

ORDINANCE NO. 5475

AN ORDINANCE AMENDING ORDINANCE 4441, WHICH ADOPTED THE CITY OF ALBANY DEVELOPMENT CODE, BY AMENDING THE TEXT IN ARTICLE 1 AS DESCRIBED BELOW, ADOPTING FINDINGS, AND DECLARING AN EMERGENCY (FILE DC-01-01).

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

WHEREAS, the Planning Commission held a public hearing on proposed amendments on March 19, 2001, as required by local and state law; and

WHEREAS, the Planning Commission recommended the City Council approve the proposed amendments based on evidence presented in the staff report; and

WHEREAS, the City has given notice of the hearing on the proposed amendments; and

WHEREAS, the City Council held a public hearing on April 11, 2001;

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

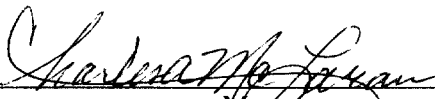
Section 1: Article 1 of the Albany Development Code (ADC) is hereby amended as shown on attached Exhibit A, and summarized below.

- a. Amend ADC 1.060 and ADC 1.080 to specify for how long land use approvals are valid.
- b. Amend ADC 1.210 to clarify when a land use application is complete.
- c. Amend ADC 1.220 and add ADC 1.226 to specify procedures for modifying approved site plans and conditional uses.
- d. Add ADC 1.505 to clarify when a land use decision becomes final.

Section 2: The Findings of Fact and Conclusions included in the staff report, and attached as Exhibit A, are hereby adopted in support of this ordinance.


Section 3: Inasmuch as this ordinance is necessary for the immediate preservation of the public peace, health, and safety of the city of Albany, an emergency is hereby declared to exist; and this ordinance shall take effect immediately upon passage by the Council and approval by the Mayor.

Passed by Council: April 11, 2001
Approved by Mayor: April 11, 2001
Effective Date: April 11, 2001

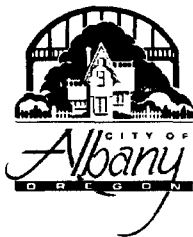


Mayor

ATTEST:



City Clerk



Community Development Department

333 Broadalbin Street SW, P.O. Box 490, Albany, OR 97321

Phone: (541) 917-7550 Facsimile: (541) 917-7598

STAFF REPORT Development Code Amendments

<u>HEARING BODY</u>	CITY COUNCIL
<u>HEARING DATE</u>	Wednesday, April 11, 2001
<u>HEARING TIME</u>	7:15 p.m.
<u>HEARING LOCATION</u>	Council Chambers, Albany City Hall, 333 Broadalbin Street SW

GENERAL INFORMATION

DATE OF REPORT:	April 3, 2001
FILE:	DC-01-01
TYPE OF REQUEST:	Amendments to Article 1 of the Development Code that would: <ul style="list-style-type: none"> (1) Specify for how long land use approvals are valid. (2) Clarify when a land use application is complete. (3) Specify procedures for modifying approved site plans and conditional uses. (4) Clarify when a land use decision becomes final.

REVIEW BODIES: Planning Commission and City Council (Planning Commission hearing was held on March 19, 2001.)

APPLICANT: City of Albany Planning Division

APPLICANT REP: Don Donovan, Senior Planner

INTRODUCTION

Periodically, staff finds sections of the Development Code that are not clear when we try to apply them. We keep of a list of these sections and propose clarifications to the Planning Commission and City Council as time permits. We try to do this at least twice a year.

The set of amendments to the Development Code proposed here consists of four changes.

Amendment Number (1) would specify for how long land use approvals are valid. We currently have a system where an approval is good for one year, but two one-year extensions can be requested. Occasionally, a question arises about how and when extensions should be granted. There are two relevant sections of the Code that are hard to understand and may even conflict.

Number (2) described above would simply address the question of when an application is deemed complete for the purposes of the "120-day rule." The City has 120 days to make a decision on a land use application after the application is complete.

Number (3) would specify procedures for modifying a site plan or conditional use that has already been approved. Applicants sometimes want to make changes to the plan that has been approved. The City Council recently adopted an interpretation of the Code that explains how an approved site plan may be modified. The proposed amendments to the Code would add language that explains the procedure.

Number (4) would clarify when a land use decision becomes final. A question has been raised recently about how the City documents a land use decision. We have routinely adopted findings, conclusions, and conditions, and mailed a written notice of decision, but a state administrative rule requires that the decision be signed by the decision maker.

The review criteria for Development Code amendments require that the proposed amendments better achieve the goals and policies of the Comprehensive Plan and that they be consistent with the policies and purposes of the Code. The review criteria are addressed beginning on Page 3 of this staff report. The proposed amendments to the text of the Code are shown on Exhibit A at the end of the staff report. Exhibit B is a copy of the interpretation adopted by the City Council in September 2000, which staff used to propose new Code language related to modification of site plans and conditional uses.

NOTICE INFORMATION

A Notice of Public Hearing was published in the *Albany Democrat-Herald* on March 9, 2001, and mailed to persons believed to have a particular interest in the proposed amendments. The persons believed to have a particular interest are Barbara Kasper, Friends for Responsible Progress, and Costco Wholesale Corporation, who raised questions about a City Council decision on the Costco site plan review application. The proposed Code amendments would address some of their issues.

PLANNING COMMISSION AND STAFF RECOMMENDATIONS

APPROVAL of the proposed Development Code amendments.

The Planning Commission held a public hearing on the proposed amendments on March 19, 2001. No members of the public spoke either in favor of or against the amendments. Two interested people attended the public hearing.

The Planning Commission discussed each of the amendments and recommended that staff clarify some of the proposed language. Those clarifications have been made in the staff report that follows. Where appropriate, specific Planning Commission comments or changes are noted in the staff comments that follow each proposed amendment in Exhibit A.

CITY COUNCIL ACTION

[NOTE TO CITY COUNCIL: CHOOSE ONE FROM THE MOTIONS LISTED BELOW.]

MOTION TO APPROVE

If the City Council wishes to approve the proposed amendments as written, the Council may approve the amendments based on the findings and conclusions of the staff report.

I MOVE that the City Council adopt the ordinance that will approve the proposed amendments to Article 1 of the Development Code. (File DC-01-01). This motion is based on the findings and conclusions of the staff report and testimony presented at the public hearing.

OR

MOTION TO APPROVE AS MODIFIED

The City Council may propose modifications to the proposed amendments, and approve the amendments with the modifications.

I MOVE that the City Council adopt the ordinance that will approve the proposed amendments to Article 1 of the Development Code with modifications. The modifications are: *[explain modifications]*. The modifications are identified in File DC-01-01. This motion is based on the findings and conclusions of the staff report and testimony presented at the public hearing.

APPEALS

A City Council decision may be appealed to the Oregon Land Use Board of Appeals if a person with standing files a Notice of Intent to Appeal within 21 days of the date of the notice of the Council's decision.

STAFF ANALYSIS

Development Code Amendments File DC-01-01

The Albany Development Code contains the following review criteria which must be met for these Code amendments 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.*

FINDINGS

1.1 The proposed amendments would:

- (a) Specify for how long land use approvals are valid.
- (b) Clarify when a land use application is complete.
- (c) Specify procedures for modifying approved site plans and conditional uses.
- (d) Clarify when a land use decision becomes final.

1.2 The following Comprehensive Plan goals and policies are relevant to review of the proposed Development Code amendments. Each goal and policy will be written in bold italic type and considered as a separate review criterion.

1.3 *Goal 1, Citizen Participation, is to: "Ensure that local citizens and other affected groups, neighborhoods, agencies, and jurisdictions are involved in every phase of the planning process."*

Goal 1, Policy 2 is, "When making land use and other planning decisions:

- a. Actively seek input from all points of view from citizens and agencies and assure that interested parties from all areas of the Urban Growth Boundary have the opportunity to participate.*
- b. Utilize all criteria relevant to the issue.*
- c. Ensure the long-range interests of the general public are considered.*
- d. Give particular attention to input provided by the public.*
- e. Where opposing viewpoints are expressed, attempt to reach consensus where possible."*

Goal 1, Policy 2, is to: "Ensure information is made available to the public concerning development regulations, land use, and other planning matters including ways they can effectively participate in the planning process."

Development Code amendments are reviewed using the legislative process described in ADC 1.580-1.660. A legislative act deals with amendments that affect a large number of persons, properties, or situations, and are applied over a large area. A legislative act is different than a quasi-judicial act which affects a small number of persons, properties, or situations, or affects a small area. A legislative act is typically initiated by staff, the Planning Commission, or City Council. A quasi-judicial act is typically initiated by a property owner who files a land use application.

ADC 1.600 describes the process by which notification is given for legislative acts, such as amendments to the Development Code. Notice is published in the *Albany Democrat Herald* at least one week prior to the Planning Commission public hearing, and notice may be given to persons believed to have a particular interest in the amendments.

For the proposed amendments, a notice advertising the Planning Commission and City Council public hearings was published in the *Democrat Herald* on March 9, 2001. A notice of the Planning Commission and City Council public hearings was mailed to Barbara Kasper, Friends for Responsible Progress, and Costco Wholesale Corporation on March 12, 2001. The notice was mailed to these people because some of the issues raised during City Council hearings and in a LUBA appeal regarding a City Council decision on Costco's site plan review application are addressed in the proposed amendments.

Notice and public hearings allow the general public and persons with a particular interest in the proposed amendments to participate in discussions about the amendments.

The findings in this staff report list the relevant review criteria and respond to them. The long-range interests of the general public are considered by reviewing the proposed amendments in the context of Comprehensive Plan goals and policies.

- 1.4 ***Goal 9, Economy, Sub-goal 7, is to: "Assure that regulatory requirements provide for high standards of public health, safety, and welfare but are not detrimental to economic development opportunities."***

The requirements of the Development Code are regulatory requirements. The Development Code includes requirements for land use applications. The proposed amendments clarify procedures for reviewing land use applications. The proposed amendments do not address public health and safety concerns. Public welfare is affected by the clarity of the development review process because the development review process affects the time, cost, and quality of development in Albany. It is in the interest of both the people developing their property and the community to have procedures that are clear and accomplish the objectives of the Code. Expeditious reviews facilitate the economic development of the community by providing certainty in time lines and review standards for development.

- 1.5 ***Goal 9, Policy 15, is to: "Ensure that all building permit and planning regulations and procedures are clear, uncomplicated, concise, and are administered in a timely manner to avoid unnecessary delays."***

The proposed amendments are intended to make more clear, uncomplicated, and concise the sections of the Code to which revisions are proposed. See the staff comments included in Exhibit A. The comments are incorporated here by reference. Code language that is clear makes it possible to review development applications in a more efficient manner that takes less time.

- 1.6 ***Goal 9, Policy 16, is to: "Periodically review the Albany Development Code with the assistance of public input to eliminate inconsistencies, conflicts, and ambiguities."***

Staff typically identifies changes that should be made to the Development Code and brings them to the Planning Commission and City Council a few times each year. In

some cases, the proposed amendments are the result of discussions with people who use the Code who suggest areas that can be clarified. The Code sections proposed for amendments were all identified by people who use the Code as needing clarification.

- 1.7 ***Goal 14, Urbanization, is to: "Ensure that all new developments are reviewed expeditiously and thoroughly and result in compliance with Comprehensive Plan goals and policies and ordinance standards."***

The proposed amendments are intended to clarify Code sections that may now be conflicting, ambiguous, and/or confusing. An expeditious and thorough review depends on being able to understand and apply the provisions of the Code.

- 1.8 ***Goal 14, Policy 5, is to: "Ensure that the City's land use planning process and its policy framework is workable and understandable for local officials, staff, and the public. Ensure that the degree of application and review is commensurate with the size and complexity of various development requests."***

A workable and understandable Code depends on clear Code provisions.

CONCLUSIONS

- 1.1 The proposed amendments better achieve the goals and policies of the Comprehensive Plan than the existing regulatory language because the Code amendments clarify requirements of the Code that are confusing or ambiguous. A Code that is easier to understand makes it more clear what the standards are and how they apply. This helps the review process be more expeditious and efficient, which promotes the welfare of the public.
- (2) ***The proposed amendments are consistent with Development Code policies on purpose and with the purpose statement for the base zone, special purpose district, or development regulation where the amendment is proposed.***

FINDINGS

- 2.1 Article 1 of the Development Code explains the processes that the City follows for different types of land use reviews and also explains how hearings and appeals are conducted. (ADC 1.000)
- 2.2 The following purposes are relevant to review of the proposed Development Code amendments. Each purpose will be written in bold italic type and treated as a separate review criterion.
- 2.3 ***ADC 1.020 says the general purpose of the Development Code is to set forth and coordinate City regulations governing the development and use of land. The Code is more specifically intended to do the following:***
- (1) ***Serve as the principal vehicle for implementation of the City's Comprehensive Plan in a manner which protects the health, safety, and welfare of the citizens of Albany.***

The Development Code implements the Comprehensive Plan. This report reviews the proposed amendments in the context of Comprehensive Plan goals and policies. As found in Review Criterion (1) above, the proposed amendments do not involve public health or safety. They do protect the welfare of the citizens of Albany.

(2) *Satisfy relevant requirements of federal law, state law, statewide goals, and administrative rules.*

Amendments 3 and 4 do not involve federal or state laws or administrative rules. Amendments 1 and 2 do involve state laws (Oregon Revised Statutes) and administrative rules (OAR). See the staff comments included in Exhibit A. The comments are incorporated here by reference.

The statewide goals do not apply to the proposed amendments because the amendments involve City administrative procedures, not substantive changes.

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

See Findings of Fact 1.4 through 1.8 above.

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

The most commonly cited constitutional property right involved in application of the Development Code to land use applications is the obligation of government to pay for a taking of property. None of the proposed amendments relates to using private property for public benefit.

Due process of law requires that people in similar circumstances be treated similarly. To do this, it is important to have a Code that is clear so that it can be applied the same way in similar circumstances. The proposed amendments are intended to clarify several sections of the Code.

The owners of property who wish to develop their property and the owners of surrounding properties are affected by development proposals. It is important to have a Code that expresses clearly what is required in reviewing development applications, so that both developers and neighbors understand the requirements of the Code and their rights and responsibilities in land use application reviews.

CONCLUSIONS

- 2.1 The proposed amendments are consistent with the purposes of the Development Code because they will promote the public welfare, satisfy relevant requirements of state law and administrative rules, facilitate prompt review of development proposals, provide due process of law, and promote the interests of affected property owners in making land use decisions.

THIS COPY OF ARTICLE 1 OF THE DEVELOPMENT CODE SHOWS CHANGES PROPOSED IN FILE DC-01-01. DELETIONS ARE SHOWN IN ~~STRIKETHROUGH~~ TYPE. ADDITONS ARE SHOWN IN **BOLD** TYPE. SECTIONS 1.230 THROUGH 1.490 ARE NOT INCLUDED BECAUSE NO CHANGES ARE PROPOSED TO THOSE SECTIONS.

ARTICLE 1 ADMINISTRATION AND PROCEDURES

1.000 Overview. This Article establishes the framework for the review of land use applications. It explains the processes which 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 which can assist the user in locating information. The table of contents contains a complete listing of the material covered in this Article.

GENERAL ADMINISTRATION

INTRODUCTION

1.010 Official Name. The official name of this Title is "Title 20, Development Code and Zoning Map." It may be referred to as "Development Code" or "this Code."

1.020 Purpose. The general purpose of this Code is to set forth and coordinate City regulations governing the development and use of land. The Code is more specifically intended to do the following:

- (1) Serve as the principal vehicle for implementation of the City's Comprehensive Plan in a manner which protects the health, safety, and welfare of the citizens of Albany.
- (2) Satisfy relevant requirements of federal law, state law, statewide goals, and administrative rules.
- (3) Facilitate prompt review of development proposals and the application of clear and specific standards.
- (4) Provide for public information, review, and comment on development proposals which may have a significant impact on the community.

- (5) Guide public and private planning policies and actions to ensure provision of adequate water, sewerage, transportation, drainage, parks, open space and other public facilities and services for each development.
 - (6) Establish procedures and standards requiring that the design of site improvements and building improvements are consistent with applicable standards and flexible design guidelines.
 - (7) Provide for review and approval of the relationship between land uses and traffic circulation in order to minimize congestion, with particular emphasis on not exceeding the planned capacity of residential streets.
 - (8) Require that permitted uses and development designs provide reasonable protection from fire, flood, landslide, erosion, or other natural hazards as well as prevent the spread of blight, and aid in the prevention of crime.
 - (9) Protect and enhance the city's aesthetic beauty and character.
 - (10) Protect constitutional property rights, provide due process of law, and give consideration in all matters to affected property owner interests in making land use decisions.
- 1.025 Legislative Intent. In addition to the purposes set forth above, subsequent amendments to this Code may be accompanied by staff reports, commentary sections, and/or additional findings which may be used to more accurately determine the purpose and legislative intent of specific provisions.
- 1.030 Scope and Compliance. A parcel of land or a structure may be used or developed only as this Code permits. The requirements of this Code apply to the property owner(s), the person(s) undertaking a development, the user(s) of a development, and to their successors in interest.
- 1.035 Severability. The provisions of this Code are severable. If any portion of this Code is declared by a court of law to be invalid or unconstitutional, the decision shall not affect the validity of the remaining portions.
- 1.040 Interpretation.
- (1) Except as otherwise specified, the definitions included in Article 22 shall be used to interpret the provisions of this Code.
 - (2) The Director shall have the initial authority and responsibility to interpret all terms, provisions, and requirements of this ordinance. For quasi-judicial interpretations, the Type II procedure set forth in Section 1.240 shall be followed. For legislative interpretations, Type IV procedures as set forth in Section 1.260 shall be followed. A person requesting such an interpretation shall do so in writing to the Director.
 - (3) The terms of this ordinance shall be liberally construed to give maximum effect to the purposes set forth in Section 1.020.
 - (4) Where the conditions imposed by a provision of this Code are less restrictive than comparable conditions imposed by other provisions of this Code or other sections of the Albany Municipal Code, the more restrictive shall govern.
- 1.050 Consistency with Plan and Laws. Actions initiated under this Code shall be consistent with the adopted Comprehensive Plan of the City of Albany and with applicable state and federal laws and regulations as these plans, laws, and regulations may now or hereafter provide. Since the City of Albany has a

Comprehensive Plan and implementing regulations which have been acknowledged by the State of Oregon as being in compliance with statewide goals, any action taken in conformance with this Code shall be deemed also in compliance with statewide goals and the Comprehensive Plan. Unless stated otherwise within this Code, specific findings demonstrating compliance with the Comprehensive Plan are not required for land use application approval. However, this provision shall not relieve the proponent of the burden of responding to allegations that the development action requested is inconsistent with one or more Comprehensive Plan policies.

1.060 When Land Use Applications Are Required.

- (1) Except as excluded by 1.070, no person shall engage in or cause to occur a development for which a land use application has not been approved.
- (2) Whenever this Code requires a land use application, no other permit issued by the City shall be approved until the land use application has first been approved by the Director.
- (3) Land use applications shall be approved by the Community Development Director, the Hearings Board, the Planning Commission, or the City Council pursuant to the provisions of this Code. The Director shall not approve a land use application for the division, improvement, or use of land that has been previously divided in violation of state or local codes or otherwise developed in violation of this Code unless the violation is corrected prior to or concurrent with issuance of required permits.
- (4) No action may be taken in reliance upon a decision approving a land use application until all applicable appeal periods have expired or while an appeal to a City review body is pending. However the action allowed by the decision may be initiated if:
 - (a) There were no objections to the decision or if all objections were resolved at a hearing or in writing prior to the hearing; and
 - (b) The applicant has executed a release and indemnity agreement in a form satisfactory to the City Attorney which protects the City from all claims of the applicant resulting from the approval of the land use application or issuance of a building permit.
- ~~(5) All land use approvals shall expire one year from the date of issuance unless:
 - ~~(a) Substantial construction or operation of the development has begun within that time and has continued toward final completion; or~~
 - ~~(b) Development proceeds in accordance with an approved phasing plan; or~~
 - ~~(c) An extension has been granted by the Director upon request of the applicant.~~~~
- ~~(6) Requests for extension must be filed with the Director prior to the expiration date of the original approval or subsequent extension. No single extension of time shall exceed a one (1) year period. Extensions of time shall not be approved where the effect of doing so would violate any provisions of this Code including any amendments made following the effective expiration date. In no instance shall the extension(s) of time exceed a total of 36 months from the effective date of project approval.~~

Staff Comments: Two alternatives to the existing language in (5) and (6) above are presented below. The Planning Commission, Planning staff, and the City Attorney recommend Alternative A.

Alternative A:

- (5) 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.

Alternative B:

- (5) All land use approvals shall expire one year from the date of the approval, unless the Community Development Director grants an extension. The Director may grant not more than two one-year extensions, so long as construction activity on the project started within one year of original approval. The Development Code standards for development within these time periods are those in effect at the time the original approval was granted.

***Staff Comments:** The current requirements in (5) and (6) are confusing and ambiguous and may conflict with some of the provisions of ADC 1.080. See the discussion on Page 1-6. Staff recommends replacing the current (5) and (6) with Alternative A.*

It is not uncommon today that financial and legal constraints result in a longer timeline for development following approval. Consequently, the current requirement that substantial construction be done within one year is sometimes not realistic. Changes of property ownership can also cause delays. At present, extensions are occasionally requested and usually granted, since there is no basis for denying them. We currently have the authority to grant one-year extensions for a total of three years to do the project. If we make a good decision initially, it should be valid for a reasonable amount of time.

Given the City’s current financial limitations, it may not be appropriate to continue to use staff time to review extension requests which, for the most part, the City Attorney advises cannot be legally denied.

We presently allow development to continue without limitation once substantial construction has been accomplished. This level of financial expenditure should be sufficient to permanently vest a property owner’s rights. Alternative A provides for this.

Alternative B would continue to require that extensions be granted. As mentioned above, this requires a staff review and decision, with an approval letter, for little apparent purpose.

If the expiration date of land use approvals is changed in Article 1, it will also need to be changed for subdivision plats in Article 11. An amendment to ADC 11.060 will be needed. ADC 11.060 reads as follows:

- 11.060 Expiration Dates. City approval of a tentative subdivision or partition plat will expire after one year if a final plat is not submitted for approval. 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.

There is no provision in this section for an extension of the approval, so it has been ambiguous if an extension could be granted under ADC 1.060(5).

- 1.070 When Land Use Applications Are Not Required. Activities and developments listed below are excluded from the requirement for a land use application but are nevertheless subject to the provisions of the Code

where applicable:

- (1) Agricultural uses permitted outright in Articles 3, 4 and 5.
- (2) Detached single family dwellings and two unit dwellings.
- (3) Accessory buildings and building additions of less than 500 square feet which conform to the provisions of this Code and the Uniform Building Code.
- (4) Landscaping and routine property maintenance.
- (5) Improvement of parking areas containing less than 1,000 square feet and otherwise meeting the provisions of this Code.
- (6) A change internal to a building or other structure or usage of land that does not constitute a change of use as listed in Articles 3, 4 or 5.
- (7) Site Plan Review for a change in use within an existing structure when the following criteria are satisfied:
 - (a) No structural expansion in excess of 500 feet or 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-conformities with the provisions of this Code have been addressed, including compliance with sign, landscaping, and parking requirements except where restricted by building location or limiting site characteristics.
- (8) An emergency measure necessary for the safety or protection of property when authorized by the City Manager with written notice to the City Council.
- (9) Any temporary use of land of up to a 30-day duration (such as a promotional event, festival, carnival, or outdoor sale) which 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 location, scope, and duration.
- (10) The establishment, construction, alteration, or maintenance of a public facility authorized by the Director of Public Works 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 a six months duration but does not include major substations, treatment facilities, storage tanks, reservoirs, and towers.
- (11) Excavation and fill for foundations and all other excavation or filling of land involving 50 cubic yards or less which does not adversely affect drainage patterns and is not located within a floodplain or slope area. See also Article 6.

1.075 Fees. The City Council shall establish application and review fees and fee policies by separate resolution for the performance of the actions and reviews required by this Code.

~~1.080 Validity of Prior Approval.~~

- ~~(1) The following actions initiated prior to the adoption of this Code, or prior to the adoption of any amendment which would otherwise restrict the activity, may be continued and completed according to prior approvals granted by the City and in accordance with requirements in effect at the time approval was granted:~~
- ~~(a) Completion of any construction activity for which a building permit has been issued provided that such work continues to be in conformance with the requirements under which it was issued. Such work shall progress in a timely manner and not be discontinued for a period of more than one year after which time a new land use application shall be required.~~
 - ~~(b) Completion of final subdivision plat, final manufactured home park plan, and final PUD plan for which preliminary or interim approval has been granted, provided such plats and plans are submitted within one year of previous approval or are submitted in accordance with a previously approved phasing plan under which construction has begun and has progressed in a timely manner on at least one phase.~~
 - ~~(c) Construction of any subdivision, PUD, or manufactured home park, which: i) has received final approval (provided that such work is commenced within one year of final approval and is completed within two years of final approval); or ii) wherein substantial construction activity has not been discontinued for more than 24 consecutive months.~~
 - ~~(d) Construction of any structure or facility for which a Conditional Use Permit, Variance, or Site Plan approval has been granted provided such work is begun within one year of approval and is completed within two years of approval.~~
- ~~(2) Extensions of time under Sections (a) (d) above may be granted by the Director for up to two additional years provided there are no requirements in effect which would otherwise restrict project development and provided further that no extensions shall be granted which extend beyond 36 months from the effective date of project approval.~~

Staff Comments: These sections are similar but not identical to ADC 1.060(5) and (6). We have recommended deletion of those sections and we recommend deletion of these sections for the same reasons. These sections seem to be inconsistent with or even contradictory to ADC 1.060(5) and (6). The language is confusing and ambiguous as to which section applies and how to apply it. If approvals are simply good for three years as suggested above, it will save staff time, eliminate confusion, and provide more certainty about how much time is allowed for development.

1.080 **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.

Staff Comments: This section states what is a common tenant in other laws regarding property. People some times ask if an approval resides with an owner or with the land, so we think it is a good idea to be specific in the Code.

1.090 **Official Action.** All officials, departments, and employees of the City vested with authority to issue permits, certificates, or licenses shall adhere to and require conformance with the zoning regulations.

1.100 **Certificate of Occupancy.** It shall be unlawful to use or occupy any new building or premises until a certificate of occupancy has been issued by the designated building official stating that the proposed use of the building or land conforms to the requirements of the Uniform Building Code, this ordinance, and any other City conditions attached to the development or use of the building or land.

ENFORCEMENT

- 1.110 Inspections. The Director or his designee may make periodic and routine inspections of properties and premises within the corporate limits of Albany. The purpose of these inspections shall be to determine whether there is compliance with the laws, rules, and regulations which are designed for the protection of the health, safety, and welfare of the public. The Director is also empowered to make such inspections upon the receipt of complaints, specific or general information, or observations indicating the existence of hazardous conditions or non-compliance with such rules, regulations, and laws. In the event that any authorized officer or employee of the City of Albany shall be denied access to any property or premises for the purposes of making an inspection provided for in this ordinance, then such officer or employee shall not inspect such premises unless and until he has obtained from the municipal judge of the City of Albany a search warrant for the inspection of such premises.
- 1.120 Search Warrants. A search warrant for inspections can only be issued under the terms of this ordinance when an affidavit has been filed with the City's municipal court showing probable cause for the inspection by stating:
- (1) The purpose and extent of the proposed inspection;
 - (2) The ordinance or ordinances which form the basis for the inspection; and,
 - (3) Whether it is a routine or periodic inspection, an inspection initiated by complaint, other specific or general information, or observation concerning the property or premises or the area in which it is situated.
- It shall be unlawful for any person, firm, or corporation to hinder, delay, or obstruct the inspection of premises based on a search warrant issued under the terms of this ordinance.
- 1.130 Abatement. The location, erection, construction, maintenance, repair, alteration or use of a building or other structure in violation of this ordinance shall be deemed a nuisance and may be abated as such.
- 1.140 Code Enforcement. The Director or his designee may enforce the provisions of this ordinance. 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.
- 1.150 Legal Proceedings by City Attorney. In addition to the remedies prescribed herein, the City Attorney, upon request from the City Council or City Manager, shall cause to be instituted any civil action, suit, or other legal means considered to be appropriate to remedy violations of this ordinance.
- 1.160 Suits in Equity to Enjoin Violations. If any existing or proposed structure or use is in violation of this Code, the City Attorney or any affected person may sue to enjoin the violation.
- 1.170 Enforcement by Chief of Police. The Chief of Police or his designee(s) shall have the power to assist in the enforcement of the provisions of this ordinance.
- 1.180 Penalty. In addition to the remedies set forth above, the general penalties and procedures set forth in Chapter 1.04 of the Albany Municipal Code apply to any and all violations of this Development Code. The City may, at its option, elect to pursue such procedure in lieu of or in addition to any other remedy set forth above.
- 1.190 Violation of a Land Use Approval. Violation of any condition or requirement of any land use approval constitutes a civil infraction when such violation does not, in and of itself, constitute a separate violation of the Albany Municipal Code.

APPLICATION PROCEDURES

1.200 Land Use Application Procedures.

- (1) A land use application shall be processed under a Type I, I-L, II, III, or IV procedure, as described in this Article.
- (2) Where there is a question as to the appropriate type of procedure, the Director shall determine the type of procedure to be utilized based upon the most similar land use application procedure specified by this Code or other established policy.
- (3) Where a proposal involves more than one application for the same property, the applicant(s) may submit concurrent applications which shall be processed simultaneously in accordance with the highest numbered procedure specified. When concurrent applications are so received and accepted as complete, the 120-day requirement of Section 1.220(2) shall apply as if a single application had been made.

1.201 Coordination of Land Use Application Procedure. The Director shall be responsible for coordination of the land use application and decision-making procedure. The Director shall issue a land use approval for applications and proposed developments that are in compliance with the provisions of this Code. Before issuing the approval, the Director shall be provided with the information required to determine full compliance with the requirements of this Code.

1.202 Preapplication Conference. The Director and the applicant or the applicant's authorized representative shall arrange a preapplication conference, unless the applicant and Director agree that the conference is not needed. The purpose of the conference is to acquaint the applicant with the substantive, and procedural requirements of this Code, and to identify any constraints on the proposed development. Depending on the nature and size of the proposed development, a rough sketch conceptual plan may be required for review in the preapplication conference. Upon the request of the applicant, the Director shall provide the applicant with a written summary of the conference including confirmation of the procedures to be used to process the application, a list of materials to be submitted, and the criteria and standards which may apply to the approval of the application.

1.203 Neighborhood Meeting. The purpose of a neighborhood meeting is to ensure that applicants pursue early and effective citizen participation in conjunction with their applications, giving them the opportunity to understand and try to mitigate any real or perceived impacts their application may have on the neighborhood. The meeting is not intended to produce complete consensus on all applications. It is intended to encourage applicants to be good neighbors. City staff will attend the neighborhood meeting in an advisory capacity to answer questions.

The applicant shall hold a neighborhood meeting prior to submittal of the following types of applications:

- (1) Multifamily development that abuts a single-family zoning district.
- (2) Commercial and industrial development that abuts any residential zoning district.
- (3) Manufactured home park.
- (4) Subdivision with more than 10 lots.
- (5) Any subdivision that is an infill development.

For other applications that may have a neighborhood impact, the City recommends that the applicant have a neighborhood meeting. [Ord.5445, 4/12/00]

1.207 Application Contents. A land use application shall consist of the following:

dcnewart.1

04/04/01

1-8

- (1) Explanation of intent, nature and proposed use of the development, pertinent background information and other information that may have a bearing in determining the action to be taken, including submission of detailed findings where such are required by the provisions of this Code.
- (2) Signed statement indicating that the property affected by the application is in the exclusive ownership or control of the applicant, or that the applicant has the consent of all partners in ownership of the affected property.
- (3) Property description and assessor map parcel number(s).
- (4) Additional information required by other sections of this Code because of the type of development proposal or the area involved.
- (5) Duplicates of the above information as required by the Director.
- (6) Submission of application fees as established by the City Council.
- (7) A report documenting the results of any neighborhood meeting. The report shall contain:
 - (a) The dates and locations of all meetings where citizens were invited to discuss the applicant's proposal;
 - (b) The method(s) by which each meeting was publicized;
 - (c) The number of people who attended the meeting or otherwise contacted the applicant;
 - (d) A summary of the concerns, issues, and problems raised by neighbors;
 - (e) A discussion of how the applicant has addressed or intends to address concerns, issues, and problems; and
 - (f) A discussion of any concerns, issues, and problems the applicant is unable or unwilling to address and why. [Ord. 5445, 4/12/00]

1.210 Submission of Quasi-Judicial Land Use Applications.

- (1) Application materials shall be submitted to the Director who shall have the date of submission indicated on each copy of the materials submitted.
- (2) Within 30 calendar days the Director shall determine whether the application is complete. The Director shall notify the applicant when the application is found to be incomplete and identify what additional information is needed. An application which has been determined to be incomplete may be supplemented, amended or resubmitted, at the Director's discretion.

~~Resubmitted applications~~ **The application** shall be subject to another 30 calendar day completeness check beginning on the date additional information is submitted.

If the applicant declines to submit the additional information, the application will be deemed complete on the 31st day after the application was first received.

Staff Comments: The City has 120 days to make a decision on land use applications by state law. The proposed changes will clarify when an application is deemed complete for the purpose of beginning the 120-day "clock." The new language comes almost directly from the same section of state law as the 120-day rule [ORS 227.178(2)]

- (3) The Director shall set the date of public hearing(s) for land use applications requiring a public hearing. When setting hearing dates, the Director may take into consideration the complexity of the development proposal, other scheduled agenda items and adequate review and preparation time for the staff report.
- (4) All documents or evidence relied upon by the applicant shall be submitted to the Planning Division and made available to the public at least 20 days prior to the evidentiary public hearing (or 10 days before the first evidentiary public hearing if two or more evidentiary public hearings are allowed). Any staff report used at the hearing shall be available at least seven days prior to the hearing.

dcnewart.l

04/04/01

If additional documents or evidence are provided by any party, the local government may allow a continuance or leave the record open to allow the parties a reasonable opportunity to respond.

- (5) Upon request, the application file shall be made available to the public for inspection at no cost and copies will be provided at reasonable cost. [Ord. 5446, 5/10/00]

1.215 Referral and Review of Quasi-Judicial Land Use Applications. Upon acceptance of an application, the Director shall do the following:

- (1) Send one copy of the project review sheet to each agency and city department identified by the Director as having possible interest in reviewing and commenting on the development proposal, including those agencies and departments responsible for determining compliance with state and federal requirements. If the agency or city department does not comment within 10 days from the date the Director mails or routes the project review sheet, the agency or city department is presumed to have no comments or objections. The Director may grant an extension of up to 14 days to a reviewing department or agency if the application involves unusual circumstances.
- (2) Send the project review sheet to other governmental bodies and private utilities as appropriate.
- (3) Provide for notices to be given and hearings to be established as required under Type I-L, II, III, and IV procedures established in this Article. [Ord. 5446, 5/10/00]

1.220 Land Use Decision for Quasi-Judicial Applications.

- (1) Within five days of final action on a land use application, the Director shall provide written notice of the decision to the applicant and any other parties entitled to notice. The notice shall state the effective date of the decision, describe the right of appeal, and summarize the reasons for the decision and any conditions of approval or indicate where such can be reviewed in detail.
- (2) The City shall take final action on all land use requests which are wholly within the authority and control of the City within 120 days from the date the application is deemed complete. However, by agreement with the applicant, this deadline may be extended for any reasonable length of time. The 120-day period set out in ORS 227.178, does not apply to an amendment to an acknowledged comprehensive plan or land use regulation or adoption of a new land use regulation that was forwarded to the Director of the Department of Land Conservation and Development under ORS 197.610 (for legislative amendments). [Ord. 5446, 5/10/00]
- (3) **Development shall be completed as shown on the plans that were reviewed and approved through the land use process, subject to any modifications identified in the conditions of approval. Modifications to site plans and conditional uses may be made as described in ADC 1.226.**

Staff Comments: The Code does not now explicitly require that developments be built as approved. Staff has noted that developments should be built as approved in the notice of decision, but we do not have clear Code authority to require it. The new language would provide Code authority. The modification process in ADC 1.226 is also proposed new language.

1.225 Action on Resubmission of Denied Quasi-Judicial Application. An applicant may make appropriate alterations to a proposal which has previously been denied and resubmit it with a payment of any required fee. If a previously denied application is resubmitted within one year of the date denied, recommendations of advisory bodies, departments, and agencies need not be requested again unless the Director finds that changed conditions or changes in the proposal warrant such reconsideration. [Ord.

1.226 Modification of Approved Site Plan Reviews and Conditional Uses. When a site plan review or a conditional use review results in an approved site plan, with or without conditions, and the property owner wants to make changes to the plan, the following procedures shall be used to review the proposed modifications.

- (1) **Definitions:** When “property owner” is used here, it means the property owner, or the property owner’s authorized agent. When “site plan” is used here, it means the site plan approved through either a site plan review or a review of a conditional use.
- (2) The property owner must submit to the Planning Division an application to modify the approved site plan.
- (3) The review body shall be the same body that granted the final approval for which modification is sought.
- (4) The modification shall be “consistent with” the approved site plan. If the review body determines that the modified site plan is consistent with the original approval, a modification to the site plan may be allowed. If the modified site plan is consistent with the approved site plan and meets the review criteria specified in 1.226(6) below, the modified plan shall be approved.

If the review body determines that the modified site plan is not consistent with the original approval, then approval of the site plan will be denied. If a new application is submitted, it will be subject to the Development Code standards in effect at the time the new application is submitted.

- (5) The determination on consistency by the review body shall be based on a comparison of the approved site plan and the modified site plan, taking into account:
 - a. The land use category;
 - b. The size and scale of the proposed building(s);
 - c. The traffic impacts;
 - d. Compatibility with surrounding development;
 - e. Capacity of available infrastructure; and
 - f. Unusual obstacles and opportunities associated with the property.

The modified site plan will be found to be consistent with the approved site plan if the review body determines that there are no greater adverse impacts, or, if additional adverse impacts are identified, they have been adequately mitigated.

- (6) The review body shall use the same procedure and review criteria as that used for the original approval. The Development Code regulations in effect at the time the application for the approved site plan was submitted are the regulations that will be used to review the proposed modification(s).
- (7) The entire site plan will be reviewed at the time the modified site plan is reviewed.
- (8) **Conditions of approval:**
 - a. The application to approve a modified site plan will be denied if an applicant seeks to modify a prior land use decision merely to seek the reduction or elimination of a

condition of approval, unless the applicant proposes an equivalent reduction in the scope, size, or scale of the part of the development that led to the condition of approval.

- b. When reviewing a modified site plan that has different impacts than the approved site plan, the decision-maker may modify conditions or impose new ones. Only conditions related to the impact of the modified site plan may be imposed on the modified site plan approval. Impact means characteristics of the development such as traffic, wastewater discharge, noise, etc.
 - c. The review of the modified site plan shall not be used to allow an application to escape prior infrastructure commitments. A modification cannot be used to provide a new timeline for appealing a previously-accepted infrastructure obligation. The original conditions of approval imposed for the approved site plan may remain in effect or be increased as necessary to address additional impact. Conditions related to improving existing infrastructure or building new infrastructure (such as streets, sewers, etc.) may be reduced only if the modification substantially reduces the infrastructure burden created by the development.
- (9) The property owner may choose to either accept approval of the modified site plan or to retain the original approval. If the property owner accepts approval of the modified site plan and any conditions that may be imposed, the property owner must give notice to the Planning Division. Notice must be received by the Planning Division within 10 days of the date on the notice of decision for approval of the modified site plan. If the property owner accepts approval of the modified site plan, the new approval supercedes and voids the original approval.

If the property owner does not provide the required written notice of acceptance, or if the approval of the modified site plan is not granted by the review body, the project shall continue to be subject to the original conditions of approval and time lines.

- (10) When first granted, a site plan or conditional approval is valid for three years [ADC 1.060(5)]. When a modified site plan is approved and accepted, the approval is valid for one year beyond the date that the original site plan approval would have expired. (For example, if the original approval would have expired on July 1, 2001, the approval of the modified site plan is extended to July 1, 2002.)

Only one one-year extension of the original approval will be allowed. Any subsequent modification of the site plan will be subject to the time limit established at the time the first modification was approved. The approval can be valid for only a total of four years including the first three-year period and the one-year extension.

Substantial construction of the development must take place within the four years. If substantial construction is accomplished, construction can continue to completion. If substantial construction is not accomplished, the approval is void.

Staff Comments: These sections would explain the procedures that will be used to review modifications to site plans, including those for site plan review applications and conditional use applications. (Note that the first sentence assumes Alternative A under ADC 1.060 was chosen by the Council. If Alternative B is chosen, the language here will be modified to be consistent with Alternative B.

All of this language would be new in the Code. Much of the language is very nearly identical to the interpretation adopted by the City Council on September 13, 2000. Planning staff worked with the City Attorney to revise and clarify the intent and meaning of the proposed language. A few additional requirements

were added where necessary. The text of the September 13, 2000, interpretation is included for information as Exhibit B.

SECTIONS 1.230 THROUGH 1.490 OF THE DEVELOPMENT CODE WERE NOT INCLUDED HERE BECAUSE NO CHANGES ARE PROPOSED TO THOSE SECTIONS.

DECISION

1.500 Findings. The review body shall make a decision and adopt findings based upon the information accompanying the application, staff report, and/or evidence presented at the hearing. The findings shall address:

- (1) Applicable Development Code criteria.
- (2) For approval, a statement of the facts establishing compliance with each applicable policy or criteria. For denial, a statement of the facts establishing non-compliance with any required policy or criteria.
- (3) Concluding statement(s) to approve or deny.

1.505 Final Decision. Unless a local ordinance specifies that the decision becomes final at a later time than defined in this section, a decision becomes final (a) when it is reduced to writing, bears the necessary signatures of the decision maker, and (b) if written notice of the decision is required by law, when written notice of the decision is mailed to persons entitled to notice.

Staff Comments: We have always been of the opinion that a land use decision was final on the date the notice of decision was mailed as required in ORS 215.416(10). This date also establishes the date that the 21-day period for an appeal to LUBA would begin.

However, OAR 661-010-010(3) defines "Final Decision." It says "Unless a local rule or ordinance specifies that the decision becomes final at a later time than defined in this section, a decision becomes final (a) when it is reduced to writing, bears the necessary signatures of the decision maker(s), and (b) if written notice of the decision is required by law, when written notice of the decision is mailed to persons entitled to notice.

This Administrative Rule says that, in addition to the notice of decision, a decision must be reduced to writing and signed by the decision maker. The staff report for a land use application is the written decision on the application, but we have not had the decision maker sign it. The proposed Code amendment would require a signature."

1.510 Notice of Decision.

- (1) Within five days of final action on a land use application, the Director shall provide written notice of the decision to the applicant and any other parties entitled to notice. The notice shall state the effective date of the decision, describe the right of appeal, and summarize the reasons for the decision and any conditions of approval or indicate where such can be reviewed in detail.
- (2) The City shall take final action on all land use requests which are wholly within the authority and control of the City within 120 days from the date the application is deemed complete. However, by agreement with the applicant, this deadline may be extended for any reasonable length of time.

The 120-day period set out in ORS 227.178 does not apply to an amendment to an acknowledged comprehensive plan or land use regulation or adoption of a new land use regulation that was forwarded to the Director of the Department of Land Conservation and Development under ORS 197.610 (for legislative changes). [Ord. 5446, 5/10/00]

APPEALS

1.520 Appeal Procedures.

- (1) See ADC 1.330(5) for appeals of Type I-L limited land use decisions.
- (2) An affected party may request a public hearing on a tentative land use decision made by staff under the Type II procedure. At the Director's discretion, this hearing will be before the Planning Commission, Hearings Board, or the Landmarks Advisory Commission.
- (3) A Type III decision of the Planning Commission, Hearings Board, or Landmarks Advisory Commission may be appealed to the City Council by an affected party by filing a "Notice of Appeal" within 10 days from the date the City mails the Notice of Decision.

Staff Comments: In May 2000 the City Council adopted revisions to the Development Code. One of the revisions was that some Type I-L limited land use decisions could be appealed to the Planning Commission. Before the revisions, Type I-L decisions could be appealed only to LUBA. Now that some decisions may be appealed to the Planning Commission, we need to direct people to the relevant code section. We also need to make it clear that only Type III Planning Commission decisions may be appealed to the City Council.

The decision to limit the opportunity for appeal of Type I-L decisions to one hearing was based on concern about how long it takes to have two public hearings. With Type I-L decisions, the use is allowed and there is no question about whether it should be allowed. Typically, the only questions relate to conditions of approval. With two hearings, there is a greater risk of running afoul of the 120-day rule and additional staff time is required. With our limited resources these days, these are both real concerns. These are also concerns with Type III decisions, such as conditional uses, but with these there may be a question about whether the use should be allowed at all, so an opportunity for an appeal to the City Council is appropriate.

The clarifications suggested here would not revise the Code, they would simply make ADC 1.520 consistent with changes made in May 2000 elsewhere in the Code (ADC 1.330 and 1.360).

- (4) Within the appeal period, the City Council, acting upon the recommended action of the City Manager or upon its own motion, may order a de novo review of any lower level decision. Such review shall be conducted in accordance with appeal procedures as specified herein.
- (5) For any appeal proceeding, the Director shall cause notice to be provided in the same manner as provided for the original decision, those testifying and any other parties to the proceedings who request notice in writing.
- (6) A decision of the City Council may be appealed to the Land Use Board of Appeals by filing a notice of intent to appeal not later than 21 days after the decision becomes final. [Ord. 5446, 5/10/00]

1.530 Requirements of Notice of Appeal. A "Notice of Appeal" shall contain:

- (1) An identification of the decision sought to be reviewed, including the date of the decision.
- (2) A statement of the interest of the person seeking review and that he/she was a party to the initial

dcnewart.1

04/04/01

1-14

proceedings.

- (3) The specific policy or criteria relied upon for review.
- (4) If de novo review is requested, a statement summarizing the new evidence which will be offered and the criteria to which it will relate.

1.540 Scope of Review. The reviewing body shall determine the scope of review on appeal to be one of the following:

- (1) Restricted to the record made on the decision being appealed.
- (2) Limited to such issues as the reviewing body determines necessary for a proper resolution of the matter.
- (3) A de novo hearing on the merits.

1.550 Review on the Record.

- (1) The reviewing body may hear the entire matter on the record or it may admit additional testimony and other evidence in a de novo hearing.
- (2) When the reviewing body requests a review on the record, the record shall include:
 - (a) A factual report prepared by the Community Development Director.
 - (b) All exhibits, materials, pleadings, memoranda, stipulations, and motions submitted by any party and received or considered in reaching the decision under review.
 - (c) The minutes of the hearing.
- (3) The reviewing body may make its decision based only upon the record, or may grant the right of oral argument, to all affected parties but not the introduction of additional evidence.

1.560 De Novo Hearing. "De novo hearing" shall mean a hearing by the review body as if the request had not been previously heard and as if no decision had been rendered, except that all testimony, evidence, and other material from the record of the previous consideration may be included in the record of the review.

1.570 Review Body Decision. Upon review, the reviewing body may affirm, remand, reverse, or modify in whole or part a determination or requirement of the decision that is under review. When the reviewing body modifies or renders a decision that reverses a decision of the review body, the review body shall set forth its findings and state its reasons for taking the action. When the reviewing body elects to remand the matter back to the previous review body for such further consideration as the reviewing body deems necessary, it may include a statement explaining the error found to have materially affected the outcome of the original decision and the action necessary to rectify such.

LEGISLATIVE PROCESS

1.580 Initiation.

- (1) The City Council may make changes in the Comprehensive Plan or Development Code provisions and designations by legislative act where such changes affect a large number of persons, properties, or situations and are applied over a large area.

- (2) The City Council, Planning Commission, Landmarks Advisory Commission, or the Community Development Director may initiate a review on any legislative matter.
 - (3) Any property owner or resident of the City may request the Planning Commission to initiate a review of any legislative matter (such as an amendment to the Development Code text). The Planning Commission shall review the proposal and determine whether the proposal warrants processing as a legislative amendment.
- 1.590 Procedure. Legislative land use applications are processed as a legislative Type IV procedure.
- 1.600 Hearing Notice.
- (1) The Director may inform persons believed to have a particular interest and provide the general public with reasonable opportunity to be aware of the hearings on the proposal.
 - (2) Notice shall be published in the Albany Democrat-Herald at least one week prior to the hearing and additionally as may be required by state law for a particular proceeding.
 - (3) Published notice shall include the following information:
 - (a) The reviewing body, the date, time, and place of the hearing.
 - (b) The nature of the proposed amendment.
 - (c) The name and telephone number of the staff member to contact for more information.
- 1.610 Hearing Procedures. Interested persons may submit written recommendations and comments in advance of the hearing and this information shall be available for public inspection. At the hearing, written recommendations and other information will be received and oral statements will be permitted. The presiding officer may establish a time limit for presentation of information.
- 1.620 Planning Commission Recommendation. In preparing its recommendation to the City Council, the Planning Commission shall do the following:
- (1) Evaluate the proposal based on the relevant Development Code criteria.
 - (2) Prepare a recommendation and make findings in support of such recommendation.
- 1.630 City Council Action.
- (1) In reaching a decision on a legislative matter, the Council shall adopt findings applicable to the relevant policies and criteria in support of the decision.
 - (2) The City Council may:
 - (a) Enact, amend or defeat all or part of the proposal under consideration, or
 - (b) Refer some or all of the proposal back to the Planning Commission for further consideration.
- 1.640 Notice to DLCD on Legislative Matters.
- (1) The Director shall notify Department of Land Conservation and Development for adoption of or amendment to the Comprehensive Plan, the Development Code, or any other land use regulation. The notice shall be provided at least 45 days before the first evidentiary hearing on adoption and the notice shall contain information sufficient to inform the Department as to the effect of the

proposal.

- (2) If the City determines that the statewide goals do not apply to a particular proposed amendment or new regulation, notice under subsection (1) of this section is not required. In addition, the City may consider an amendment or new regulation with less than 45 days notice if the City Council determines that there are emergency circumstances requiring expedited review. [Ord. 5446, 5/10/00]

1.650 Decision Notice Requirements.

- (1) Within five working days following adoption of an amendment or new land use regulation, the Director shall forward to the Department of Land Conservation and Development a copy of the adopted text and findings and notify the Department of any substantial changes which may have occurred in the proposal since any previous notification to the Department.
- (2) Within five working days, the Director shall also notify any person who participated in the proceedings leading to the decision. Such notice shall briefly describe the final action taken, state the date and effective date of the decision, and explain the requirements for appealing the action under ORS 197.830 to 197.845.

1.660 Appeal. A legislative land use decision may be appealed to the Land Use Board of Appeals.

EXHIBIT B

The following interpretation was adopted by the City Council on September 13, 2000:

“The Council finds:

1. It is appropriate to interpret the Albany Development Code to determine whether or not the prior site plan approval for Coastal Farm can be modified to allow Costco’s proposed development.
2. ADC 1.080 describes certain actions, including construction for which a variance or site plan approval has been granted, which may be continued and completed according to prior approvals granted by the City and in accordance with requirements in effect at the time approval was granted. In the case of a site plan or variance, the code requires that construction must begin within one year of approval and completion must occur within two years of approval.
3. Coastal Farm started their project within one year of approval, which was June 14, 1999. A letter from Chris Bernhardt to Community Development Director Helen Burns Sharp states: “Since the approval, the landowner has demolished the existing improvements and cleared the site, and has installed erosion control measures. These construction activities were performed in preparation for construction of the development contemplated by the Existing Approval, and in accordance with the approved plans. In total, Coastal Farms has invested approximately \$100,000 in construction and construction engineering expenses for initial development of the site. This is a significant investment on the part of the land owner, and is sufficient to maintain the vesting of the Existing Approval.” In addition, a memo from Scott Morris, PE, of Access Engineering, dated July 13, 2000 details the site construction activities undertaken by Coastal Farm and the associated costs, which totaled \$98,829.00.
4. The Albany Development Code does not specify whether a site plan approval and variance runs with the land or with the applicant.
5. It is appropriate to interpret the Development Code to make clear that a site plan approval and variance runs with the land. Owners and tenants may change.
6. The Albany Development Code does not specify who the decision-maker is when an applicant seeks to modify an approved site plan. ADC 1.040(2) gives the Community Development Director initial authority to interpret all terms, provisions, and requirements of the code. However, since the City Council initially approved the site plan, the decision as to whether it may be modified should also rest with the City Council.
7. It is appropriate to interpret the Development Code to clarify that the original decision-maker approving should make the decision on a subsequent request to modify a valid site plan.
8. The Albany Development Code does not spell out the process to be followed when an applicant requests modification of an approved site plan.
9. It is appropriate to interpret ADC 1.040 to clarify whether an interpretation of a prior decision is an appropriate procedure for modifying an approved site plan or whether a new application

is required. The question before the decision-maker when presented with a modified site plan is whether or not the proposal is consistent with the approval granted by the original application.

10. If the decision-maker determines that the modified site plan is consistent with the original approval, an interpretation of a prior decision is appropriate. If the decision-maker determines that the modified site plan is not consistent with the original approval, then a new application is required.
11. The determination on consistency should be based on a comparison of the initially approved and modified site plans, taking into account the impacts, dimensional and development and use characteristics. Factors to be considered include the type of land use, the size and scale of the proposed building(s), the traffic impacts, and compatibility with surrounding development.
12. Section 4.050 of the Albany Development Code lists the uses permitted in commercial zoning districts. The proposed buildings for both Coastal Farms and Costco fall into the same use category (Retail Sales-13.410), and the proposed fueling station is also an outright permitted use in the zone. (13.150).
13. The original site plan showed 151,000 square feet of retail sales area; the modified site plan shows 148,000 square feet of retail sales area.
14. The original proposal was for two buildings; the modified proposal is for one building and a fueling station.
15. The original site plan showed a building along the south property line adjoining a residential zoning district and one along the west property line. The modified proposal shows a building along the east property line and a fueling station along the west property line.
16. The same engineering consultant who performed the Transportation Impact Analysis for Coastal Farm created a document that compares the original (Coastal) and modified (Costco) proposals. The city's transportation staff reviewed this analysis and concluded that the number of peak hour trips with the modified plan may exceed those in the original proposal.
17. The original approval contained conditions requiring the applicant to install a traffic signal at Pacific Boulevard, to build a new collector street connecting Pacific Boulevard and Airport Road and to cul-de-sac Bain Street. The City has determined that these same major conditions remain appropriate and that the modified proposal is acceptable based on the LOS standards contained in the City's Transportation System Plan. The driveway locations on the collector are improved in the modified site plan, and are designed based upon standard transportation engineering criteria.
18. The original site plan showed 650 parking spaces; the modified site plan has 678. The modified site plan incorporates elements of the new commercial design standards recently adopted by the City Council. These include pedestrian connectivity, parking lot landscaping, designed to provide increased shade and aesthetics, and location of the main entrance adjacent to the public right of way.
19. When reviewing a modified proposal that has different impacts than the original proposal, the decision-maker can modify conditions or impose new ones. The interpretation process shall

not be used to allow an applicant to escape prior infrastructure commitments. Infrastructure requirements may be reduced only if the modification substantially reduces the infrastructure burden. An interpretation cannot be used to provide a new timeline for appealing a previously accepted infrastructure obligation.

20. The "Findings of Fact" included in the attached "Staff Analysis" are hereby adopted and incorporated herein by reference.
21. Any "Conclusion" contained herein that is deemed a Finding of Fact is hereby adopted as such.

CONCLUSIONS

The Council concludes:

1. The Coastal site plan approval and variance are still valid because substantial work began within one year of approval (June 14, 2000). The applicable city regulations are those in effect at the time of original approval.
2. Construction must be completed within two years of original approval (June 14, 2001), per ADC 1.080.
3. The land use approval for the site plan and variance runs with the land rather than with the applicant. In other words, the fact that the applicant for the site plan modification is different from the applicant for whom the original site plan was approved has not bearing in and of itself on whether the modification is "consistent" with the original.
4. The Council interprets ADC 1.040 to permit an interpretation to allow the modification or clarification of a prior land use decision only under the following circumstances:
 - A. The original infrastructure conditions may remain in effect or be increased if there is additional impact. These conditions may be reduced only if the modified proposal substantially reduces the infrastructure burden. In other words, an interpretation cannot be used to provide a new timeline for appealing a previously accepted infrastructure obligation.
 - B. An interpretation request is inappropriate and shall not be processed if an applicant seeks to modify a prior land use decision merely to seek the reduction or elimination of a development condition of approval without proposing a corresponding reduction in the scope, size, or scale of the approved development.
 - C. The review body granting the original approval, using the same procedure and review criteria as that used for the adoption of the original decision, must make the interpretation.
5. The City Council made the original decision so this decision is properly before the Council.
6. In the case of both site plans, the city mailed a notice of public hearing to surrounding property owners and each applicant held neighborhood meetings.

7. The original review criteria were the site plan review criteria listed in ADC 2.650. The same criteria are applied to this site plan.
8. The Costco proposal will not reduce the infrastructure needs. The prior infrastructure conditions are confirmed and modified where necessary.
9. This modified proposal is consistent with the approval granted in the original application. The proposed buildings fall into the identical use category (retail sales), and all uses proposed under both the original and the modified site plans are allowed outright in the zone. The total amount of retail area is similar. The vehicular trips are similar and the traffic impacts can be mitigated through the previously defined conditions of approval. The modified proposal would have less impact on the Bain/Oakwood residential neighborhood because there is no longer a building proposed along the south property line. The modified site plan has more landscaping and better pedestrian access.
10. Because the Council has determined that Costco's application is consistent with the approved valid site plan and variance for Coastal Farm, the modified site plan may be approved pursuant to the development standards that were in effect when Coastal Farm submitted its application in 1999.
11. The closure of Bain Street, that is required as part of constructing the new collector street, will alter existing traffic patterns within the neighborhood to the south. Residents of the neighborhood have expressed concerns regarding possible increases in cut-through traffic by customers of the Costco store, vehicle speeds, and pedestrian safety. The traffic study prepared by Access Engineering evaluated possible cut-through routes through the neighborhood and concluded that there would be no significant time savings, and hence no incentive, for drivers to cut through the neighborhood. This conclusion, however, is based upon existing traffic patterns, volumes, and travel times in the area. The development of Costco will add trips to the street network, and could result in changes in travel times for the routes evaluated in the study.

In order to address the neighborhood's concerns, Costco has agreed to perform a post-opening study of traffic speed and volume on neighborhood streets south of the development, and pay up to \$25,000 towards the cost of such study, and the engineering and installation of traffic calming and/or pedestrian safety improvements, if warranted by the conclusions of the study.

12. Although each City Council member has received arguably ex parte communications or contacts in the form of in-person correspondence, e-mails, letters, and newspaper editorials, the substance of these contacts has been placed into the record and the parties have been provided an opportunity to respond. Thus the requirements of ORS 227.180(e) have been satisfied.
13. The "Conclusions" and "Conditions" included in the attached "Staff Analysis" are hereby adopted and incorporated herein by reference.
14. Any Finding of Fact contained herein that is deemed a Conclusion is hereby adopted as such."