



## ORDINANCE NO. 5966

AN ORDINANCE AMENDING ORDINANCE NO. 4441, WHICH ADOPTED THE CITY OF ALBANY DEVELOPMENT CODE, BY AMENDING THE ALBANY DEVELOPMENT CODE TEXT AND ADOPTING FINDINGS.

WHEREAS, in 2017, the Albany City Council, Albany Planning Commission, staff, and development community participated in an audit of the Albany Development Code (Code) that identified numerous issues for potential amendments, including modifications to existing development and non-conforming situations standards; and

WHEREAS, the city council formed a task force to evaluate Code issues identified for amendments and provide recommendations to the planning commission, city council, and staff; and

WHEREAS, the planning commission and city council held joint work sessions on December 14, 2020, and January 11, 2021, to consider the task force's recommendations regarding non-conforming situations; and

WHEREAS, from time to time it is appropriate to amend the Code to address changing conditions or laws, clarify the intent of the standards, and to ensure that it remains responsive to community needs; and

WHEREAS, a notice of the proposed amendments and planning commission and city council public hearings was sent to the Oregon Department of Land Conservation and Development on July 26, 2021, and an advertisement of the public hearings was published in the Albany Democrat Herald on August 16, 2021; and

WHEREAS, on August 30, 2021, the planning commission held a public hearing and deliberated on proposed text amendments to the Code related to non-conforming situations and minor housekeeping amendments (planning file no. DC-01-21); and

WHEREAS, on August 30, 2021, the planning commission recommended that the city council adopt the proposed text amendments based on the staff report findings and conclusions for file DC-01-21; and

WHEREAS, the city council held a public hearing on the proposal on September 22, 2021, reviewed the findings and conclusions in Exhibit C, heard testimony and evidence presented at the public hearing, and then deliberated; and

WHEREAS, the text amendments to the Code considered by the planning commission and city council are presented as attachments to this ordinance as Exhibits A and B; and

WHEREAS, the city council concludes that the staff report findings and conclusions presented in Exhibit C reflect their own findings and conclusions.

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

Section 1: The text of the Albany Development Code is hereby amended as shown in attached Exhibits A and B of this ordinance.

Section 2: The staff report findings and conclusions in Exhibit C are hereby adopted in support of this decision.

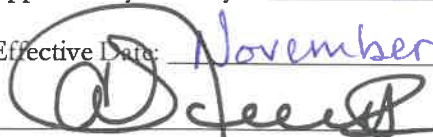
Section 3: A copy of this ordinance shall be filed in the office of the city clerk of the City of Albany, and these changes shall be made in the Albany Development Code.

Section 4: The effective date of this ordinance shall be 30 days from adoption of this ordinance.

Passed by the Council: October 13, 2021

Approved by the Mayor: October 13, 2021

Effective Date: November 12, 2021

  
\_\_\_\_\_  
Mayor

ATTEST:

  
\_\_\_\_\_  
City Clerk



## Amendments to the Albany Development Code (ADC)

*Draft code amendments are written as follows: additions in red underline and deletions in ~~strike-out~~.  
Sections not amended are omitted unless needed for context. Omitted sections are indicated by asterisks: \*\*\**

### ARTICLE 1

## ADMINISTRATION AND PROCEDURES

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### LAND USE REVIEW PROCEDURES GENERALLY

- 1.100 Applicability of Review Procedures. Except for those activities and developments listed in Section 1.105, all land use and development permit decisions will be made by using the procedures contained in this Article. The procedure "type" assigned to each application governs the decision-making process for that permit or application. There are six types of permit/application procedures as described in subsections (1) through (6) below. Table 1.100-1 lists the City's land use and development applications and corresponding review procedure(s).
- (1) Type I Procedure (Ministerial Staff Review). A Type I procedure is used in applying City land use standards and criteria that do not require the use of discretion, interpretation, or the exercise of policy or legal judgment (i.e., clear and objective standards). Type I decisions are made by the Director without public notice and without a public hearing. Appeals of Type I decisions are to Circuit Court under writ of review.
  - (2) Type I-L Procedure (Staff Review with Notice). A Type I-L procedure is used for some tentative plats and when applying discretionary land use standards that regulate the physical characteristics of a use which is permitted outright. Type I-L decisions are made by the Director and require public notice and an opportunity for appeal to a local hearing body. With the exception of Historic Resource decisions which are appealed to the Landmarks Commission, appeals of Type I-L decisions are heard by the Planning Commission.
  - (3) Type II Procedure (Staff Review with Notice of Decision). A Type II procedure is used when the land use standards and criteria require some discretion, interpretation, or policy or legal judgment. The Director is the person designated in accordance with ORS 227.175 to make Type II decisions. Type II decisions require public notice and an opportunity for appeal to a local hearing body. With the exception of Historic Resource decisions which are appealed to the Landmarks Commission, appeals of Type II decisions are heard by the Planning Commission.
  - (4) Type III Procedure (Quasi-Judicial Review—Public Hearing). A Type III procedure is used when the land use standards and criteria require discretion, interpretation, or policy or legal judgment or for large projects. Quasi-Judicial decisions implement established policy but typically involve discretion. Type III decisions are made by the Planning Commission, Hearings Board or Landmarks Commission and require public notice and a public hearing, with an opportunity for appeal to the City Council.
  - (5) Type IV-Q Procedure (Quasi-Judicial Review—City Council Public Hearing). The Type IV-Q procedure is used when the land use standards and criteria require discretion, interpretation, or policy or legal judgment and is the procedure used for site-specific land use actions initiated by an applicant. The application is heard by the Planning Commission, Hearings Board, or Landmarks Commission. If the recommending body makes a favorable recommendation, the City Council will hold a hearing and make a final decision. If the Planning Commission, Hearings Board, or Landmarks Commission recommends against a proposal, the City Council will only consider the proposal on appeal by the applicant. Appeal of the City Council's Type IV-Q decisions are heard by the state Land Use Board of Appeals.
  - (6) Type IV-L Procedure (Legislative Review). Legislative review procedures are used to review proposals to amend the Albany Comprehensive Plan, the City's land use regulations, and large-scale changes to the Comprehensive

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Plan or Plan Maps, and involve the creation, revision, or implementation of broad public policy. Legislative proposals are first considered by the Planning Commission, which makes a recommendation to City Council. City Council makes the final decision on a legislative proposal through the enactment of an ordinance. Appeals of legislative decisions are heard by the state Land Use Board of Appeals.

**Commentary Table 1.100-1:** The table requires minor updates to reflect the procedures for different types of applications for nonconforming situations.

**Table 1.100-1 – Procedure by Application Type**

Application / Action	Procedure Type	Decision Body	Pre-App Conference Required	Neighborhood Mtg Req.	Applicable Section
<b>Nonconforming Situations <u>Use</u></b>					
<ul style="list-style-type: none"> <li>Nonconforming use review – change of use within same <u>use</u> category (<u>see 2.345(1)(a) for criteria</u>); <del>nonconforming residential densities</del></li> </ul>	I	CDD	No	No	2.350
<ul style="list-style-type: none"> <li>Nonconforming use review – all other situations</li> </ul>	II	CDD	Yes	No	2.350

\*\*\*

1.105 When a Type I - IV Application is Not Required. Activities and developments listed below do not require a Type I - IV land use application but are nevertheless subject to the provisions of the Code, including, but not limited to setbacks, lot coverage, building height, design standards, on-site development standards, and public improvement and environmental standards.

Activities and development within special purpose districts must comply with the regulations described in Article 4 (Airport Approach), 6 (Natural Resources), and 7 (Historic), as applicable, and may require a land use application as described in each respective section.

Activities and development on ~~either a nonconforming site or~~ a site containing a nonconforming use may require a Nonconforming Situations Use Review in accordance with Article 2.

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## ARTICLE 2

### REVIEW CRITERIA

\*\*\*

#### NONCONFORMING SITUATIONS

**Commentary:** The proposed amendments to Article 2 replace the Nonconforming Situations section in its entirety. While much of the current text has been retained, it has been significantly reorganized, such that showing the amendments in “track changes” can be very difficult to follow. Therefore, the entire section has been struck out and replaced for the sake of readability.

- ~~2.300 Purpose. Some lots, developments, and uses in the City of Albany were lawful before this Code was adopted or amended, but would no longer be allowed under the current terms of this Code. These provisions are intended to permit such nonconforming situations to continue, but not to encourage their perpetuation.~~
- ~~2.310 Status and Documentation of a Nonconforming Situation. Nonconforming situation regulations apply only to situations that were legally established. Nonconforming uses that were not allowed when established have no grandfather rights and must be removed. The property owner or applicant must document that a nonconforming situation was legally established and was maintained over time. Evidence that it was maintained over time might consist of building permits, utility hookups, tax records, business licenses, lease agreements, business receipts, or telephone directory listings.~~
- ~~[Ord. 5832, 4/9/14]~~
- ~~2.320 Types of Nonconforming Situations. A lot of record may be nonconforming because it does not meet the dimensional or area standards currently required in a particular zoning district. A specific site may be nonconforming because it contains either a nonconforming use, an allowed residential use that exceeds the allowed density, a nonconforming development, or a combination of these.~~
- ~~[Ord. 5338, 1/28/98]~~
- ~~2.325 Nonconforming Lots of Record. Legally established lots of record that do not meet the dimensional or area requirements of the zoning district in which they are located may be developed. Any new structure built on the lot must conform to the development standards (such as setbacks, lot coverage, etc.) for that zoning district. [Ord. 5338, 1/28/98; Ord. 5832, 4/9/14]~~
- ~~2.330 Certain Residential Uses Granted Special Status. Special status has been granted to single family dwellings built before January 1, 2002, in commercial, office, mixed use, and industrial zones. Special status has also been granted for certain properties with two or more units in the Hackleman Monteith and RS-5 Residential Single Family zoning districts. Notwithstanding the restrictions or terms of any other section of this Code, these properties shall be deemed to be conforming to the base zoning district. See Sections 3.085, 4.075, and 5.080.~~
- ~~[Ord. 5555, 2/7/03; Ord. 5947, 1/01/21]~~
- ~~2.333 Compliance with Former Regulations. Every nonconforming use, structure, development site or situation shall maintain compliance with all applicable regulations, including conditions of approval on land use actions by which it was governed at the time it became nonconforming.~~
- ~~[Ord. 5832, 4/9/14]~~
- ~~2.335 Loss of Nonconforming Status:~~
- ~~(1) The nonconforming status of a building, structure, or land shall be deemed to have terminated excluding~~

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~~building height, setbacks or lot coverage, 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. A request may be submitted to the Community Development Department for reinstatement of nonconforming status within one year from April 9, 2014, or for an extension of up to two additional years prior to the site being vacant for one year. The extension or reinstatement may be granted under the Type II procedure only if the Director finds that:~~

- ~~(a) Converting to a conforming use will result in a substantial economic loss; AND~~
- ~~(b) The proposed use will result in greater or equal conformance with the development standards of the zone than the previous use; OR~~
- ~~(c) Immediately surrounding properties are similarly nonconforming, and the proposed use will be compatible with both the nonconforming and conforming uses in the review area.~~

[Ord. 5832, 4/9/14]

- ~~(2) Any nonconforming use or development dependent upon a building or structure that has been declared a “dangerous building” and ordered demolished pursuant to the Albany Dangerous Building Code (AMC Title 18) will be considered terminated upon that declaration and order.~~
- ~~(3) Any nonconforming use or development dependent upon a building or structure that has been substantially damaged to the extent that repair or restoration of the building or structure would cost more than 70 percent of its fair market value will be considered terminated.~~
  - ~~(a) Cost of repair or restoration shall be determined by the Building Official. Fair market value shall be determined by an independent appraisal acceptable to the City. The owner or applicant may appeal these determinations of value and cost to the Building Board of Appeals, or may apply for an exception under the Type II procedure.~~
  - ~~(b) The Director may allow additional reconstruction upon finding that:
 
    - ~~i. Conversion to a conforming use will result in substantial economic loss, and~~
    - ~~ii. The proposed use will result in greater conformance with the development standards, or~~
    - ~~iii. Immediately surrounding land uses are similarly nonconforming and the reconstructed use will be compatible with both the nonconforming and conforming uses in the review area.~~~~
- ~~(4) Rebuilding structures that contained nonconforming uses and which have been intentionally destroyed is prohibited.~~

~~2.340 Allowances That Apply to All Nonconforming Situations. [Ord. 5832, 4/9/14]~~

- ~~(1) Their status is not affected by changes in ownership.~~
- ~~(2) They may be changed to conforming situations by right or with an applicable land use approval. Once a conforming situation occupies a site, the nonconforming rights are lost and a nonconforming situation may not be re-established. [Ord. 5832, 4/9/14]~~
- ~~(3) Normal maintenance and repair is allowed.~~
- ~~(4) Changes that conform to the base zone development standards of the site may be made.~~
- ~~(5) Legal nonconforming uses may continue to operate. [Ord. 5832, 4/9/14]~~
- ~~(6) A change from a legal nonconforming use to a use in the same use category or to a use not otherwise permitted in the zone may be considered through a Nonconforming Use Review in accordance with Section 2.350.~~

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[Ord. 5832, 4/9/14]

~~2.350 Nonconforming Use Review Procedure. A nonconforming use is reviewed through either a Type I or Type II procedure as described below.~~

- (1) ~~Type I Procedure. The following situations will be processed through a Type I procedure, as established in Section 1.210. [Ord. 5832, 4/9/14; Ord. 5947, 1/01/21]~~
- (a) ~~Changes of use within the same use category. A change of use within the same land use category if the nonconforming use was not created unlawfully, and the new use requires no more than two new parking spaces. [Ord. 5832, 4/9/14]~~
- (b) ~~Nonconforming Residential Densities. Existing dwelling units may continue, may be removed or enlarged, and amenities may be added to the site. There may not be a net increase in the number of dwelling units and the building may not move further out of compliance with the base zone development standards.~~
- (2) ~~Type II Land Use Review. The following nonconforming situations will be processed through a Type II procedure as established in Section 1.230. [Ord. 5832, 4/9/14; Ord. 5947, 1/01/21]~~
- (a) ~~Extension or reinstatement of nonconforming status per Section 2.340.~~
- (b) ~~A change to another use in the same use category that requires three or more new parking spaces or has increased hours, staffing, traffic, outside storage areas, or off-site impacts.~~
- (c) ~~A change from a legal nonconforming use to a use in a category not otherwise permitted in the base zone may be permitted if it meets the applicable review criteria in Section 2.360.~~
- (d) ~~Changes in operational characteristics such as increased hours, staffing, or expansions to outside storage areas.~~
- (e) ~~New construction or structural expansions of nonconforming uses.~~

~~2.360 Nonconforming Use Review Criteria for Type II Decisions. A request will be approved for nonconforming uses if the review body finds that the application meets all of the following criteria:~~

[Ord. 5832, 4/9/14]

- (1) ~~The nonconforming use was not created unlawfully. See Section 2.310.~~
- (2) ~~With mitigation measures, there will not be a net increase in overall adverse impacts (over the impacts of the previous use or development) on the surrounding area taking into account factors such as:~~
- (a) ~~Noise, vibration, dust, odor, fumes, glare, and smoke;~~
- (b) ~~Potential for increased litter;~~
- (c) ~~The amount, location, and nature of any outside displays, storage, or activities;~~
- (d) ~~The appearance of the new use or development will not detract from the desired function and character of the zone.~~
- (e) ~~The operating characteristics of the proposed use are compatible with the existing and anticipated uses. The hours of operation in residential zones cannot be extended into the period of 11 p.m. and 6 a.m.;~~
- (f) ~~The street system has adequate capacity to accommodate the use through the horizon year of the current TSP;~~
- (g) ~~The site has adequate on-site parking to accommodate the development or adequate parking will be provided in accordance with Article 9;~~
- (h) ~~Parking areas and entrance exit points are designed to facilitate traffic and pedestrian safety and avoid~~

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congestion;

- ~~(i) Public services for water, sanitary sewer, stormwater, water management, and for fire and police protection, can serve the proposed use;~~
- ~~(j) Activities and developments within overlay districts must comply with the regulations described in Article 4 (Airport Approach), 6 (Natural Resources), and 7 (Historic), as applicable;~~
- ~~(k) If a commercial use is proposed in an existing building in an industrial zone, the development shall not alter the existing building or site in a way that would discourage or preclude its later conversion back to an industrial use; and~~
- ~~(l) Any applicable criteria in (3) and (4) below. [Ord. 5832, 4/9/14]~~

~~(3) Structural Expansions shall be limited to the following:~~

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

- ~~(a) Nonconforming uses and buildings may expand one time only and must comply with current development standards.~~
- ~~(b) Expansion of a nonconforming use onto another site is prohibited, except when:
 
  - ~~i. The expansion site abuts the site of the nonconforming use; and~~
  - ~~ii. The expansion site was in the same ownership as the nonconforming site when it became nonconforming; and~~
  - ~~iii. Prior zoning regulations on the expansion site would have allowed the use; and~~
  - ~~iv. The expansion is approved through a nonconforming use review.~~~~
- ~~(c) Addition of new residential units to a nonconforming residential use is prohibited.~~
- ~~(4) Nonconforming Uses or Expansions in Residential Areas. If the nonconforming use is in a residential zone or in a mixed use zone with residential uses adjacent to the site, the appearance of the new use or development will not lessen the residential character of the area. This is based on taking into account factors such as: [Ord. 5832, 4/9/14]
 
  - ~~(a) Building scale, placement, and facade;~~
  - ~~(b) Parking area placement;~~
  - ~~(c) Buffering and the potential loss of privacy to abutting residential uses; and~~
  - ~~(d) Lighting and signs.~~~~

~~2.370 Nonconforming Site Review Criteria. Sites that are nonconforming with the current development standards and that have lost their nonconforming status are required to bring the site into compliance with current Code standards. Incremental improvements are allowed in accordance with Subsection (1).~~

[Ord. 5832, 4/9/14]

- ~~(1) Incremental Improvements to Nonconforming Sites. Once the cumulative value of one or more building improvements, expansions or site modifications exceeds \$25,000, excluding the costs associated with voluntarily bringing the site into compliance with applicable development standards, 10% of the cost of all~~



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~~improvements proposed thereafter must be allocated toward improvements that bring the site into compliance with standards in this Code unless all of the standards listed below can be met at lesser cost. The value of a proposed building or site investment will be the value stated on the application for building permits or calculated by the Building Official, whichever is higher. Improvements that bring the site into compliance with the standards of this Code shall be implemented in the following order of priority, unless a greater benefit is achieved by implementing a lower order of priority item first: \_\_\_\_\_ [Ord. 5832, 4/9/14]~~

- ~~(a) If the site is within the Willamette River Greenway, funds will be used to enhance the natural areas closest to the waterfront in accordance with the criteria in Section 6.540.~~
- ~~(b) Access to public streets in accordance with Section 12.100.~~
- ~~(c) Front yard landscaping standards in accordance with Article 9, unless there is not enough physical room and a Minor Variance is approved; \_\_\_\_\_ [Ord. 5947, 1/01/21]~~
- ~~(d) Buffering and screening standards in accordance with Article 9, unless there is not enough physical room and a Minor Variance is approved; \_\_\_\_\_ [Ord. 5947, 1/01/21]~~
- ~~(e) Parking space and lot improvement standards in accordance with Sections 9.120 and 9.130;~~
- ~~(f) Parking lot landscaping improvement standards in accordance with Section 9.150;~~
- ~~(g) Screening of refuse containers; and~~
- ~~(h) Other improvements necessary to bring the site into compliance with the standards of this Code. \_\_\_\_\_ [Ord. 5720, 08/12/09; Ord. 5832, 4/9/14]~~

**Commentary:** The proposed new Nonconforming Situation language follows, including the following sections:

- 2.300 Purpose.
- 2.310 Nonconforming Situations, Generally.
- 2.320 Nonconforming Lots.
- 2.330 Nonconforming Development.
- 2.340 Nonconforming Uses.
- 2.345 Nonconforming Use Review - Procedures for Expanding or Changing a Nonconforming Use.
- 2.350 Review Criteria for Type II Decisions - Nonconforming Uses.

**Commentary 2.300:** The purpose statement is proposed to be updated to more accurately reflect the revised Code, which is less restrictive than the current requirements. For example, the current purpose statement states that, “these provisions are intended to permit such nonconforming situations to continue, but not to encourage their perpetuation”, which doesn’t necessarily reflect the approach taken in the proposed amendments.

**2.300 Purpose. This section provides standards and procedures for the continuation of lots, developments, and uses that are lawfully established but do not comply with current Code standards (“nonconforming situations”). The Code is intended to protect public health, safety, and general welfare, while allowing reasonable use of private property.**

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**Commentary 2.310:** This section would apply to all three types of nonconforming situations: nonconforming lots, nonconforming developments, and nonconforming uses. In addition, each type of nonconforming situation has specific standards. These are described in Subsection (1).

2.310 Nonconforming Situations, Generally.

(1) Applicable Provisions. In addition to the general requirements in this section, properties are subject to the standards and procedures for the type (or types) of nonconforming situations applicable to the property.

(a) Non-conforming lots are subject to Section 2.320.

(b) Non-conforming developments are subject to Section 2.330.

(c) Non-conforming uses are subject to Sections 2.340 through 2.350.

**Commentary (2) and (3):** For these subsections, the current Code has comparable requirements for nonconforming situations to have been legally established and maintained and for the applicant to provide the necessary proof. The approach to describing the proof required has been updated to clarify the difference between the type of evidence required for a nonconforming lot, development, or use to show that it was legally established, and the need for uses (only) to provide evidence that it has been maintained over time.

(2) Nonconforming Situations Must be Lawfully Established. Uses or developments that were not lawfully established do not have a legal right to continue as nonconforming situations as defined by this Code and must be removed.

(3) Documentation that a Nonconforming Situation was Lawfully Established. The property owner or applicant must document that a nonconforming situation was legally established on its present site. Evidence that the situation was allowed depends on the type of nonconforming situation. For nonconforming lots, the property owner or applicant must document when the lot was lawfully created by providing land division records meeting the requirements of the State of Oregon. For development or uses, the property owner or applicant must provide building, land use, or development permits. For development or uses which did not require a permit when lawfully established, the property owner or applicant must provide other evidence which clearly shows the date the development or use was established such as dated aerial photographs. In addition, for nonconforming uses, the property owner or applicant must document that the use has been maintained over time. Evidence that a use was maintained over time might consist of building permits, utility hookups, tax records, business licenses, lease agreements, business receipts, or telephone directory listings.

**Commentary 2.310 (4):** Since the revised Code would allow “in-kind” replacement of destroyed buildings (see 2.330.2) it is now necessary to clarify what happens in cases of intentional destruction.

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(4) Dangerous Buildings or Intentional Destruction. Except as provided in Subsection 2.330(2), any nonconforming use or development dependent upon a building or structure that has been declared a “dangerous building” and ordered demolished pursuant to the Albany Dangerous Building Code (AMC Title 18) will be considered terminated upon that declaration and order. Nonconforming uses or nonconforming developments that have been intentionally destroyed by the owner shall lose their legal nonconforming status.

**Commentary 2.310(5):** Subsections (a) through (e) are from the current Code, although subsection (b) has been moved. Subsection (f) is from the current code, but the requirements have been simplified in order to make it easier for staff to evaluate what is required to maintain compliance.

(5) Allowances That Apply to All Nonconforming Situations. The following allowances apply to all nonconforming situations.

(a) Their status is not affected by changes in ownership.

(b) Legal nonconforming uses may continue to operate.

(c) They may be changed to conforming situations by right or with an applicable land use approval. Once a conforming situation occupies a site, the nonconforming rights are lost and a nonconforming situation may not be re-established.

(d) Normal maintenance and repair is allowed.

(e) Changes that conform to the base zone development standards of the site may be made.

(f) Except as specified herein, a nonconforming situation shall maintain compliance with any conditions of approval.

**Commentary 2.320:** This section was amended to refer to all legal lots, not just lots of record. The definition of “lot of record” is provided below for background.

*Lot of Record: A lot shown as part of a recorded subdivision or approved partition map; or any parcel of land described by metes and bounds in a recorded deed, record of survey, or other appropriate document recorded in the Office of the County Recorder prior to December 12, 1956. No lot or parcel of land created without complying with the provisions of the Land Division Requirements of the State of Oregon and the City Subdivision Ordinance is recognized as a lot of record.*

2.320 Nonconforming Lots. A legal lot or a legally established lot of record that does not meet the dimensional or area requirements of the zoning district in which it is located may be developed, subject to the other applicable requirements of the Code.

**Commentary 2.330(1):** Nonconforming development refers to the physical development of land that was lawfully established but which no longer complies with the standards of the Code. Nonconforming developments can house uses that are nonconforming or conforming. The Task Force was generally supportive of allowing unlimited expansion or alteration of nonconforming development, provided the expansion or alteration is in compliance with the code or

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moving toward compliance. This concept also received support at the December 2020 Planning Commission/City Council work session.

Additionally, there was general support to allow vacant nonconforming development to be reoccupied at any time, provided Building Code requirements can be met. In other words, unlike nonconforming uses (see 2.340.3), there would be no limit on the length of time a nonconforming development could be vacant without ~~the~~ losing its nonconforming status. The only time limit applicable to a nonconforming development would be to rebuild it as it was, if it were destroyed (see subsection (2)).

### 2.330 Nonconforming Development.

(1) Nonconforming Development, Generally. Nonconforming developments may continue unless specifically limited by other regulations in this Code. A nonconforming development or portion thereof may be enlarged or altered in a way that satisfies the current requirements of this Code or moves in the direction of conformity. A nonconforming development shall not be enlarged or altered in a way that increases its nonconformity.

**Commentary 2.330(2):** The current regulations state that: “Any nonconforming use or development dependent upon a building or structure that has been substantially damaged to the extent that repair or restoration of the building or structure would cost more than 70 percent of its fair market value will be considered terminated.” The approach proposed in the Code amendments would change this significantly by allowing “in-kind” restoration of damaged or destroyed nonconforming development. This was supported by a majority of the Task Force and also appeared to receive general support at the December 2020 Planning Commission/City Council work session. Staff and the Project Team recommend that there be a limit on the amount of time allowed to restore the building as it was—and that the limit should be consistent with the reinstatement threshold for nonconforming uses. After that point, if the development were rebuilt, it would have to comply with the Development Code.

(2) Damage or Destruction of a Nonconforming Development. When a nonconforming development is damaged or destroyed by fire or other causes beyond the control of the owner, it may be replaced in-kind within the footprint of the destroyed improvement within three years in a residential zone or five years in any other zone, provided doing so is not otherwise precluded by the regulations of the Albany Municipal Code. The replacement improvements shall not increase the degree of nonconformity beyond that of the previously existing improvements.

(3) Nonconforming Residential Densities. Existing dwelling units may continue, may be removed or enlarged, and amenities may be added to the site provided the building and development site do not move further out of conformance with the applicable standards.

**Commentary 2.330(4):** This section, which is based on language in the City of Bend’s code, is intended to confirm the City’s authority to require improvements to nonconforming driveways and access. There was some question as to what is meant by a “development approval”. That is intended to be fairly broad; however, it would have to be a land use or development approval to which the city can apply conditions of approval.

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(4) Roadway Access. The owner of a nonconforming driveway approach or access to a public street or highway, upon receiving land use or development approval, may be required as a condition of approval to bring the nonconforming access into conformance with the standards of the applicable roadway authority.

**Commentary 2.330(5)(a):** The current Code requires that certain improvements be made when applicants are proposing projects of more than \$25,000. The Task Force generally supported increasing this threshold to \$250,000. The Planning Commission and City Council supported increasing the threshold at their December 2020 and January 2021 work sessions, but many thought \$250,000 was too high; \$150,000 is recommended per the revisions below, and numerous improvements can be excluded from the threshold. The current use of “cumulative value” of site improvements in triggering these requirements has been retained, but the “look-back” period has been limited to three years for the sake of easier tracking by staff and fairness to the applicant.

**(b):** The Task Force, Planning Commission and City Council generally supported retaining a list of improvements but allowing the developer to choose which order to make the required improvements. Since some improvements are particularly important to public safety, Subsection (b) identifies a few “Category 1” improvements that must be done first (if necessary), otherwise the developer is free to choose from the list.

**Subsection (c)** includes new language that creates an exception for site improvements on the entire site when the project is limited to a ground lease. A new definition of “ground lease” is proposed for Article 22.

(5) Required Improvements. When a proposed project includes alterations that are over the threshold in Subsection (a), the project shall provide the required improvements listed in Subsection (b) for the area specified in Subsection (c).

(a) Threshold. The project requires a Type I-L, Type II, or Type III land use approval as specified in Article 1 of this Code and cumulative value of one or more building improvements or expansions exceeds \$150,000, excluding the costs associated with the following alterations and improvements intended to bring the site or building into compliance with applicable regulations:

- i. Alterations required by fire/life safety standards;
- ii. Alterations required to remove existing architectural barriers, as required by the Americans with Disabilities Act;
- iii. Seismic improvements;
- iv. Improvements to on-site stormwater management facilities in conformance with code standards;
- v. Energy efficiency or renewable energy improvements;
- vi. Required landscaping; and
- vii. Removal or remediation of hazardous substances conducted under ORS 465.200-545 and 900.

The value of a proposed building or site improvement or expansion will be the value stated on the application for building permits or calculated by the Building Official, whichever is higher. The cumulative value of the alterations is based on the value of improvements on the entire project site over the preceding three-year period (from date of application submittal), not individual building permits.

(b) Required improvements. Ten percent of the cost of all improvements proposed in excess of the

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threshold in Subsection (a) must be allocated toward improvements that bring the site into compliance with standards listed below unless all of the standards listed below can be met at lesser cost. Category 1 improvements must be brought into compliance first. Improvements within a category can be made in any order. If improvements required to comply with this subsection are proposed after approval of the Type I-L, Type II, or Type III land use review (e.g., in conjunction with the building permit), those improvements shall not be subject to an additional Type I-L, Type II, or Type III land use review or additional required improvements under Subsection (a).

### Category 1

- Pedestrian facilities connecting the development to a public sidewalk (if a public sidewalk is abutting the property).
- Access to public streets in accordance with Section 12.100.

### Category 2

- If the site is within the Willamette River Greenway, funds will be used to enhance the natural areas closest to the waterfront in accordance with the criteria in Section 6.540.
- Front yard landscaping standards in accordance with Article 9, unless there is not enough physical room, and a Minor Variance is approved;
- Buffering and screening standards in accordance with Article 9, unless there is not enough physical room, and a Minor Variance is approved;
- Parking space and lot improvement standards in accordance with Sections 9.120 and 9.130;
- Parking lot landscaping improvement standards in accordance with Section 9.150;
- Screening of refuse containers.

### (c) Area of required improvements.

- i. Except as provided in subsection ii, below, required improvements must be made for the entire site.
- ii. Required improvements may be limited to a smaller area if there is a ground lease for the portion of the site where the alterations are proposed. The area of the ground lease will be considered as a separate site for purposes of required improvements provided the applicant submits a signed ground lease or excerpts from the lease document showing that there is at least one year remaining on the ground lease, and submits a legal description of the boundaries of the lease.

### 2.340 Nonconforming Uses.

**Commentary 2.340 (1) and (2):** The standards in these subsections are generally consistent with the current Code, except that the *prohibited* hours of operation in residential zones are proposed to be changed:

FROM (current) 11 p.m. to 6 a.m.

TO (proposed) 10 p.m. to 7 a.m.

(1) Continued Operation. Nonconforming uses may continue to operate on a site. Except as provided in Subsection (2), changes in operations, such as changes in ownership, hours of operation and the addition

**Amendments to the Albany Development Code (ADC)**

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or subtraction of accessory uses, are allowed.

**(2) Hours of Operation in Residential Zones. Nonconforming uses in residential zones may not extend their hours of operation into the period of 10 p.m. to 7 a.m.**

**Commentary 2.340(3):** The new language in this Subsection is intended to clarify when a nonconforming use has been discontinued or abandoned. This action starts the “clock ticking” -- unlike nonconforming development, if a nonconforming use ceases for a period of time, it loses its nonconforming status and can't be restarted. The current Code allows discontinued nonconforming uses to be reinstated within one year of being discontinued. An additional two-year extension is possible with Type II discretionary review. The Task Force identified a wide range of timeframes for the abandonment of a nonconforming use. Members of the Planning Commission and City Council generally agreed with the need for a longer timeframe than the current Code allows. Various members suggested 3, 4, and 5-year timeframes.

A three-year timeframe is proposed in residential zones and five years in nonresidential zones. This suggested two-track approach provides a shorter timeframe in residential zones to respond to concerns raised at the December 2020 work session about impacts of nonconforming uses on residential areas. The longer timeframe precludes the need for a discretionary extension process which has been problematic to implement.

**(3) Discontinuation or Abandonment of Nonconforming Use. A nonconforming use that is discontinued for a period of more than three years in a residential zone (listed in Article 3) or five years in any other zone shall be deemed abandoned and shall no longer be allowed as a legal nonconforming use. For purposes of calculating the time period, a use is discontinued on a site when:**

- (a) The use no longer physically occupies the site;**
- (b) For nonresidential uses, the use ceases operation. For example, the site is no longer actively in use for the sale of merchandise, the manufacture or warehousing of products, or the provision of services; as evidenced by the removal of signs, goods, stock, or office equipment, or the disconnection of telephone or utility service or similar indications;**
- (c) Any lease or contract under which the nonconforming use has occupied the site is terminated;**
- (d) A request for final reading of water and power meters is made to the applicable utility or the utility bill account indicates inactivity;**
- (e) The use ceases operation as a result of damage or destruction by fire or other causes; and/or**
- (f) An event occurs similar to those listed in Subsections (a) – (e), above, as determined by the Director.**

**(4) Application of Code Criteria and Standards to Nonconforming Use. Once the City deems a nonconforming use abandoned pursuant to Subsection (3), any subsequent use of the subject lot shall conform to the current standards and criteria of this Code applicable to the use. After the City has deemed a nonconforming use abandoned, the use shall not be allowed to resume, in whole or in part, under the same or different ownership or management; any such activity is a violation of this Code and subject to enforcement proceedings.**

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**Commentary 2.345:** The procedures and thresholds in this section apply to nonconforming uses. As a reminder, under the proposed amendments, nonconforming developments can be expanded, provided the expansion doesn't increase the nonconformity (and incremental upgrades are made, if triggered).

In general, the threshold for Type I and Type II nonconforming use review have been updated with two goals in mind:

1. To create clear and objective criteria to identify what qualifies for Type I. Since the code would no longer include discretionary thresholds related to offsite impacts (e.g., odor), a new clear and objective trigger has been added to require Type II review in or abutting residential zones.

2. To make Type I and Type II mutually exclusive categories.

Subsection (2)(b) has been clarified so that the "change to a use not permitted in the base zone" provision allows changes to commercial uses in industrial zones only, which is consistent with the original legislative intent. This provision was added to the Code as part of the Business Ready Task Force initiative in 2014 and was intended to promote the reuse of vacant industrial buildings by allowing commercial uses in industrial zones. It was not intended to allow a nonconforming use to change to any and all prohibited uses. The original intent was also to preserve the ability to go back to a conforming industrial use; that language is retained in the review criteria in Subsection 2.350(2)(k). Subsection (c) has been amended to clarify that hours and staffing, which are generally not regulated by the Development Code, would be considered if specified in conditions of approval.

### 2.345 Nonconforming Use Review - Procedures for Expanding or Changing a Nonconforming Use on a Site.

A nonconforming use is reviewed through either a Type I or Type II procedure as described below.

(1) Type I Procedure. The following situations will be processed through a Type I procedure, as established in Section 1.210.

(a) Changes of use within the same use category. Changing to a different use within the same use category, such as a change from one type of Manufacturing and Production use to another type of Manufacturing and Production use, is permitted if all of the following criteria are met:

i. The nonconforming use was not created unlawfully;

ii. The new use requires no more than two new parking spaces;

iii. The new use does not result in new construction or expansions in floor area to provide space for nonconforming uses or an expansion to outside storage areas;

iv. If hours of operation or staffing levels were specified in an earlier land use approval, the new use does not propose increases in hours of operation or staffing levels; and

v. The new use is not within or abutting a residential zoning district.

(2) Type II Land Use Review. The following changes to nonconforming uses will be processed through a Type II procedure as established in Section 1.230 and subject to the applicable review criteria in Section 2.350.

(a) A change to another use in the same use category that:

i. Requires three or more new parking spaces;

ii. Is within or abutting a residential zoning district;



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iii Proposes to increase in hours of operation or staffing levels above levels that were specified in earlier land use approvals (if applicable); or

iv. Includes expansions to outside storage areas or new construction or expansions in floor area to provide space for nonconforming uses.

(b) Within an industrial zoning district, a change from a legal nonconforming use to a commercial use that is not otherwise permitted in the base zone.

(3) A change to another nonconforming use in a different use category, such as changing from a Manufacturing and Production use to a Contractor and Industrial Service use, is prohibited except as specified in subsection (2)(b), above.

**Commentary 2.350:** The criteria in this section apply to nonconforming uses. They are generally consistent with the current Code except that the *prohibited* hours of operation in residential zones are proposed to be changed (as noted above):

FROM (current) 11 p.m. to 6 a.m.

TO (proposed) 10 p.m. to 7 a.m.

### 2.350 Review Criteria for Type II Nonconforming Use Decisions.

A request will be approved for nonconforming uses if the review body finds that the application meets all of the following criteria:

(1) The nonconforming use was not created unlawfully. See Subsection 2.310(3).

(2) With mitigation measures, there will not be a net increase in overall adverse impacts (over the impacts of the previous use) on the surrounding area taking into account factors such as:

(a) Noise, vibration, dust, odor, fumes, glare, and smoke;

(b) Potential for increased litter;

(c) The amount, location, and nature of any outside displays, storage, or activities;

(d) The appearance of the new use will not detract from the desired function and character of the zone;

(e) The operating characteristics of the proposed use are compatible with the existing and anticipated uses. The hours of operation in residential zones cannot be extended into the period of 10 p.m. to 7 a.m.;

(f) If the proposed change to the nonconforming use will result in an increase in vehicular trips, the street system has adequate capacity to accommodate the use through the horizon year of the current TSP;

(g) If the proposed change to the nonconforming use will result in an increase in vehicle parking demand, the site has adequate on-site parking to accommodate the development or adequate parking will be provided in accordance with Article 9;

(h) Parking areas and entrance-exit points are designed to facilitate traffic and pedestrian safety and avoid

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congestion;

- (i) Public services for water, sanitary sewer, stormwater, water management, and for fire and police protection, can serve the proposed use;
- (j) Activities and developments within overlay districts must comply with the regulations described in Article 4 (Airport Approach), 6 (Natural Resources), and 7 (Historic), as applicable;
- (k) If a commercial use is proposed in an existing building in an industrial zone, the development shall not alter the existing building or site in a way that would discourage or preclude its later conversion back to an industrial use; and
- (l) Any applicable criteria in (3) and (4) below.

**Commentary 2.350 (3):** Section 1.105, When a Type I - IV Application is Not Required, states that Activities and development on either a nonconforming site or a site containing a nonconforming use may require a Nonconforming Situations Review in accordance with Article 2. Therefore, exceptions tied to floor area thresholds in Section 1.105 don't apply to nonconforming uses; expansions to nonconforming uses, including floor area in accessory buildings, would be subject to this section.

(3)(a) Expansions of nonconforming uses must comply with current development standards, whereas expansions of nonconforming developments just have to move toward conformance. This might be somewhat complicated where a nonconforming use is housed in a nonconforming development; however, the most restrictive regulation would apply.

(3) Expansions in floor area to provide space for nonconforming uses do not exceed the following thresholds:

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

- (a) Expansions in floor area for nonconforming uses may occur one time only and the expansion must comply with current development standards.
- (b) Expansion of a nonconforming use onto another site is prohibited, except when:
  - i. The expansion site abuts the site of the nonconforming use; and
  - ii. The expansion site was in the same ownership as the nonconforming site when it became nonconforming and the zoning regulations applicable to the expansion site at that time would have allowed the use.
- (c) Addition of new residential units to a nonconforming residential use is prohibited.

(4) Nonconforming Use Expansions in Residential Areas. If the nonconforming use is in a residential zone or in a mixed-use zone with residential uses adjacent to the site, the appearance of the proposed expansion will not lessen the residential character of the area. This is based on taking into account factors

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**such as:**

- (a) Building scale, placement, and facade;**
- (b) Parking area placement;**
- (c) Buffering and the potential loss of privacy to abutting residential uses; and**
- (d) Lighting and signs.**

## Amendments to the Albany Development Code (ADC)

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## ARTICLE 22

## USE CATEGORIES AND DEFINITIONS

\*\*\*

**Commentary:** The following revisions are proposed to the definitions related to nonconforming situations.

1. Delete the term “nonconforming building” because in the proposed Article 2 revisions, “nonconforming development” includes all nonconforming improvements on a site, including buildings.
2. Amend the “nonconforming use” definition to remove the reference to Conditional Uses, since the City considers uses approved through Conditional Use Review to be allowed uses, and not nonconforming. Uses allowed in districts by Conditional Use Permit that were existing on the effective date of this Code without a Conditional Use Permit would be required to go through the Conditional Use application process when seeking an expansion. If the site also includes nonconforming development, the nonconforming development would still be subject to the standards for nonconforming situations.
3. Add a definition for “ground lease”.

22.400 Definitions. As used in this Code, the following words and phrases shall have the following meanings:

**Ground Lease:** A ground lease is an agreement in which a tenant is permitted to develop and use a piece of property during the lease period, after which the land and all improvements are turned over to the property owner.

**Nonconforming Development:** Any physical development of land that lawfully existed on the effective date of this Code but which, due to the requirements adopted herein, no longer complies with the ~~site development~~ standards of this Code for the zoning district in which the development is located.

**Nonconforming Lot:** A lot or parcel of land that lawfully existed on the effective date of this Code or that was legally created after the effective date of this Code, but which in either case does not conform to the lot area and lot dimension standards for the zone in which it is located.

**Nonconforming Situation:** An inclusive term for a nonconforming lot, nonconforming use, ~~nonconforming building~~, and/or nonconforming development.

**Nonconforming Use:** Any use that lawfully existed on the effective date of this Code but which, due to the requirements adopted herein, no longer complies with the schedule of permitted uses and which has not been deemed terminated under the provisions of this Code. ~~Uses allowed in districts by Conditional Use Permit but were existing on the effective date of this Code without a Conditional Use Permit shall also be considered as nonconforming.~~

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# ARTICLE 1<sup>1</sup>

## ADMINISTRATION AND PROCEDURES

1.000 Overview. This Article establishes the framework for the review and processing of land use applications and legislative land use proposals, as well as ministerial actions. This Article is intended to enable the City, applicants, and the public, where applicable, to reasonably review applications and participate in the local decision-making process in a timely and effective way. The list below is a summary of the topics covered in this chapter.

- General Administration of Title 20
- Review Procedures Generally
- Pre-Application Conferences and Neighborhood Meetings
- Application Submittal and Completeness Review
- Review Type Procedures
- Expirations, Extensions, and Modifications
- Appeals
- Conduct of Quasi-Judicial Hearings
- Conduct of Legislative Hearings
- Enforcement

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

### GENERAL ADMINISTRATION OF TITLE 20

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 “Code” or “ADC.”

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 that 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 that may have a significant impact on the community.
- (5) Guide public and private planning policies and actions to ensure provision of adequate water, sewer, transportation, drainage, parks, open space and other public facilities and services for each development, as applicable.
- (6) Establish procedures and standards requiring that the design of site improvements and building improvements are consistent with applicable standards and design guidelines.

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<sup>1</sup> Entire article replaced with Ordinance 5947, January 1, 2021.

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- (7) Provide for review and approval of the relationship between land uses and traffic circulation in order to minimize congestion.
  - (8) Require that permitted uses and site designs provide reasonable protection from fire, flood, landslide, erosion, or other natural hazards, as well as prevent the spread of blight, and help prevent crime.
  - (9) Protect and enhance the city's 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 and 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 1.230 shall be followed. For legislative interpretations, the 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 that 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 applicant of the burden of responding to allegations that the development action requested is inconsistent with one or more Comprehensive Plan policies.
- 1.055 Fees. The City Council shall establish application review fees, and fee policies by separate resolution for the performance of the actions and reviews required by this Code.

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- 1.060 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 this Title.
- 1.070 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 Building Official stating that the proposed use of the building or land conforms to the requirements of the adopted building code, this ordinance, and any other City conditions attached to the development or use of the building or land.
- 1.080 Approval Runs with the Land. Unless expired, approval of a land use or development permit decision runs with the land. The approval transfers to a new owner if the property is sold.

**Commentary 1.085.** When Article 1 was reformatted in 2020, the standard below was inadvertently removed. From time to time, the City will get applications for already developed property that are not in compliance with prior land use approvals. Restoring this standard would bring the site into compliance before additional development is approved for the site.

1.085 Prior Approvals. Before another land use application can be filed for a site with a completed development, the site must be brought into compliance with all applicable outstanding conditions of approval from prior land use approvals.

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*No changes are proposed to sections 1.100 through 1.160 so those sections are not shown.*

**Commentary 1.165 and 1.170(5):** Staff proposes to add language to clarify what criteria apply when concurrent applications include a Comprehensive Plan and/or Zoning map amendment. Generally, LUBA has determined that when an applicant files a consolidated set of applications for: (1) a comprehensive plan amendment and/or (2) a zone change that is dependent on that plan map amendment; and/or (3) a development permit that is dependent on that zone change, the goal post rule at ORS 197.427(3)(a) does not apply to “freeze” in place the standards and criteria that applied to that development permit as of the date the applications were filed. Instead, the standards and criteria that apply are those supplied by the new plan and zoning designations.

1.165 Concurrent Applications. When an applicant files a consolidated set of applications for: (1) a comprehensive plan amendment and/or (2) a Zoning Map amendment that is dependent on that plan map amendment; and/or (3) a development permit that is dependent on that Zoning Map amendment, the goal post rule at ORS 197.427(3)(a) does not apply to “freeze” in place the standards and criteria that applied to that development permit as of the date the applications were filed. Instead, the standards and criteria that apply are those supplied by the new plan and zoning designations.

- 1.170 Completeness Review.
  - (1) Duration. Except as otherwise provided under ORS 227.178, the Director must review an application for completeness within 30 days of its receipt.
  - (2) Considerations. Determination of completeness will be based upon receipt of the information required under ADC 1.160 and will not be based on opinions as to quality or accuracy. Applications that do not respond to relevant Code requirements or standards can be deemed incomplete. A determination that an application is complete indicates only that the application

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is ready for review on its merits, not that the City will make a favorable decision on the application.

- (3) Complete Applications. If an application is determined to be complete, review of the application will commence.
- (4) Incomplete Applications. If an application is determined to be incomplete, the Director must provide written notice to the applicant identifying the specific information that is missing and allowing the applicant the opportunity to submit the missing information. An application which has been determined to be incomplete must be deemed complete for purposes of this section upon receipt of:
  - (a) All of the missing information;
  - (b) Some of the missing information and written notice from the applicant that no other information will be provided; or
  - (c) Written notice from the applicant that none of the missing information will be provided.
- (5) Vesting. If an application was complete at the time it was first submitted, or if the applicant otherwise responds as provided in subsection (4) of this section within 180 days of the date the application was first submitted, then:
  - ~~(a) A~~ approval or denial of the application must be based upon the standards and criteria that were in effect at the time the application was first submitted; or
  - ~~(a)~~ (b) When a concurrent quasi-judicial Comprehensive Plan and/or Zoning Map is proposed and approved, then approval or denial of the concurrent application will be based on the new zoning district or Comprehensive Plan designation.
- (6) Void Applications. An application is void if the application has been on file with the City for more than 180 days and the applicant has not provided the missing information or otherwise responded, as provided in subsection (4) of this section.



**Amendments to the Albany Development Code (ADC)**

*Draft code amendments are written as follows: additions in red underline and deletions in ~~strike-out~~. Sections not amended are omitted unless needed for context. Omitted sections are indicated by asterisks: \*\*\**

**ARTICLE 3  
RESIDENTIAL ZONING DISTRICTS**

3.010 Overview. The residential zones are intended to preserve land for housing. This Code preserves the character of neighborhoods by providing seven zones with different density standards. The site development standards allow for flexibility of development while maintaining compatibility within the City's various neighborhoods. These regulations provide certainty to property owners, developers and neighbors by stating the allowed uses and development standards for the base zones. Sites within overlay districts are also subject to the regulations in Articles 6 and 7.[Ord. 5673, 6/27/07]

The list below is a summary of the topics covered in this article.

- Zoning Districts
- Schedule of Permitted Use
- Development Standards

\*\*\*

*No changes are proposed to sections 3.020 through 3.040 so those sections are not shown.*

**Commentary 3.080(4)(c):** Revisions to clarify that every detached single-family residence on a legally established lot is permitted one accessory dwelling unit.

*No changes are proposed to the Schedule of Permitted Uses, but a portion of Section 3.050 is provided for context.*

3.050 Schedule of Permitted Uses. The specific uses listed in the following schedule are permitted in the zones as indicated, subject to the general provisions, special conditions, additional restrictions, and exceptions set forth in this Code. A description of each use category is in Article 22, Use Categories and Definitions.

A number appearing opposite a use in the “special conditions” column indicates that special provisions apply to the use in all zones. A number in a cell particular to a use and zone(s) indicates that special provisions apply to the use category for that zone(s). The conditions follow the schedule of uses, in Section 3.060.

The abbreviations used in the schedule have the following meanings:

- Y Yes; use allowed without land use review procedures but must meet development standards in this article and may be subject to special conditions.
- S Use permitted that requires a site plan approval prior to the development or occupancy of the site or building.
- CU Use permitted conditionally under the provisions of Sections 2.230-2.265 through a Type III procedure.
- CUII Uses permitted conditionally through the Type II procedure.
- PD Use permitted only through planned development approval.
- CD Use permitted only through cluster development approval.
- N No; use not permitted in the zoning district indicated.

Some zones have two abbreviations for a use category (ex. Y/CU). Refer to the special condition

Amendments to the Albany Development Code (ADC)

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number to determine what review process is required based on the details of the use.

[Ord. 5673, 6/27/07; Ord. 5947, 1/01/21]

**SCHEDULE OF PERMITTED USES**

Uses Allowed in Residential Zoning Districts								
Use Categories (See Article 22 for use descriptions.)	Spec. Cond.	RR	RS-10	RS-6.5	HM	RS-5	RM	RMA
<b>RESIDENTIAL SINGLE FAMILY USE</b>								
<b>CATEGORIES: One Unit per Property</b>								
Single-Family, detached	19	Y	Y	Y	Y	Y	Y	N
Single-Family, attached (zero lot line)		N	PD/CD	PD/CD	N	Y	Y	Y
<b>RESIDENTIAL TWO FAMILY USE</b>								
<b>CATEGORIES: Two Units per Property</b>								
2 attached units (Duplex)	3	N	Y-1, PD/CD-20	Y-1, PD/CD-20	N	Y-1, PD/CD-20	Y	Y
2 detached units	2	N	PD/CD	PD/CD	S	PD/CD	Y	Y
Primary Residence with one accessory dwelling unit	4	Y	Y	Y	Y	Y	Y	Y

\*\*\*

**SPECIAL CONDITIONS**

3.080 General. Where numbers appear in the column labeled “special conditions” or in a cell in the Schedule of Permitted Uses, the corresponding numbered conditions below shall apply to the particular use category as additional clarification or restriction:

*No changes are proposed to Special Conditions 1 through 3, so they are not shown.*

- (4) Where detached single-family residences are permitted outright, one accessory dwelling unit (ADU) may be allowed per legally established detached single-family residence, called the “primary residence”. The ADU shall comply with the following standards:

Accessory dwelling units shall be incidental in size to the primary residence and meet the following standards:

- (a) The size of an ADU does not exceed 50 percent of the gross floor area of the primary residence (excluding garages or carports) or 900 square feet, whichever is less. (Note: ADUs greater than 900 square feet that were legally constructed before July 1, 2007, may remain). [Ord. 5949, 1/01/21]
- (b) All required building permits have been obtained. If the primary residence is on the Local Historic Inventory, historic review may be required.
- (c) ~~The size of the property lot was legally established meets the minimum single-family lot area requirements for the zoning district in which the lot is located.~~

[Ord. 5338, 1/28/98; Ord. 5673, 6/27/07]

Detached ADUs must also meet the following development standards:

Front Setback: Greater than or equal to the location of the front wall of the primary residence; and

Interior Setback: 5 feet for one-story; 8 feet for two-story; and

Maximum Height: 24 feet to the ridge of the roof.

[Ord. 5673, 6/27/07; Ord. 5949, 1/01/21]

Amendments to the Albany Development Code (ADC)

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No changes are proposed to sections 3.080(5)-(20) and 3.085 through 3.160 so those sections are not shown.

**Commentary:** Revisions to clarify the following density bonus through lot size reductions are proposed.

**3.190(1):** Add note (1) to the types of multi-family units listed in the table and clarify the note referring to the lot or area reductions options.

**3.220:** Allow the maximum density bonus through lot size reduction to exceed 20 percent when housing is provided that is affordable to persons earning 50 percent or less of the area median income per Table 3.220-2.

**3.220 (6), Table 3.220-2:** The bonus provisions for reduction to standard lot or area requirements for moderate cost housing as specified in Table 3.220-2 are intended to apply to all of the units or lots within the development.

**DEVELOPMENT STANDARDS**

3.190 Purpose. Development standards are intended to promote site planning and design that consider the natural environment, site intensity, building mass, and open space. The standards also promote 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 3.190-1, 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, Ord. 5768, 12/7/11; Ord. 5947, 1/01/21]

**TABLE 3.190-1**

RESIDENTIAL DISTRICT DEVELOPMENT STANDARDS							
STANDARD	RR	RS-10	RS-6.5	HM	RS-5	RM	RMA
<b>Minimum Property Size or Land Requirements by Unit Type (1)</b>							
Single-family detached, (1)	5 acres (15)	10,000 sf	6,500 sf	5,000 sf	5,000 sf	3,500 sf	N/A
Single-family, attached (14)(1)	N/A	N/A	N/A	N/A	2,800 sf	2,400 sf	1,800 sf
Two primary units on one property (1)	N/A	14,000 sf Corner lot	8,000 sf Corner lot	N/A	7,000 sf Corner lot	4,800 sf	3,600 sf
Multi-family, Studio and 1-bedroom units <u>(1)</u>	N/A	N/A	N/A	N/A	N/A	2,000 sf/ unit	1,500 sf/ unit
2-and 3-bedroom units <u>(1)</u>	N/A	N/A	N/A	N/A	N/A	2,400 sf/ unit	1,800 sf/ unit
4+ bedroom units <u>(1)</u>	N/A	N/A	N/A	N/A	N/A	3,000 sf/ unit	2,200 sf/ unit
Minimum Lot Widths: Detached S-F Attached Units	N/A N/A	65 ft N/A	50 ft N/A	35 ft N/A	40 ft 20 ft	30ft 20 ft	None None

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RESIDENTIAL DISTRICT DEVELOPMENT STANDARDS							
Minimum Lot Depth	N/A	100 ft	80 ft	65 ft	70 ft	60 ft	None
<b>Setbacks (4):</b>							
Minimum Front (4)	20 ft	20 ft	15 ft	15 ft	15 ft	15 ft	12 ft
Maximum Front Setback	None	None	None	None	None	(14)	(14)
Minimum Interior: single-story (4)	5 ft	5 ft	5 ft	5 ft	5 ft	10 ft (5)	10 ft (5)
Minimum Interior: two or more stories (4)	8 ft	8 ft	8 ft	6 ft	6 ft	10 ft (5)(6)	10 ft (5)(6)
Minimum Building Separation	N/A	N/A	N/A	N/A	(12)	(12)	(12)
Min. Garage or carport vehicle entrance (10)	20 ft	20 ft	20 ft (7)	20 ft (7)	20 ft (7)	20 ft (7)	20 ft (7)
Maximum Height (8)	30 ft	30 ft	30 ft	30 ft	30 ft	45 ft	60 ft
Maximum Lot Coverage (9)	20% (11)	50%	60%	60%	60%	70%	70%
Minimum Open Space	N/A	N/A	N/A	N/A	N/A	(13)	(13)
Min. Landscaped Area	None	(2)	(2)	(2)	(2)	(3)	(3)

N/A means not applicable.

- (1) Section 3.220 bonus provisions may reduce minimum lot size and area requirements of units, ~~such as alley access.~~
- (2) All yards adjacent to streets.
- (3) All yards adjacent to streets plus required open space.
- (4) Additional setbacks may be required, see Sections 3.230-3.330 and the buffer matrix at 9.210; exceptions to Setbacks for Accessibility Retrofits are in Section 3.263; Zero-Lot Line standards are in Sections 3.265 and 3.270. [Ord. 5832, 4/9/14; Ord. 5947, 1/01/21]
- (5) Except for single-family homes (attached and detached) or duplexes, which must have a minimum setback of 3 feet for one-story dwellings and 5 feet for two-story dwellings.
- (6) More than 3 stories = 10 feet plus 3 feet for each story over 3 per unit requirements. Multiple-family developments must also meet the setbacks in Section 8.270(3). [Ord. 5974, 1/01/21]
- (7) Garage front setback for non-vehicle-entrance = 15 feet, except in RR and RS-10 zoning districts where the setback shall be 20 feet.
- (8) See exceptions to height restrictions, Section 3.340.
- (9) Lot coverage for single-family detached development shall only include the area of the lot covered by buildings or structures.
- (10) See Table 3.230-1 for garages with alley access. [Ord. 5947, 1/01/21]
- (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.
- (12) The minimum separation between multi-family buildings on a single parcel shall be 10 feet for single-story buildings and 20 feet for two-story or taller buildings.
- (13) Ten or more units require open space. See Section 8.220.
- (14) See Section 8.240 for standards.
- (15) A property line adjustment between two existing RR properties may be allowed as long as no new lots are created and the resulting properties are at least 20,000 square feet and approval of a septic system

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has been obtained by Benton County.

[Table and footnotes amended by Ord. 5281, 3/26/97; Ord. 5338, 1/28/98; Ord. 5445, 4/12/00; Ord. 5555, 2/7/03; Ord. 5673, 6/27/07, Ord. 5768, 12/7/11; Ord. 5832, 4/9/14; Ord. 5947, 1/01/21]

3.220 Bonus Provisions for Reduction in ~~Standard Lot Size~~ and Area Requirements. The following standards may be applied to development sites in residential and mixed-use zoning districts resulting in allowed reductions in the average minimum lot size and area per unit requirements as indicated. In no instance shall the combined total of all bonus provisions applied to a development result in an overall reduction of more than 30 percent in the standard site size or lot area per unit requirements; or result in a density that exceeds the allowed density in the zone by more than 20 percent, or by more than 30 percent when housing is provided that is affordable to persons earning 50 percent or less of the area median income (AMI) per 3.220(6) and Table 3.220-2. Some bonuses are available for lot design only, with additional bonuses available due to building design or construction.

[Ord. 5338, 1/28/98; Ord. 5673, 6/27/07]

Relationship to Transportation.

- (1) A 10 percent reduction in the average minimum lot size required in a zoning district is allowed for proposed lots that meet the following qualifications:
  - (a) At least 50 percent of the lot area is located within 200 feet of a designated collector or arterial street; and
  - (b) The lot will not have direct access to an arterial.

For example, if the average minimum lot size for the zone is 10,000 square feet, the average lot size may be 9,000 square feet for those properties within 200 feet of the collector or arterial. The remaining lots in the development must average 10,000 square feet.

[Ord. 5673, 6/27/07]

- (2) For multi-family developments, condominiums, and townhouses; when any portion of a building is located within 200 feet of a designated arterial, the area per unit requirements in those buildings can be reduced by 10 percent.

[Ord. 5673, 6/27/07]

Significant Natural Resource Overlays. A transfer of development density from undeveloped buildable land within the Significant Natural Resource Overlay Districts to other property within the development proposal site under the same ownership is allowed if it meets the following standards:

- (3) Development Density to Transfer from Overlay Districts. The land area from which density can be transferred excludes developed and unbuildable areas, such as water bodies, areas below ordinary high water mark, floodways, the unbuildable portions of lands within the Significant Natural Resource Overlay Districts, and easements.
  - Residential Zoning – The applicant may choose to transfer up to 50 percent of the development density if the above standard is met. For example, if the base zoning would have allowed 8 single-family units (net), 4 units can be transferred; if it would have allowed 20 multi-family units (net), 10 units can be transferred.
  - Open Space Zoning – If the lot was legally created prior to July 1, 1991, and the area is of sufficient size and dimension to comply with the development standards for a single-family home, one single-family unit can be transferred.

[Ord. 5947, 1/01/21]

**Amendments to the Albany Development Code (ADC)**

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- (4) Development Density in Receiving Area. Up to a maximum 20 percent reduction in average minimum lot size, or lot area per unit requirements, is allowed in order to accommodate the density transfer. [Ord. 5764, 12/1/11]

Energy Conservation

- (5) Solar Access Protection. If buildings are sited (either by site design or defining buildable areas) and covenants or other mechanisms are established that protect solar access of south building walls from shading by structures and vegetation, a density bonus of up to 10 percent in reduced lot size or area requirements, as applicable, may be allowed. Table 3.220-1 indicates the amount of bonus that shall be given, based on the percentage of lots or multiple-family units that are protected. For subdivisions, to receive a bonus, a covenant or other mechanism shall be established that provides and protects solar access for the southerly building area of protected lots from 9:30 a.m. to 2:30 p.m. on December 21. For multiple unit developments to receive a bonus, protected units shall receive this same solar access protection for south facing walls, and the south facing glass of those units shall total at least 7 percent of the conditioned area. (South facing is defined as being within 25 degrees of true south.)

**Table 3.220-1**

ENERGY CONSERVATION BONUS STANDARDS		
Development Type	Percentage of Lots or Units Protected	<u>Density Area Reduction Bonus Permitted</u>
Subdivision	80 percent or more of lots	10 percent
	At least 60 percent and up to 80 percent	5 percent
Multiple-unit Development	80 percent or more of units	10 percent
	At least 60 percent and up to 80 percent	5 percent

[Ord. 5947, 1/01/21]

Moderate-Cost and Affordable Housing

- (6) Provision of Moderate-Cost and Affordable Housing. For the provision of housing that is affordable to low- and moderate-income households earning 120 percent ~~of or~~ less of the area median income (AMI), a density bonus through reductions in lot size or area requirement reductions is permitted for all units within the development, or development phase for phased developments, as provided in Table 3.220-2.
  - (a) For the purpose of this section, “AMI” means the area median income for the county in which the project is located.
  - (b) “Affordable” means that the sales price or rental amount is within the means of a household that may occupy moderate- and low-income housing. In the case of dwelling units for sale, affordable means housing in which the mortgage, amortization, taxes, insurance, and condominium or association fees, if any, constitute no more than 30 percent of such gross annual household income for a household of the size that are most likely to or intended to occupy the unit in question. In the case of dwelling units for rent, affordable means housing for which the rent and utilities constitute no more than 30 percent of such gross annual household income for a household of the size that are most

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likely to or intended to occupy the unit in question. Projects must include contractual obligations for continued availability to low- and moderate-income persons for a period of at least 30 years.

[Ord. 5947, 1/01/21]

**Table 3.220-2**

<b>AFFORDABLE HOUSING DENSITY BONUS STANDARDS</b>		
<b>Affordability Level</b>	<b>Percent of units set aside for persons whose household income is less than or equal to the affordability level (<u>including bonus units</u>)</b>	<b>Density Area Reduction Bonus Permitted</b>
120% AMI	50 percent of units	5 percent
100% AMI	50 percent of units	10 percent
80% AMI	5 percent of units	5 percent
	10 percent of units	10 percent
	20 percent of units	20 percent
50% AMI	5 percent of units	10 percent
	10 percent of units	20 percent
	20 percent of units	30 percent

[Ord. 5947, 1/01/21]

Alley Access.

- (7) Lots with vehicular access from an alley may be up to 10 percent smaller than the minimum lot size for the zone. [Ord. 5338, 1/28/98; Ord. 5445, 4/12/00; Ord. 5947, 1/01/21]

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**ARTICLE 4  
COMMERCIAL AND INDUSTRIAL ZONING DISTRICTS**

4.010 Overview. The zones created in this article are intended to provide land for commercial, office and industrial uses. The differences among the zones, in the permitted uses and development standards, reflect the existing and potential intensities of commercial and industrial development. The site development standards allow for flexibility of development while minimizing impacts on surrounding uses. The regulations in this article promote uses and development that will enhance the economic viability of specific commercial and industrial areas and the city as a whole. Development may also be subject to the provisions in Article 8, Design Standards, Article 9, On-Site Development and Environmental Standards, and Article 12, Public Improvements. Sites within overlay districts are also subject to the provisions in Article 6, Special Purpose Districts, and Article 7, Historic Overlay Districts.

[Ord. 5555, 2/7/03]

The following list is a summary of the topics covered in this article:

- Zoning Districts
- Schedule of Permitted Uses
- Development Standards
- Airport Approach Overlay District

\*\*\*

*No changes are proposed to Sections 4.020 through 4.300 so these sections are not shown.*

**Commentary 4.420:** Albany Development Code Section 4.420 identifies the airport elevation as 222 feet above main sea level, which is based on the National Geodetic Vertical Datum of 1929 (NGVD 29). The proposed amendments would clarify the source of the elevation and add the newer more accurate vertical datum North American Vertical Datum of 1988 (NAVD 88), which results in a vertical elevation difference of +3.38 feet. The NAVD 88 elevation corresponds to the elevation in the Airport Master Plan.

**AIRPORT APPROACH**

4.400 Purpose. The Airport Approach district is intended to protect the public from excessive noise and air traffic from possible hazards on landing or takeoff.

4.410 Applicability. The regulations below apply to those areas indicated on Figures 4.410-1 and 4.410-2.  
[Ord. 5947, 1/01/21]

4.420 Height Restrictions. No structure, mast, antenna, or wire shall be erected, altered, or maintained, and no tree shall be allowed to grow to a height in excess of the height limit established within each of the following described zones (which are also graphically represented in Figure 4.410-1) **and in the adopted Albany Municipal Airport Master Plan:**

[Ord. 5947, 1/01/21]

- (1) Visual Approach Area. Slopes 20 feet outward for each foot upward beginning at the ends of the primary surface (200 feet from the end of the pavement) and at the same elevation as the



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primary surface, and extending to a horizontal distance of 5,000 feet along the extended runway centerline.

- (2) Transitional Areas. Slopes 7 feet outward for each foot upward beginning at the sides of and at the same elevation as the primary surface and the approach surface, and extending to a height of 150 feet above the airport elevation, which is 222 feet above mean sea level using the National Geodetic Vertical Datum of 1929 (equivalent to 225.38 feet using the North American Datum of 1988, NAVD 88). In addition, there are height limits sloping 7 feet outward for each foot upward beginning at the sides of and at the same elevation as the approach surface, and extending to where they intersect the conical surface.
- (3) Horizontal Area. One hundred fifty (150) feet above the airport elevation ~~or at a height of 372 feet above mean sea level~~.
- (4) Conical Area. Slopes 20 feet outward for each foot upward beginning at the periphery of the horizontal zone and at 150 feet above the airport elevation and extending to a height of 350 feet above the airport elevation.

\*\*\*

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ARTICLE 5
MIXED USE ZONING DISTRICTS

5.000 Purpose. This article is intended to define the character of Albany’s mixed-use zoning districts. The mixed-use zones implement the concepts identified in the Balanced Development Patterns Project (2001) and the Town Center Plan (Central Albany Land Use and Transportation Study, CALUTS, 1996). These zoning districts are compatible with the Village Center Comprehensive Plan designation applied in the Central Albany area, North Albany, east of Interstate 5 on Knox Butte Road, and south of Oak Creek near Highway 99E (Pacific Boulevard). The mixed-use zones may be applied outside of the Village Center plan designation. [Ord. 5555, 2/7/03]

\*\*\*

No changes are proposed to sections 5.010 through 5.060 so those sections are not shown.

Commentary 5.070(15)(b): Revisions to clarify that every detached single-family residence on a legally established lot is permitted one accessory dwelling unit.

SPECIAL CONDITIONS

5.070 General. Where numbers appear in the “Special Conditions” column or in any cell in the Schedule of Permitted Uses, the corresponding numbered conditions below shall apply to the particular use category as additional clarification or restriction:

No changes are proposed to Special Conditions 1 through 13, so they are not shown.

(15) Existing Single- and Two-Family. Single-family and two-family units built before December 11, 2002, may remain as a permitted use in any zone without being nonconforming. See Section 5.080. [Ord. 5673, 6/27/07]

Accessory Dwelling Units. Where detached single-family residences are permitted, one accessory dwelling unit (ADU) may be allowed per legally established detached single-family residence, called the “primary residence”. [Ord. 5949, 1/01/21]

Accessory dwelling units shall be incidental in size to the primary residence and meet the following standards:

- (a) The size of an ADU may not exceed 50 percent of the gross floor area of the primary residence (excluding garages or carports) or 900 square feet, whichever is less.
(b) The lot was legally established. The size of the property meets the minimum single-family lot area requirements for the zoning district in which the lot is located.
(c) The front door of an ADU may not be located on the same façade as the front door of the primary residence unless the door already exists or the wall that contains the ADU front door is set back at least five feet from the front facade of the primary residence.
(d) Exterior additions must substantially match the existing materials, colors, and finish of the primary structure.
(e) All required building permits must be obtained. If the primary residence is on the Local Historic Inventory, historic review may be required.
(f) The front setback shall be greater than or equal to the location of the front wall of the

Amendments to the Albany Development Code (ADC)

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primary residence.

[Ord. 5673, 6/27/07; Ord. 5949, 1/01/21]

\*\*\*

No changes are proposed to sections 5.070(16) through 5.087 so those sections are not shown.

**DEVELOPMENT STANDARDS**

5.090 Purpose. Development standards are intended to promote site planning and design that consider the natural environment; site intensity, building mass and open space. The standards also promote energy conservation, needed privacy, and safe and efficient parking areas for new development; and improve the general living environment and economic life of a development. Table 5.090-1 summarizes the basic development standards. It should be used with the sections immediately following the table, which addresses special circumstances and exceptions. Additional design standards are located in Article 8.

[Ord. 5445, 4/12/00; Ord. 5768, 12/7/11; Ord. 5947, 1/01/21]

**TABLE 5.090-1  
MIXED-USE VILLAGE CENTER DEVELOPMENT STANDARDS**

STANDARD	MUC	WF	HD	DMU	CB	LE	PB	MS	ES	MUR
<b>Minimum Lot Size or Area Requirement (sq.ft.) (3) (21)</b>										
Single-family (20)(21)	None	None	None	None	None	N/A	N/A	N/A	5,000	None
Attached single-family, Per lot (21)	None	1,600	N/A	None	None	N/A	N/A	None	None	None
Two-family (21)	None	3,600	N/A	None	None	N/A	N/A	N/A	7,000	3,600
3 or more 1-bedroom (21)	None	1,600/u	N/A	None	None	None	1,600/u	1,600/u	3,300/u	1,600/u
3 or more 2+bedroom (21)	None	1,800/u	N/A	None	None	None	1,600/u	1,800/u	3,300/u	1,800/u
All other uses	6,000	5,000	1,000	1,000	1,000	2,000	15,000	6,000	5,000	10,000
<b>Maximum Building Size (sq. ft.)(16)</b>										
Non-grocery (16)	20,000	None	None	None	None	None	None	None	None	None
Grocery-anchored	80,000 (13)	None	None	None	None	None	None	None	None	None
<b>Maximum Business Footprint (sq. ft.)(16)(17)</b>										
Non-grocery (16)	20,000	None	None	None	None	None	25,000	10,000	10,000	10,000
Grocery-anchored	80,000 (13)	None	None	None	None	None	60,000	60,000	60,000	60,000
<b>Lot Width, minimum</b>	None	None	20'	None	None	20'	None	None	None	None
<b>Lot Depth, minimum</b>	None	None	50'	None	None	50'	None	None	None	None
<b>Landscaped Area</b>	100% (2)	None	None	None	None	100% (2)	100% (2)	100% (2)	100% (2)	100% (2)
<b>Minimum Open Space</b>	(12)	(12)	(12)	(12)	(12)	(12)	(12)	(12)	(12)	(12)
<b>Maximum Front Setbacks: (10)</b>	10' (15)	5'/15' (18)	0'	5'/15' (18)	5'/15' (18)	None	20'	10'	10'	20'
<b>Minimum Setbacks:</b>										

**Amendments to the Albany Development Code (ADC)**

*Draft code amendments are written as follows: additions in **red underline** and deletions in ~~strike-out~~. Sections not amended are omitted unless needed for context. Omitted sections are indicated by asterisks: \*\*\**

STANDARD	MUC	WF	HD	DMU	CB	LE	PB	MS	ES	MUR
Front (5) (14)	5'	0'	0'	0'	0'	0'	5'	5'	5'	15'
Interior (5) (14)	(1)(4)	0' (1)(4)	0'(4)	0' (1) (4)	0' (1) (4)	(4)	(4)	(1)(4)	5'	10'(1)
Garage Entrance (9)	20' (8)	5' or 20' (8)(7)	None	5' or 20' (8) (7)	5' or 20' (8) (7)	20'	20'	20'(8)	20'	20'
<b>Height, maximum</b>	50'	55'	85' (19)	85' (19)	65'	60'	50'	50'	50'	45'
<b>Lot Coverage, maximum (6)</b>	80%	100%	100%	100%	100%	100%	80%	90%	80%	70%

“N/A” means not applicable. “None” means there is no requirement under Article 5 (other standards may apply). “0” means that the minimum or maximum is zero. [Ord. 5894, 10/14/17]

- (1) Single-family homes and duplexes, where permitted, must have a 3-foot interior setback for single-story buildings, and a five-foot interior setback for two-story buildings. See Sections 5.150 and 5.160 for zero lot line options and attached dwelling units. [Ord. 5742, 7/14/10; Ord. 5894, 10/14/17]
- (2) All yards adjacent to streets. Approved vegetated post-construction stormwater quality facilities are allowed in landscaped areas. [Ord. 5842, 1/01/15]
- (3) Lots with alley access may be up to 10 percent smaller than the minimum lot size for the zone. [Ord. 5338, 1/28/98; Ord. 5445, 4/12/00]
- (4) See ADC Section 5.115 for special interior setback standards abutting residential zones and uses. [Ord. 5894, 10/14/17]
- (5) Minimum front and interior setbacks are not required for buildings abutting railroad rights-of-way.
- (6) Achievement of maximum lot coverage is subject to meeting all other standards of the ADC, including, but not limited to, landscaping, buffering and setback requirements. Lot coverage for single-family detached development shall only include the area of the lot covered by buildings or structures. [Ord. 5768, 12/7/11, Ord. 5894, 10/14/17]
- (7) To prevent parked vehicles from intruding in the right-of-way, garage entrances shall be set back five feet or at least 20 feet. A setback of more than 5 feet and less than 20 feet is not permitted. Garage entrances may not be located closer to the front lot line than the front façade of the building. [Ord. 5894, 10/14/17]
- (8) Garage setback for non-vehicle entrance must conform to the requirements for interior setbacks.
- (9) For garages with alley access, see Table 5.100-1. [Ord. 5894, 10/14/17; Ord. 5947, 1/01/21]
- (10) The maximum setback may be increased with the condition that 100 percent of the increased setback is used for pedestrian amenities associated with the building use, such as patio dining for a restaurant, sidewalk café, plaza, or courtyard; or to accommodate changes in elevation due to road and site grading or natural slopes. See ADC Section 5.120 for additional exceptions and calculation methodology for the HD, CB, DMU, and WF zoning districts. [Ord. 5894, 10/14/17]
- (11) For multi-family and commercial developments, no parking or circulation will be allowed between the building with the primary entrance and the adjacent street. [Ord. 5742, 7/14/10]
- (12) Ten or more residential units require common open space. See Section 8.220. [Ord. 5894, 10/14/17]
- (13) The building and business footprint maximum is 80,000 square feet if a grocery store occupies at least fifty percent (50 percent) of the total square footage. This footprint may include one or more businesses or attached buildings. For purposes of this section, a grocery store is defined as a business that sells primarily food and household supplies. Ancillary grocery uses include uses such as pharmacy, bakery, and florist.
- (14) Properties adjacent to the Willamette River see also the Willamette Greenway standards in Sections 5.200 - 5.207 and Sections 6.500-6.560.
- (15) Except for residential development, which has a maximum setback of 25 feet. See Sections 8.200 – 8.305 for multiple-family residential design standards. [Ord. 5947, 1/01/21]
- (16) The maximum building size and business footprint size may be exceeded for non-commercial and non-office uses when the building is multi-story.

**Amendments to the Albany Development Code (ADC)**

*Draft code amendments are written as follows: additions in red underline and deletions in ~~strike-out~~.  
Sections not amended are omitted unless needed for context. Omitted sections are indicated by asterisks: \*\*\**

- (17) In shopping centers with multiple tenants, “business” refers to each individually leasable space. “Footprint” refers to the amount of area covered by the first floor. Businesses may build on additional floors.
- (18) The maximum setback for non-residential and mixed-use development is five feet. The maximum setback for residential development is 15 feet. See ADC Section 5.120 for exceptions and calculation methodology. [Ord. 5894, 10/14/17]
- (19) In order to maintain compatibility with existing historic structures and the character of designated historic districts, maximum building heights in the HD and DMU zones are limited within designated historic districts. Within the Downtown Commercial National Register Historic District (see Article 7, Figure 7.010-1), the maximum building height in the HD and DMU zones is 65 feet. Within the Hackleman and Monteith National Register Historic Districts (see Article 7, Figure 7.010-1), the maximum building height in the HD and DMU zones is 45 feet. [Ord. 5894, 10/14/17]
- (20) Where new single-family detached housing is not permitted in a given Mixed Use zone, minimum lot size for single-family refers to legally established existing single-family uses with special status. [Ord. 5894, 10/14/17]
- (21) Section 3.220 bonus provisions may reduce minimum area requirements for residential developments.

## Amendments to the Albany Development Code (ADC)

*Draft code amendments are written as follows: additions in **red underline** and deletions in ~~strike-out~~. Sections not amended are omitted unless needed for context. Omitted sections are indicated by asterisks: \*\*\**

## ARTICLE 8 DESIGN STANDARDS

8.000 Overview. The purpose of this Article is to establish additional standards for certain uses. These standards are intended to reduce adverse effects on surrounding property owners and the general public, to create a business environment that is safe and comfortable, to further energy conservation efforts within the City, to enhance the environment for walking, cycling, and mass transit use, and to ensure that high-quality development is maintained throughout Albany.

An applicant for a development that does not meet the design standards in Article 8 may apply for one or more Adjustments pursuant to ADC 2.060-2.080 except that Adjustments are not permitted to the standards in Section 8.500 (Telecommunication Facilities) and Section 8.600 through 8.620 (Supplemental Design Standards for the Oak Creek Transition Area).

[Ord. 5947, 1/01/21]

The following list is a summary of the topics covered in this article.

- Single-Family Homes
- Multiple Family Development
- Commercial and Institutional Site Design
- Supplemental Standards in Village Centers
- Telecommunications Facilities
- Supplemental Design Standards for the Oak Creek Transition Area

[Ord. 5445, 4/12/00, Ord. 5801, 2/13/13; Ord. 5832, 4/9/14]

\*\*\*

*No changes are proposed to sections 8.110 through 8.260 so those sections are not shown.*

### (5) MULTIPLE-FAMILY DEVELOPMENT

8.200 Purpose. These sections are intended to set standards for quality designs in new multiple-family developments. Good design results when buildings are visually compatible with one another and adjacent neighborhoods and contribute to a residential neighborhood that is attractive, active, and safe.

[Ord. 5445, 4/12/00; Ord. 5947, 1/01/21]

*No changes are proposed to sections 8.205 through 8.265 so those sections are not shown.*

**Commentary 8.270(3):** The current language requires multi-family buildings to be set back at least one foot for each foot in building height from a shared property line when abutting lower density development. Since non-residential uses such as churches or schools are permitted in residential zones, the proposed amendments clarify the intent of this section, and exclude the existing residences or undeveloped land. The standard does not provide exceptions for properties developed with non-residential uses, such as institutional uses.

8.270 Transition to Lower Density Uses.

- (1) Purpose. The standards of this section are intended to create transitions between multiple-

### Amendments to the Albany Development Code (ADC)

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family developments and nearby, lower-density residential development, in order to reduce the impacts of the multiple-family development on lower-density development. These impacts may include incompatible building mass and scale, reduced privacy, and loss of solar access for the lower-density development. [Ord. 5947, 1/01/21]

- (2) Applicability. These standards apply to multiple-family housing in all zoning districts except HD, DMU, CB, and WF, which are subject to special interior setbacks in ADC Section 5.115. These standards shall not apply when the abutting property is developed with a non-residential use. [Ord. 5894, 10/14/17; Ord. 5947, 1/01/21]
- (3) Multiple-family buildings shall be set back at least one foot for each foot in building height from a shared property line, up to a maximum required setback of 30 feet, when the abutting lot sharing the property line meets criteria (a) or (b) below, or both. Building height is measured from the average grade to the top of the wall facing the property line or to the top of the highest window or door, whichever is higher.
  - (a) The abutting lot is in a residential single-family zoning district or in the HM zoning district and is developed with single-family residential or middle housing uses or is underdeveloped or vacant.
  - (b) The abutting lot has a pre-existing single-family home and is in a zoning district other than the NC, CC, RC, LI, HI, or IP. For the purposes of this section a “pre-existing single-family home” is one constructed prior to January 1, 2021. [Ord. 5947, 1/01/21]
- (4) Active recreation areas, loading areas and dumpsters shall not be located between multiple-family buildings and abutting pre-existing single-family homes. [Ord. 5445, 4/12/00; Ord. 5947, 1/01/21]



## COMMUNITY DEVELOPMENT

333 Broadalbin Street SW, PO Box 490, Albany, Oregon 97321-0144 | BUILDING 541-917-7553 | PLANNING 541-917-7550

# Staff Report Findings and Conclusions

## Albany Development Code Text Amendments

DC-01-21

September 15, 2021

### Application Information

Proposal:	City-initiated legislative amendments to the Albany Development Code (ADC or Code) to: <ol style="list-style-type: none"> <li>A. Improve clarity and function of nonconforming situations standards and processes. Most changes are proposed to ADC Article 2 – Review Criteria, Sections 2.300 through 2.370; with minor amendments in Article 1 – Administration and Procedures, and Article 22 – Definitions. (Exhibit A)</li> <li>B. Clarify the following: satisfying prior land use conditions, applicable criteria for concurrent application (Article 1 - Administration and Procedures), accessory dwelling units are permitted on legal single-family lots (Article 3 – Residential Zoning Districts and Article 5 – Mixed Use Zoning Districts), lot area reductions for affordable housing (Article 3), airport elevations (Article 4, Commercial and Industrial Zones), and transition buffers between multi-family and land developed with non-residential uses (Articles 8 – Design Standards). (Exhibit B)</li> </ol>
Applicant:	Albany Community Development Department, 333 Broadalbin Street SW, Albany, OR 97321
Location:	Legislative amendments; not site specific

### Overview

**Nonconforming Situations Amendments:** In 2017, the city council, planning commission, staff, and community members participated in a development code audit. The audit identified several potential code amendments that council further considered and ultimately directed staff to pursue with consultant support and guidance from a code amendment task force. Phase Three of the Code Audit includes clarifications to the Nonconforming Situations standards in Article 2 (amendments are presented in Exhibit A).

**Miscellaneous Minor Amendments:** As the current and recently amended ADC standards are applied, there is occasionally a need to clarify the intent of the standards. This package of amendments will clarify the intent of recently updated sections of the Code in Phases One and Two described above and includes a couple of other minor amendments.

### Summary of Proposed Amendments

Proposed amendments as they would appear in the ADC are included as Exhibits A and B to the ordinance:

- A: Nonconforming Situations Development Code Amendments
- B: Miscellaneous Minor Development Code Amendments

- A. **Nonconforming Situations** is a term used to describe land uses, lots, or developments that were lawfully created in compliance with the zoning standards in place at the time established, but which, because of subsequent changes

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in those regulations, no longer comply. The proposed amendments to the nonconforming situations regulations in ADC Sections 2.300 through 2.370 will reorganize the standards to better define and delineate the types of nonconforming situations (lots, developments, and uses) and clarify which regulations apply to each type of nonconforming situation.

- Nonconforming Lots – continue allowing nonconforming lots that were legally established to be developed in compliance with the ADC.
- Nonconforming Development – allow nonconforming developments to be occupied regardless of how long the building has been vacant, allow expansions and changes that conform to current standards or that don't increase the nonconformity of the site, allow rebuilding after fire or other disaster, and require incremental site improvements when the dollar threshold is met but increase that threshold from \$25,000 to \$150,000.
- Nonconforming Uses – increase time limit for reinstatement of a discontinued nonconforming uses to three years in residential zones and five years in nonresidential zones, simplify the process, and allow some expansion or alterations to nonconforming uses.

B. Miscellaneous Minor Amendments This package of minor amendments will:

- Restore a standard related to prior conditions of approval that was inadvertently removed in recent amendments to Article 1, Administration and Procedures,
- Clarify the standards that apply to development when a consolidated applications that include a zoning and/or comprehensive plan map amendment are submitted,
- Clarify that single-family residences on a legal lot are permitted one accessory dwelling in compliance with state law, even if the lot doesn't meet the average minimum lot size for the underlying zoning district,
- Clarify how to calculate and apply recently revised bonus provisions for affordable housing,
- Specify the vertical datum of the elevations used in the Airport Approach Overlay, and
- Revise the multi-family transition setback so it applies when abutting lower density residential development or vacant residential land but not when an abutting site is developed with a nonresidential use.

In the exhibits, proposed new text is in red underlined font and proposed deleted text is ~~in black strike-out font~~.

Commentary boxes in the exhibits provide explanations of proposed amendments. Should the amendments be approved, the text boxes will be removed, and the approved amendments made part of the ADC.

## Notice and Hearing Information

Public notice was issued in accordance with legislative amendment requirements in the ADC Section 1.260. Specifically,

- Notice was provided to the Oregon Department of Land Conservation and Development (DLCD) on July 26, 2021, at least 35 days before the first evidentiary hearing, in accordance with Oregon Administrative Rule (OAR) 660-018-0020 and the ADC.
- Notice of the proposed amendments was also mailed on August 16, 2021, to various agencies, both counties and interested parties.
- Notice of the public hearings was published in the *Albany Democrat-Herald* on August 16, 2021, two weeks before the first public hearing on August 30, 2021.
- The staff report and proposed code amendments were posted on the City's website on August 23, 2021, seven days before the first public hearing.

Public hearings regarding the proposed legislative amendments were held on the following dates:

- **August 30, 2021, planning commission.** One person testified in support of the proposed amendments. The planning commission voted to recommend the city council approve the ADC amendments as presented.

- **September 22, 2021, city council.**

## Legislative Amendments Review Process and Appeals

Amendments to the ADC are made through a Type IV legislative land use review process. Following this process, the planning commission held a public hearing to consider proposed amendments and recommended the city council approve the proposed amendments. (The planning commission's recommendation cannot be appealed.) The city council will hold a subsequent public hearing to consider the proposed amendments. After closing the public hearing, the city council will deliberate and make a final decision. Within five days of the city council's final action on the proposed amendments, the Community Development Director will provide written notice of the decisions to any parties entitled to notice. A city council decision can be appealed to the Oregon Land Use Board of Appeals (LUBA) if a person with standing files a notice of intent to appeal within 21 days of the date the decision is reduced to writing and bears the necessary signatures of the decision makers.

## Analysis of Development Code Criteria

### Development Code Text Amendments (file no. DC-01-21)

Section 2.290 of the ADC includes the following review criteria, which must be met for these legislative text amendments to be approved. Code criteria are written in ***bold italics*** and are followed by findings and conclusions.

**Some of the findings and conclusions in the staff analysis are specific to either the proposed amendments in Exhibit A or in Exhibit B as described below, while some apply to both sets of proposed ADC amendments. Findings specific to A or B below are labeled accordingly throughout the report.**

### Development Code Amendment - Review Criterion 2.290(1)

***The proposed amendments better achieve the goals and policies of the Comprehensive Plan than the existing language.***

### Findings of Fact

- 1.1 The Comprehensive Plan defines a goal as, "a general statement indicating a desired end, or the direction the City will follow to achieve that end" (Comprehensive Plan, page ii).
- 1.2 The Comprehensive Plan (page 2) defines a policy as, "a statement identifying a course of action or City position."
- 1.3 The Comprehensive Plan describes the City's obligation regarding policies as follows: "The City must follow relevant policy statements in making a land use decision ... [I]n the instance where specific Plan policies appear to be conflicting, then the City shall seek solutions which maximize each applicable policy objective within the overall content of the Comprehensive Plan and in a manner consistent with the statewide goals. In balancing and weighing those statements, the City can refer to general categories of policies and does not have to respond to each applicable policy. Also, in this weighing process, the City shall consider whether the policy contains mandatory language (e.g., shall, require) or more discretionary language (e.g., may, encourage)," (Comprehensive Plan, page iii).
- 1.4 The following statewide planning goals and Comprehensive Plan goals and policies are applicable to the proposed development code amendments. Goals and polices are shown below in **bold** print followed by findings of fact and conclusions.

**COMPREHENSIVE PLAN CHAPTER 9: LAND USE PLANNING***Statewide Planning Goal 1: Citizen Involvement*

**Goal:** Ensure that local citizens and other affected groups, neighborhoods, agencies, and jurisdictions are involved in every phase of the planning process.

**Applicable Policies:**

2. 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.
4. 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.

**Findings of Fact:**

- 1.5 This application is reviewed according to the Type IV land use review process. In accordance with that procedure, input from all points of view from citizens and agencies was solicited to ensure interested parties have the opportunity to participate. Public notice was provided in accordance with ADC Section 1.260.
  - Notice was provided to the Oregon Department of Land Conservation and Development (DLCD) on July 26, 2021, at least 35 days before the first evidentiary hearing.
  - A notice of the public hearing was mailed August 16, 2021, to various Linn and Benton County planning staff and other interested parties.
  - Notice of the public hearing was published in the *Albany Democrat-Herald* on August 16, 2021, two weeks before the public hearing on August 30, 2021.
  - The staff report and supporting materials were posted to the City's website on August 23, 2021.
- 1.6 The planning commission public hearing was held August 30, 2021, to consider the proposed development code amendments. Two people representing one company testified in support of the proposed amendments. One letter was received after the planning commission public hearing from the Housing Land Advocates and Fair Housing Council of Oregon requesting staff further illustrate the benefits of the proposed amendments as they relate to the City's housing needs and buildable lands inventory.
- 1.7 Through the notification and public hearing process, all interested parties are afforded the opportunity to review and comment on the proposals, attend the public hearing, and participate in the land use process.
- 1.8 A 2017 audit of the ADC identified several issues related to nonconforming situations standards. Staff and consultants met with the ADC Amendments Task Force (composed of 12 stakeholders) 12 times between 2018 and 2020 to address the code changes identified in the audit and included how to improve the current nonconforming situations code language.
- 1.9 The proposed amendments in Exhibit A – Nonconforming Situations Amendments originated with the task force, and their recommendations were presented and refined with input from the planning commission and city council at two work sessions held on December 14, 2020, and January 11, 2021. Interested parties attended the work sessions and provided comments and suggestions that were incorporated into the proposed amendments. The code concepts and meeting materials were also posted to a project website.

- 1.10 The package of minor amendments as outlined in Exhibit B mostly consists of corrections and clarifications to code amendments made in Phases One and Two of the code audit implementation and work with the task force, planning commission, city council, and the public. The one exception is a clarification of the vertical datum used for the elevations in the Airport Approach District.

## **A. Comprehensive Plan Goals and Policies Related to the Nonconforming Situations Amendments**

### **COMPREHENSIVE PLAN CHAPTER 3: ECONOMIC DEVELOPMENT**

#### *Statewide Planning Goal 9: Economic Development*

**Albany's Economy, Goal 2: Provide a supportive environment for the development and expansion of desired businesses.**

**Albany's Economy, Policy 10: Cooperate with business and industry to examine measures to reduce the cost of starting or expanding a business.**

**Land Use Goal 4: Promote infill development and redevelopment throughout the City.**

**Land Use Goal 5: Improve community appearance and establish attractive gateways into Albany and visually appealing highway corridors.**

### **COMPREHENSIVE PLAN CHAPTER 8: URBANIZATION**

#### *Statewide Planning Goal 14: Urbanization*

**Goal: Achieve stable land use growth which results in a desirable and efficient land use pattern.**

**Policy 12: Discourage future strip commercial development and promote clustered commercial opportunities and the infilling of existing commercial areas which will foster:**

- a. **Efficient and safe utilization of transportation facilities.**
- b. **A variety of attractive and comfortable shopping opportunities that encourage shopping in a number of stores without auto use.**
- c. **Compatibility between land uses, particularly adjacent residential neighborhoods.**
- d. **Efficient extension of public facilities and services.**

#### **A - Findings of Fact and Conclusions for Nonconforming Situations Amendments:**

- 1.11 The current standards make it difficult to put a vacant building back into productive use, and many of Albany's older developments are nonconforming with current development standards.
- 1.12 The proposed amendments in Exhibit A, Article 2, Sections 2.310-2.350, will make it easier to locate and expand businesses on developed property that may have a nonconforming situation. The changes would allow nonconforming developments to be occupied regardless of how long the building has been vacant and be expanded if the expansion does not increase the nonconformity of the site.
- 1.13 Proposed amendments would allow some expansion and alterations to nonconforming uses and would allow property owners to rebuild a nonconforming development after a fire or other disaster.
- 1.14 Proposed incremental site improvements would apply to alterations of nonconforming development when improvements are over \$150,000, with some exclusions. Proposed amendments would increase the dollar threshold when incremental site improvements are triggered, from \$25,000 to \$150,000, which may reduce the cost of starting or expanding a business and support the improvement of existing development.
- 1.15 Incremental site improvements may improve the appearance of the property and appearance from highway corridors.

- 1.16 The proposed amendments to the nonconforming situations will promote redevelopment throughout the City. The standards will enable existing nonconforming buildings and sites to be occupied and nonconforming uses to continue or be reinstated within three years in residential zones and five years in nonresidential zones.
- 1.17 The proposed development code text amendments are consistent with the goals and policies noted above because they remove barriers and costs to redevelopment and are intended to allow reasonable use of existing developments while improving community appearance.
- 1.18 The amendments to nonconforming situations standards would allow redevelopment of existing nonconforming development already served by transportation and other public facilities and services, supporting an efficient land use pattern.
- 1.19 Improvements to nonconforming developments may result in improved access to the site, enhanced landscaping, and other site improvements that would promote safety and compatibility between uses.
- 1.20 The proposed development code text amendments are consistent with the goals and policies noted above.

## **B. Comprehensive Plan Goals and Policies Related to the Miscellaneous Minor Amendments**

### **COMPREHENSIVE PLAN CHAPTER 4: HOUSING**

#### *Statewide Planning Goal 10: Housing*

**Goal: Provide a variety of development and program opportunities that meet the housing needs of all Albany's citizens.**

**Goal: Create a city of diverse neighborhoods where residents can find and afford the values they seek.**

**Policy 6: Encourage residential development on already serviced vacant residential lots or in areas where services are available or can be economically provided.**

**Policy 9: Encourage new residential developments to provide housing choices that allow for persons to stay within their neighborhoods ("age in place") as their housing needs change.**

**Policy 16: Encourage the development of affordable housing in a range of types and appropriate sizes to meet Albany's housing needs. Examples include accessory apartments, manufactured housing, and attached single-family houses.**

#### **B - Findings of Fact and Conclusions for Miscellaneous Minor Amendments:**

- 1.21 The proposed minor amendments to recently updated sections of the ADC will clarify that accessory dwelling units (ADUs) are permitted on lots with a single-family dwelling, regardless of lot size as required by ORS 197.312(5); they will clarify the bonus available for providing housing affordable to different income levels; and they will exempt multi-family housing from providing additional "transition" setbacks when abutting lots are developed with non-residential uses.
- 1.22 According to Albany's Housing and Residential Land Needs Assessment to 2040 (HNA), Albany is projected to need about 3,000 new units to 2040 that are affordable to residents earning 80 percent or less of the area median income (AMI), and another 1,300 that are affordable to those earning between 80 and 120 percent of AMI. Housing types that may be affordable to these households are subsidized housing, apartments, small homes, attached and 2-4 plex housing.
- 1.23 The proposed amendments to permit ADUs on legal single-family dwelling, regardless of lot size, will clarify the original intent of the code and ORS 197.312(5) and will provide more housing choices and smaller house sizes that may be more affordable to help address housing needs identified in the HNA.

- 1.24 The proposed amendment to clarify the bonus available for providing housing affordable to different income levels may reduce barriers to multi-family housing and encourage the development of needed housing that is affordable to residents earning less than 120 percent of the area median income, estimated to be more than 4,200 units by 2040.
- 1.25 Clarifications to the existing code will facilitate development of housing in already serviced and developed areas, which reduce the demand for residential buildable land.
- 1.26 The proposed development code text amendments are consistent with the Housing goals and policies noted above and support the needs identified in the HNA, as they remove obstacles to the types of housing identified in the policies.

### Conclusions: Development Code Amendments Criterion 1

- 1.1 Citizen Involvement. The City followed the required citizen participation process outlined in state law, the ADC, and in the Comprehensive Plan that included a process that provided notice and information to all affected properties, solicited input from the public at multiple times and in multiple ways, and included refinements to reflect the input provided by participants, notices of public hearings, and opportunities to provide comments.
- 1.2 The citizen involvement procedures and processes followed for these amendments meet the requirements of citizen involvement in the land use planning process.
- 1.3 Comprehensive Plan Goals and Policies. The proposed code amendments support the applicable goals and policies of the Comprehensive Plan regarding citizen participation, economic development, urbanization, and housing needs.
- 1.4 This review criterion is met.

### Development Code Amendment - Review Criterion 2.290(2)

***The proposed amendments are consistent with Development Code policies on purpose and with the purpose statements for the base zone, special purpose districts, or development regulation where the amendment is proposed.***

### Findings of Fact and Conclusions:

- 2.1 ADC 2.290(2) requires ADC amendments to be consistent with ADC policies and purpose statements for the affected development regulations where the amendments are proposed. Below are applicable purpose statements from Article 1 – Administration and Procedures, Article 2 – Review Criteria for Nonconforming Situations, Article 3 – Residential Zoning Districts, Article 4 – Commercial and Industrial Zoning Districts, Article 5 – Mixed Use Zoning Districts, Article 8 – Design Standards, and Article 22 – Use Categories and Definitions.
- 2.2 Article 1, Administration and Procedures, ADC Purposes. Some of the general purposes of the ADC are to satisfy relevant requirements of federal law, state law, statewide goals, and administrative rules; and facilitate prompt review of development proposals and the application of clear and specific standards.
- 2.3 The proposed code amendments will bring the ADC standards into compliance with state laws and rules and will clarify the intent of existing standards to facilitate more efficient review of development proposals.
- 2.4 Article 2, Review Criteria, Nonconforming Situations Purpose. Some lots, developments, and uses in the City of Albany were lawful before this Code was adopted or amended but would no longer be allowed under the current terms of this Code. These provisions are intended to permit such nonconforming situations to continue, but not to encourage their perpetuation.

- 2.5 The proposed development code text amendments permit some nonconforming situations to continue and be improved. The regulations would continue to place some limitations on expansion of nonconforming situations and reinstatement of nonconforming uses and to require incremental improvements to nonconforming developments; however, the amended standards provide greater flexibility and reduce burdens for owners of nonconforming properties.
- 2.6 Article 3, Residential Zoning Districts Purpose Statement/Overview. The residential zones are intended to preserve land for housing. This Code preserves the character of neighborhoods by providing seven zones with different density standards. The site development standards allow for flexibility of development while maintaining compatibility within the City's various neighborhoods. These regulations provide certainty to property owners, developers, and neighbors by stating the allowed uses and development standards for the base zones. Sites within overlay districts are also subject to the regulations in Articles 6 and 7.
- 2.7 The proposed minor amendments to clarify existing standards are consistent with the purpose of the residential zones, to provide housing.
- 2.8 Article 4, Commercial and Industrial Zoning Districts – Airport Approach Purpose Statement. The Airport Approach District is intended to protect the public from excessive noise and air traffic from possible hazards on landing or takeoff.
- 2.9 The proposed minor amendments to clarify the Airport Approach height restriction standards are intended only to provide more accurate standards and remain consistent with the purpose of the Airport Approach standards to protect the public from hazards and impacts from aircraft landing or takeoff.
- 2.10 Article 5, Mixed-Use Zoning Districts Purpose Statement/Overview. This article is intended to define the character of Albany's mixed-use zoning districts. The mixed-use zones implement the concepts identified in the Balanced Development Patterns Project (2001) and the Town Center Plan (Central Albany Land Use and Transportation Study, CALUTS, 1996). These zoning districts are compatible with the Village Center Comprehensive Plan designation applied in the Central Albany area, North Albany, east of Interstate 5 on Knox Butte Road, and south of Oak Creek near Highway 99E (Pacific Boulevard). The mixed-use zones may be applied outside of the Village Center plan designation.
- 2.11 The proposed minor amendments clarify existing standards and are not substantive, and do not impact the Code's consistency with the purpose of the mixed-use zones.
- 2.12 Article 8, Design Standards – Transition to Lower Density Uses Purpose Statement. The standards of this section are intended to create transitions between multiple-family developments and nearby, lower-density residential development, to reduce the impacts of the multiple-family development on lower-density development. These impacts may include incompatible building mass and scale, reduced privacy, and loss of solar access for the lower-density development.
- 2.13 The proposed minor amendments to the existing standard are consistent with the purpose to create transitions between multi-family developments and lower-density residential developments because the transition requirement would continue to apply to properties that are developed with lower-density residential uses.
- 2.14 Article 22, Use Categories and Definitions, Purpose. The purpose of including definitions in the ADC is to provide meanings to words and phrases as they are used in the Code. In addition, Section 1.060 further states that, "Except as otherwise specified, the definitions included in Article 22 shall be used to interpret the provisions of this Code."
- 2.15 The proposed amendments to Article 22 include adding a definition of ground lease as used in the proposed amendments to the nonconforming situations standards.

## Conclusions: Development Code Amendment Criterion 2

- 2.1 The proposed development code amendments proposed in Exhibits A and B are consistent with the purpose of the development regulations proposing to be amended related to nonconforming situations standards and the minor amendments related to procedures and housing in Articles 1, 2, 3, and 22, as described in findings 2.1 through 2.9 above.
- 2.2 Based on the above analysis, this criterion is satisfied.

## Overall Conclusions

Based on the findings and conclusions in this report, the proposed legislative development code text amendments related to Nonconforming Situations standards in Exhibit A and Miscellaneous Minor Amendments in Exhibit B, meet the applicable review criteria as outlined in this report.

## Acronyms

ADC	Albany Development Code
AMC	Albany Municipal Code
DC	Development Code Text Amendment File Designation
DLCD	Oregon Department of Land Conservation and Development
EOA	Economic Opportunities Analysis to 2040
HNA	Albany's Housing and Residential Land Needs Assessment to 2040
LUBA	Oregon Land Use Board of Appeals
OAR	Oregon Administrative Rule
ORS	Oregon Revised Statutes