towards this standard, each on-street space must be at least 25 feet long and be striped.

**ARTICLE 5
MIXED USE VILLAGE CENTER ZONING DISTRICTS**

- 5.260 Parking Standards... On street parking spaces abutting the property in the MUR, Mixed Use Residential District; CB, Central Business District; and LE, Lyon Ellsworth District, may be counted towards meeting parking requirements. Parallel parking spaces must be at least 25 feet long and shall be striped.

ISSUE 9. HOUSEKEEPING – Distinguishing Required Setbacks from Yards

Staff Comments: The words yard and setback have different definitions in Article 22. When used together they are confusing. The word yard is being removed to be consistent with the definitions and other use of the terms.

**ARTICLE 3
RESIDENTIAL ZONING DISTRICTS**

3.250 Parking and Other Restrictions in Setback or Yard Areas

- (5) (1) Vehicles in daily use may not park in the front yard, except on the paved driveway leading to a garage, ~~or~~ carport, or a driveway that provides required parking spaces. Trailers, boats, campers, and other vehicles not in daily use may not park in the required front yard-setback for more than 48 consecutive hours. Recreational vehicle, trailer and miscellaneous storage pads or buildings are not allowed in the required front setbacks. (See Section 22.400 for definition of yard.)

ISSUE 10. HOUSEKEEPING – Clarify when Maximum Setback Standards Apply

Staff Comments: There are no maximum setbacks on the CC zone, which is located in the North Albany Village Center. Clarify the standards apply only when maximum setback.

8.420 Maximum Setback

- (6) (1) **In zoning districts with maximum setbacks, buildings within 50 feet of a public street shall have 40% of the building located within the maximum setback except that:**
- (7) (a) If a previously recorded easement precludes meeting the maximum setback, the applicant shall demonstrate that an alternative layout best addresses the intent of this standard and the character of the village center
- (8) (b) A building with drive-through service may have one drive-through lane between the building and the street provided that the building is set back no more than 25 feet and the drive-through lane is screened according to the standards for perimeter parking area landscaping in ADC 8.470.

ISSUE 11. HOUSEKEEPING – Article 9: Irrigation, Landscape Professionals, Noise Standards

Staff Comments: Not all irrigation systems need to be underground. Landscape construction professionals are proposed to be added to the list of professionals qualified to determine whether or not an irrigation system is needed because they have to take a test to get their license and are regulated by the state.

ARTICLE 9

ON-SITE DEVELOPMENT AND ENVIRONMENTAL STANDARDS

9.160 Irrigation of Required Landscaping. All required landscaped areas must be provided with a ~~pipd underground water supply~~ an irrigation system unless a licensed landscape architect, **landscape construction professional** or certified nurseryman submits written verification that the proposed plants do not require irrigation.

Staff Comments: The purpose of the environmental standards is to protect all uses in all zones from objectionable off-site impacts associated with non-residential uses. The noise standards are adopted from the Oregon Administrative Rules for industry and commerce in 9.440. The City has supplemental standards. The DEQ standards do not address other non-residential standards that may create noise impacts. The following amendments are proposed.

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. [Ord.5720, 08/12/2009]

- (1) 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-generating sources under the provisions of DEQ rules, any point where a 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-sensitive property under the provision of DEQ rules, with the exception that the allowable noise levels shall be increased by 5 db.
 - (c) **The allowable noise levels cited in Tables 7, 8 and 9 shall apply to all non-residential uses.**

ISSUE 12. HOUSEKEEPING – Inconsistency in Maximum Density for RM Zone

Staff Comments: The maximum density in the RM zone increased to 25 in 2007 in Article 3, but this table was not updated.

**ARTICLE 11
LAND DIVISIONS**

11.490 Cluster Development Standards. In a cluster development, the following development standards supersede the same standards in Section 3.190, Table 1. The number of allowable lots is based on the density range for the zone as specified in the following table.

Standard	RS-10	RS-6.5	RS-5	RM
Max. dwelling units per gross acre	4	6	8	2520

ISSUE 13. HOUSEKEEPING = Article 13. Political Signs. Signs in the Right-of-Way.

**ARTICLE 13
SIGNS**

13.320 Conditional Sign Exemptions. No permit is necessary before placing, altering, constructing or erecting the following signs as long as the applicable standards have been met:

Staff Comments: Political signs are permitted within a specific time period around the election. Clarify that the date the day ballots are mailed will be considered the first election day.

- (9) Political Signs... Signs shall not be erected prior to 45 days from the **date the ballots are mailed to the general public** applicable election, and shall be removed within 7 days after the election.

Staff Comments: Signs in the r-o-w appear as both exempt from regulations in 13.320(16) and prohibited in Section 13.330(18). Section 13.330(18) references 13.310 that outlines signs allowed in the right of way and also signs permitted with a temporary right-of-way use permit in Albany Municipal Code 13.33. Section 13.320(16) is not needed.

- ~~(16) Signs placed within the public right-of-way are subject only to the limitations and provisions of AMC Chapter 13.33 and the issuance of a temporary Right of way Use Permit.~~

13.330 Prohibited Signs. The following signs are prohibited and may not be placed within the City of Albany:

(18) Signs in the public right-of-way except as listed in Section 13.310 ~~and~~ or Albany Municipal Code Chapter 13.33 (Temporary Right-of-Way Use Permits)

ISSUE 14. HOUSEKEEPING - Definition of Days

Staff Comments: Days needs to be amended to codify the practice of extending the final day of a time period to the next business day if it falls on a weekend or holiday.

ARTICLE 22

USE CATEGORIES AND DEFINITIONS

22.400 Day(s): Shall mean calendar days, unless working days are specified, which shall mean Monday through Friday. **If the last day of a time period addressed in the Albany Development Code, such as a 10-day appeal period, falls on a weekend or holiday, the final day of the time period is the first business day thereafter.**