

ORDINANCE NO. 4749

AN ORDINANCE AMENDING ORDINANCE NO 4441, KNOWN AS "THE CITY OF ALBANY DEVELOPMENT CODE," SPECIFICALLY AMENDING ARTICLES 1 THROUGH 4 (EXHIBIT A).

The City Council hereby finds the following:

1. The City of Albany Development Code was first enacted in September of 1981, amended in October of 1982, and acknowledged with the City's Comprehensive Plan by the State Land Conservation and Development Commission in November, 1982.

2. The text of the Code has not been reviewed for compliance with state goals, the Oregon Revised Statutes, administrative rules, and the City's Comprehensive Plan since 1982.

3. The City's Comprehensive Plan and state law require periodic major updates of the Comprehensive Plan and implementing regulations.

4. The planning staff, Planning Commission, City Council, and interested citizens have met in a variety of work sessions and public hearings to review proposed changes to Articles 1 through 4 of the Development Code resulting in the attached changes.

5. The proposed changes have been specifically reviewed for compliance with state goals, the Oregon Revised Statutes, administrative rules, and the City's Comprehensive Plan and have hereby been found to be in full compliance with all of the foregoing.

6. In addition to these findings, Section 1.020 sets forth the purpose and legislative intent of all ordinance provisions, including these amendments which are intended to further satisfy these purpose and intent statements.

7. The commentary sections in attached Exhibit A, though not adopted as part of the ordinance, further contain specific findings and explanations providing more detailed justification for significant amendments.

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

Section 1: That Ordinance No. 4441 is hereby amended such that the Albany City Council does hereby adopt the attached amendments (Exhibit A) to the City of Albany Development Code.

Passed by the Council: February 11, 1987

Approved by the Mayor: February 12, 1987

Effective Date of this Ordinance: March 13, 1987

Tom Holman
Mayor

ATTEST:

Deborah
City Recorder

ARTICLE 1.

INTRODUCTORY PROVISIONS

20.01.010 Title. Sections 20.01.010 to 20.22 900 of the Albany Municipal Code (AMC) may also be cited as the City of Albany Development Code and may be referred to herein as "this Code." For numbering and reference purposes, hereafter, the AMC Chapter number "20" may be deleted as a preface to Article and Section identification.

1.020 Purpose and Legislative Intent. The purpose of this Code is to coordinate City regulations governing the development and use of land. ~~and to implement the Albany Comprehensive Land Use Plan.~~ To fulfill this general purpose, this Code is more specifically intended to do the following:

- (1) Satisfy relevant requirements of state law, statewide goals, and administrative rules.
- (2) Guide future growth and development in accordance with the Comprehensive Plan and to generally serve as the principal vehicle for implementation of the Comprehensive Plan.
- (3) Assure prompt review of development proposals and the application of clear and specific standards.
- (4) Provide for public information, review, and comment on development proposals which may have a significant impact on the community.
- (5) Guide public and private planning policies and actions to assure provision of adequate water, sewerage, transportation, drainage, parks, open space and other public facilities and services for each development.
- (6) Establish procedures and standards assuring that the design of site improvements and building improvements are consistent with applicable standards and flexible design guidelines.

- (7) Provide for review and approval of the relationship between land uses and traffic circulation in order to minimize congestion, with particular emphasis on not exceeding the planned capacity of residential streets.
- (8) Ensure that permitted uses and development designs provide reasonable protection from fire, flood, landslide, erosion, or other natural hazards as well as prevent the spread of blight, aid in the prevention of crime, and protect property values.
- (9) Protect and enhance the City's aesthetic beauty and character.
- (10) Protect constitutional property rights, assure due process of law, and give consideration in all matters to affected property owner interests in making land use decisions.

Legislative Intent. In addition to the purposes set forth above, subsequent amendments to this Code may be accompanied by staff reports, commentary sections and/or additional findings which may be used to more accurately determine the purpose and legislative intent of specific provisions.

COMMENTARY

More and more local zoning ordinances are being challenged in court as lacking a rational basis or on other constitutional grounds. Frequently the courts will review the purpose section in making their decision. In general, the Comprehensive Plan may be relied upon in establishing purpose; however, more specific objectives of the Code and subsequent amendments may be useful in explaining to any party, including a court, the rational basis for various Code provisions. All Code provisions should relate to one or more of these stated purposes.

- 1.030 Scope and Compliance. A parcel of land may be used, or developed by land division or otherwise, and a structure may be used or developed by construction, reconstruction, alteration, occupancy or otherwise, only as this Code permits. ~~In addition to complying with the criteria and~~

~~other provisions within this Code, each development shall comply with the applicable policies set forth in the Comprehensive Plan in as much as failure to do so would result in non-compliance with the Plan.~~ The requirements of this Code apply to **the property owner(s), the person(s) undertaking a development, or the user of a development, and to their person's successors in interest.**

COMMENTARY

The deleted statement was confusing and the intended meaning has been clarified in 1.050.

1.035 **Severability.** If any portion of this Code is for any reason declared by a court of law to be invalid or ineffective in whole or in part, 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 in accordance with the Type I procedure set forth in Section 2.030. 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.**

COMMENTARY

Previously the Code contained no set provisions for interpretations. By utilizing the Type I procedure, any party can request a formal interpretation and, when there is disagreement, appeal that interpretation in accordance with the appeals procedure of Article 4.

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

COMMENTARY

The added language makes it clear that most permit decisions do not require findings demonstrating compliance with Comprehensive Plan policies except as required by the relevant criteria of this Code. However, State law requires that conflicts between zoning provisions and the Comprehensive Plan be resolved in favor of the Plan where it can be demonstrated that the intent of the Plan would otherwise be violated. Thus, the last sentence allows any party to raise objections or point out conflicts, in which case the proponent of the request would be required to address the conflicts by either modifying the proposal or presenting acceptable findings that the conflicts can be resolved by reliance on other overriding provisions of the Comprehensive Plan.

1.060

Development Permits Required.

- (1) Except as excluded by 1.070, no person shall engage in or cause to occur a development for which a development permit has not been issued. ~~either as an attachment to the Building Permit or as a separate permit for developments not immediately involving a Building Permit.~~

- (2) ~~The Building Official shall not issue a permit for the construction, reconstruction, or alteration of a structure or a part of a structure for which a development permit has not been issued.~~ Whenever this Code requires a development permit, no other permit issued by the City shall be approved until the development permit has first been approved by the Director.
- (3) Development permits shall be issued by the Planning Director pursuant to the provisions of this Code. The Director shall not issue a development permit for the division, improvement or use of land that has been previously divided in violation of state or local codes or otherwise developed in violation of this Code ~~regardless of whether the permit applicant created the violation (unless the violation can be rectified as part of the development).~~ is corrected prior to or concurrent with issuance of required permits.
- (4) ~~Unless appealed, a decision on a development permit shall be final upon expiration of the period provided for filing an appeal as outlined in this Code, or if appealed, upon rendering of the decision by the reviewing body.~~ No action may be taken in reliance upon a decision granting a development permit until all applicable appeal periods have expired or while an appeal to a City body is pending. However, notwithstanding the foregoing, the action allowed by the decision may be initiated if:
- (a) There were no objections to the decision or if all objections were resolved at a hearing or in writing subsequent thereto; and
 - (b) The applicant has executed a release and indemnity agreement in a form satisfactory to the City Attorney which protects the City from all claims of the applicant resulting from the issuance of the development or building permit.

COMMENTARY

This language clarifies when action on a development project may begin following a decision to approve the project. In most routine decisions, there are no objectors and by signing the release and indemnity agreement, the developer can proceed immediately following the decision. However, in cases where there are unresolved objections, the chances for appeal are such that it is probably inappropriate to allow a project to proceed until the objectors have an opportunity to pursue an appeal route. If the appeal reaches the City Council, their action is considered final and the project can proceed immediately if approved. Appeals of Council decisions to LUBA involve different rule requirements, including procedures for posting of a bond in order to stop a project from proceeding. Therefore, it is not necessary for the City to adopt duplicative proceedings for dealing with appeals from Council actions.

- (5) All development permits shall expire one year from the date of issuance, unless **substantial** construction or operation of the development has begun within that time and has continued toward final completion, ~~--A development permit may be revoked by the Director if a project has been discontinued for more than one year or unless development proceeds in accordance with an approved phasing plan, or unless an extension has been granted by the Director approval authority upon request of the applicant. Extensions of time shall not be approved where the effect of doing so would violate any provisions of this Code including any amendments made thereto following the effective expiration date. In no instance shall extension of time exceed a total of 36 months from the effective date of project approval.~~

COMMENTARY

These changes make it clear that permits are considered expired without the necessity of formal revocation by the Director (such action has never been necessary in any case). The added language would prevent an applicant from requesting a continuation of an inactive permit for purposes of circumventing Code amendments or other rulings which may adversely affect a project. It also gives the Director both the authority and the limitations for approval of time extension requests. Previously, most of these requests have been heard by the Hearings Board or Planning Commission.

1.070 Exclusions from Development Permit Requirement. Activities and developments listed below are excluded from the requirement for a development permit but are nevertheless subject to the provisions of the Code where applicable:

- (1) Detached single family dwellings and two unit dwellings.
- (2) Accessory buildings and building additions of less than 500 square feet which conform to the provisions of this Code and the Uniform Building Code.

COMMENTARY

This will allow small additions with only a building permit for structures which would otherwise require a Site Plan review.

- (3) Landscaping and routine property maintenance. ~~or other treatment or use of the land not involving a structure except grading and filling in a flood plain area and~~

COMMENTARY

This language was ambiguous and duplicative.

- (4) Improvement of parking areas containing less than 1,000 square feet and otherwise meeting the provisions of this Code.
- (5) A change internal to a building or other structure or usage of land that does not constitute ~~result in~~ a change of use as listed in Article 5.
- (6) The Director shall also waive Site Plan Review requirements for a change in use within an existing structure when the following criteria are satisfied :
 - (a) No structural expansion in excess of 500 feet or additional exterior storage is proposed.

- (b) The use will not create additional adverse affects for abutting properties or the neighborhood (e.g. objectionable conditions; visual, noise, and/or air pollution; increased parking requirements; or increased public facility requirements).
- (c) Any non-conformities with the provisions of this Code have been addressed (i.e. compliance with sign, landscaping, and parking requirements except where restricted by building location or limiting site characteristics).

COMMENTARY

This is a significant change which will allow the Director to waive Site Plan Review requirements when a proposed new use closely matches the previous use in terms of impacts and function and the property is reasonably conforming in all other respects to this Code or will be upon completion.

- (7) An emergency measure necessary for the safety or protection of property when authorized by the City Manager with written notice to the City Council.
- (8) ~~Erection of a tent or portable structure for non-commercial use up to ten days.~~ Any temporary use of land of up to 30 days duration such as a promotional event, festival, carnival, or outdoor sale which conforms with all other requirements of this Code and other applicable City regulations and public health and safety requirements, some of which may further limit such uses in terms of location, scope, and duration.

COMMENTARY

This clarifies the status of such temporary uses as fairs, festivals, and promotional events. It also makes the ordinance consistent with itinerant merchant provisions of the AMC and recognizes other temporary commercial enterprises such as Christmas tree sales.

- (9) Agricultural uses as permitted outright in Article 5.

- (10) The establishment, construction, **alteration, or maintenance or-termination** of a public facility authorized by the City Engineer ~~that directly-serves-a-development,~~ including streets, **highways, traffic control devices,** drainage ways, **sanitary and storm** sewers, pump stations, water lines, electrical power or gas distribution lines, or telephone or television cable systems, **including construction staging areas of less than six months duration,** but not including major substations, treatment facilities, and storage tanks, reservoirs, and towers.
- (11) **Excavation and backfill for foundations and all other** excavation or filling of land involving 50 cubic yards or less (~~except-when-used-as backfill-or-excavation-for-foundations~~) **which does not adversely affect drainage patterns and is not located within a floodplain or slope area as regulated further in Article 11.**

COMMENTARY

Excavation or fill in a floodplain requires special floodplain review under the provisions of Article 11. New regulations governing excavation and fill in hillside areas will also be covered in Article 11.

- (12) ~~Outside-storage-of-materials-in-conformance-with-the-provisions-of-this Code-and-other-sections-of-the-Municipal-Code-and-provided-with-screening where-required.~~

COMMENTARY

This language was ambiguous and conflicted with provisions which require a review of storage uses.

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

COMMENTARY

Increased flexibility can be maintained by continuing to establish fees and fee payment policies (i.e. when refunds can be granted, fees waived, etc.) by establishing these by separate resolution.

1.080 Validity of Prior Approval.

- (1) The following actions initiated prior to the adoption of this Code, or **prior to the adoption of any amendment which would otherwise restrict the activity**, may be continued and completed according to prior approvals granted by the City and in accordance with requirements in effect at the time approval was granted:
 - (a) Completion of any construction activity for which a building permit has been issued ~~prior to the adoption of this Code~~ provided that such work continues to be in conformance with the requirements under which it was issued. ~~and provided further that~~ Such work **shall** ~~is~~ progressing in a timely manner and **not be by-not-having been** discontinued for a period of more than one year after which time a **new** development permit shall be required. ~~or an extension of the previous approval granted by the approval authority;~~
 - (b) Completion of final subdivision plat, final **manufactured mobile** home park plan, and final PUD plan for which preliminary or interim approval has been granted ~~by the Planning Commission~~ provided such plats and plans are submitted within **one year of previous approval** ~~180 days of adoption of this Code~~ or are submitted in accordance with a previously approved phasing plan under which **building** construction has begun **and has progressed in a timely manner** on at least one phase.
 - (c) Construction of any subdivision, PUD, or **manufactured mobile** home park, which:
 - i) has received final ~~Planning Commission~~ approval (provided that such work is commenced within one year of final approval and is completed within two years of final approval) or
 - ii) **wherein substantial construction activity has not been discon-**

~~tinued for more than 24 consecutive months.-in-accordance-with-an approved-phasing-plan.--Extensions-to-this-time-requirement-may-be granted-by-the-approval-authority-upon-request-by-the-applicant;or~~

(d) Construction of any structure or facility for which a Conditional Use Permit, Variance, or Site Plan approval has been granted provided such work is commenced within one year of approval and is completed within two years of approval. ~~Extensions-to-this-time requirement-may-be-granted-by-the-approval-authority-upon-request by-the-applicant.~~

(2) Extensions of time under Sections (a)-(d) above may be granted by the Director for up to two additional years provided there are no requirements in effect which would otherwise restrict project development and provided further that no extensions shall be granted which extend beyond 36 months from the effective date of project approval.

~~(3) Except-as-otherwise-provided-in-this-Code,-all-other-permits,-approvals, authorization,-or-permission-in-any-form-given-prior-to-the-enactment of-this-Code-by-the-City-or-any-Department-thereof,-which-in-any-way pertains-to-an-action-for-which-a-development-permit-is-required-shall be-invalid.~~

**** EXISTING SECTIONS 1.090 - 1.130 HAVE BEEN DELETED. THESE SECTIONS ARE REORGANIZED AND REWORDED AS FOLLOWS:**

1.090 Non-Conforming Situations - General.

(1) Within the zoning districts established by this Code, there exist lots, developments, and uses which were lawful before this Code was adopted or amended, but which would otherwise be prohibited or restricted under the current terms of this Code. It is the intent of these provisions to permit such non-conformities to continue, but not to encourage their perpetuation. Hereafter, all such non-conformities are referred to inclusively as "Non-Conforming Situations."

- (2) Any legally established non-conforming situation may be continued as lawful unless and until terminated as provided in Section 1.110, subject to restrictions as to expansion, alteration, and change of use as provided in this article.

COMMENTARY

This new language merely sets forth basic purpose and intent of the non-conforming provisions. The degree to which non-conforming situations should be accommodated raises several policy issues which these provisions attempt to address.

1.100 Applications for Review of Non-Conforming Situations.

- (1) Except as otherwise provided herein, modifications to non-conforming situations require that an application for a development permit be filed with the Planning Department for such modification.
- (2) If a modification to a non-conforming situation will not increase the degree of non-compliance with the provisions of this Code as determined by the Director, the modification shall be considered under a Type I procedure.
- (3) A development which is non-conforming due to failure to meet current Development Code requirements (i.e. landscaping, parking, etc.) may be modified, enlarged, or extended under a Type I procedure provided that the Director finds that every reasonable effort has been or will be made to bring the development site into conformance with this Code in accordance with an approved development plan.

COMMENTARY

A common occurrence which this section addresses is an expansion of a building or a lot which has substandard landscaping. This language gives the Director and Hearings Board some discretion to approve modifications under Type I procedures without full compliance with current landscape standards provided a "reasonable effort" is made to upgrade the site.

(4) If, however, a proposed modification to a non-conforming situation may result in increasing the degree of non-compliance with the standards of the Code as determined by the Director, a Type II procedure shall be initiated for review of the proposal in accordance with the provisions of this section and where appropriate the provisions for variances set forth in Article 15.

(5) Approval of a modification to a non-conforming situation shall be based upon compliance with the following criteria:

(a) Non-Conforming Situations Generally

1. The requested modification will not create additional adverse effects for abutting properties or the neighborhood (e.g. objectionable conditions; visual, noise, and/or air pollution; increased vehicular traffic, dust, or street parking).
2. To the maximum extent possible, as determined by the approval authority, the requested modification meets all other applicable Code standards, or necessary variances are granted.
3. The existing non-conforming situation was not created illegally or without required approvals.

(b) Non-Conforming Uses

1. A non-conforming use may be modified through a change of use within a building or intensification or expansion of the use only upon findings of compliance with criteria 1-3 above and subject to the following additional criteria:
 - a. A non-conforming use may not expand onto adjoining parcels or lots which were not previously in use by the same non-conforming activity.

b. Structural expansions shall be limited to the following:

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

c. Non-conforming uses and buildings may expand one time only.

(c) Non-Conforming Lots

A non-conforming lot is any lot of record which was created in accordance with City requirements in effect at the time of creation, and is non-conforming due to current code requirements for area, width, or depth, or public improvement requirements that are currently applicable in the district. These lots may be used and further developed only as follows and without additional application under the provisions of Section 1.100 above:

1. Except for non-conformities due to lot size or configuration, the proposed development conforms to all other applicable zoning district regulations. Further, no division of lots or lot line adjustments shall be made which will leave remaining any separate lot with an area less than the requirements stated in this Code or leave an area or dimension less than that which already was non-conforming.
2. Any single vacant lot of record or parcel which is non-conforming due to a lack of public facilities (i.e. unimproved street, lack of sidewalks, sewers, or storm drainage) may be developed upon meeting the other requirements of this Code, only after the Director has reviewed the need to construct public facilities which may be necessary to support the

proposed development and the immediately surrounding area. Upon such review, the Director may take any of the following actions:

- a. Require construction of the needed public facilities commensurate with the proposed development.
- b. Require that the property owner petition the City Council to construct the needed public facilities through formation of a Local Improvement District. Such petitions shall include a "Waiver of Remonstrance" binding future owners and successors to participate in the district formation for a period not to exceed ten years.
- c. Waive any obligation to participate in the improvement as a condition of development approval where it is determined that the improvement is not timely and is not likely to be needed to serve the area within at least five years, or where it is determined that the scale of the proposed development is not of sufficient size or impact to warrant all or a portion of the public facility construction.

Any decision of the Director can be appealed under the provisions of Article 4.

COMMENTARY

Provisions 1 and 2 above allow for the outright use of non-conforming lots without special review as long as the conditions described are present. Variation from these conditions would necessitate a Type II review. The public facility construction options under 2.a.-c. provide for more flexibility and application of reasonable judgement.

- (5) In granting approval for a modification to a non-conforming situation under either a Type I or Type II procedure, the approval authority may

attach any conditions deemed appropriate in order to further achieve the purposes of this Code and the Comprehensive Plan.

COMMENTARY

For the most part, the above section is a reordering of existing provisions into a more logical and all-inclusive format. The authority referred to in (5) above probably already exists; however, applicants sometimes question the City's authority to place conditions of approval on these actions.

1.110 Terminations of Non-Conforming Situations

- (1) The non-conforming use of a building, structure, or land shall be deemed to have terminated if the building, structure, or land ceases to be occupied by a permitted or legally non-conforming use for any reason for a continuous period of one year. Extensions of up to two additional years may be granted under the Type II procedure if the approval authority finds that conversion to any conforming use will result in a substantial economic loss and that the proposed use will result in greater conformance with the development standards of the zone; or the approval authority finds that immediately surrounding land uses are similarly non-conforming and proposed use will be compatible with both the non-conforming and conforming uses in the review area.**

- (2) Non-conformance with any development standard or condition other than building setback, coverage, or height shall be deemed terminated if the building, structure, or land ceases for any reason to be occupied by a permitted or legally non-conforming use for a continuous period of one year.**

COMMENTARY

If a property which is non-conforming due to substandard landscaping or parking is vacant for more than one year, full compliance with these standards would be required or variances granted before a new user could occupy the property.

- (3) Any non-conforming use or development dependent upon a building or structure which is substantially damaged or becomes deteriorated to the extent that it has been declared a "dangerous building" and ordered demolished pursuant to the Albany Dangerous Building Code (AMC Chapter 18.16) shall be deemed terminated upon such destruction or declaration and order.
- (4) Any non-conforming use or development dependent upon a building or structure which is substantially damaged or destroyed by any cause to the extent that the cost of repair or restoration of the building or structure would exceed 50 percent of its fair market value shall be deemed terminated. Cost of repair or restoration shall be determined by the Building Official. Fair market value shall be determined by either the most current assessor's records or by independent professional appraisal in a form satisfactory to the City. Such determinations of value and cost are appealable to the Building Board of Appeals. Exceptions to this standard may be applied for under the Type II procedure. The approval authority may allow additional degrees of reconstruction upon finding that conversion to any conforming use will result in a substantial economic loss and that the proposed use will result in greater conformance with the development standards of the zone; or the approval authority finds that immediately surrounding land uses are similarly non-conforming and the reconstructed use will be compatible with both the non-conforming and conforming uses in the review area.

COMMENTARY

Section 1.110 contains explicit provisions to clarify when a non-conforming situation is considered terminated. It replaces provisions previously covered in Sections 1.090(1-2) and 1.100(1). This language closely parallels language from the City of Salem Code and similar provisions in the Springfield and Corvallis Codes. The most significant change from current language is found in subsection (4) which would prohibit reconstruction of a non-conforming building which has been substantially damaged or destroyed. This concept is standard in most jurisdictions versus Albany's existing provision allowing reconstruction regardless of the extent of damage. The policy decision which must be made is whether non-conforming uses should be encouraged to be perpetual or whether they should merely be tolerated with certain restrictions

until they are no longer viable due to vacancy, deterioration, or destruction. The latter approach is generally more common. A more restrictive approach used in some cities is an amortization or phasing out of non-conforming uses over a 5- to 10-year period. There are currently a significant number of non-conforming uses in Albany including industrial uses in residential zones (i.e. Albany, Cabinets and Oregon Bartile), commercial uses in residential zones (i.e. Pegastian Press and Geary Street Market), and several multiple family projects which exceed present zoning densities. If such uses were destroyed by more than 50% of their improved value, re-establishment could only occur by rezoning the property.

The last part of this section provides a hardship relief alternative to terminating non-conforming uses which have been destroyed. This language should be considered optional since it may not be desirable to encourage hardship relief in these situations. This is a policy decision which must be addressed by both the Planning Commission and Council.

ARTICLE 2.

PROCEDURES

2.010 Development Permit Procedures.

- (1) An application for a development permit shall be processed under a Type I, II, III, or IV procedure, as described in this Article.
- (2) ~~When an application and proposed development plan is submitted, the Director shall determine the type of procedure the Code specifies for its processing.~~ Where there is a question as to the appropriate type of procedure, the Director shall determine the type procedure to be utilized based upon the most similar development permit procedure specified by this Code or other established policy.
- (3) Where a proposal involves more than one application for the same property, the applicant(s) may submit concurrent applications which shall be processed simultaneously in accordance with the highest number procedure specified. When concurrent applications are so received and accepted as complete, the 120-day requirement of Section 2.016(2) shall apply as if a single application had been made.

COMMENTARY

This provision authorizes an existing local practice which has been mandated by State legislation for inclusion in local procedures prior to Periodic Review. It will allow fast track approvals of projects needing, for example, a Zone Change, Variance, and Site Plan approval.

- 2.011 Coordination of Development Permit Procedure. The Director shall be responsible for the coordination of the development permit application and decision-making procedure and shall issue a development permit to an applicant whose application and proposed development is in compliance with the provisions of this Code. Before issuing the development permit, the Director shall be provided with the **information detail** required to determine full compliance with the requirements of this Code.

2.012 Pre-Application Conference. ~~An~~ **The Director and the** applicant or the applicant's authorized representative shall ~~request the Director to~~ arrange a pre-application conference, unless the applicant and Director agree that the conference is not needed. The purpose of the conference shall be to acquaint the applicant with the substantive and procedural requirements of this Code; to provide for an exchange of information regarding applicable elements of the comprehensive Plan and development requirements, to arrange such technical and design assistance as will aid the applicant, and to otherwise identify policies and regulations that create opportunities or pose significant constraints for the proposed development. Any multiple family project involving more than five dwelling units or subdivision or planned unit development involving more than 2 acres requires a rough sketch conceptual plan to be reviewed in the pre-application conference. Upon the request of the applicant, the Director shall provide the applicant with a written summary of the conference including confirmation of the procedures to be used to process the application, a list of materials to be submitted, and the criteria and standards which may apply to the approval of the application.

2.013 Application Contents. An application for a development permit shall consist only of the items required by this Code ~~and any higher authority (i.e. state or federal requirements)~~ and the following:

- (1) An explanation of intent, stating the nature and proposed use of the development, pertinent background information and other information that may have a bearing in determining the action to be taken, including submission of detailed findings where such are required by the provisions of this Code.
- (2) ~~Evidence~~ **Signed statement indicating** that the property affected by the application is in the exclusive ownership or control of the applicant, or that the applicant has the consent of all partners in ownership of the affected property.

- (3) ~~Legal~~ **Property** description and assessor parcel map(s) number(s) of the property affected by the applications.
- (4) Additional information required by other sections of this Code because of the type of development proposal or the area involved.
- (5) As many duplicates of the above information as may be requested by the Director to facilitate expeditious review of the application.
- (6) Submission of application fees as established by the City Council. ~~by separate resolution.~~

2.014 Submission of Development Permit Application. Application materials shall be submitted to the Director who shall have the date of submission indicated on each copy of the materials submitted. Applications for Development Permits requiring a public hearing shall be submitted at least 35 days in advance of the next regularly scheduled public meeting of the hearings body **unless waived by the Director, at the Director's discretion, when adequate notice can otherwise be achieved.** If the Director determines that the application is incomplete or the necessary attachments have not been submitted, the Director shall notify the applicant ~~of the negative determination~~ by mailing or otherwise conveying an explanation to the applicant at least ~~28~~ 21 days prior to the hearing date. An application ~~for~~ which **has been determined to be incomplete may be supplemented or amended.** ~~a negative determination has been made may be resubmitted after revision to overcome the reasons for the negative determination.~~ However, in cases where a public hearing is required, **all such re-submissions shall be made at least 21 14 days** prior to the public hearing **unless the Director determines that materials submitted later will have no bearing on the public hearing.** ~~If a development permit application is complete and in conformance with the provisions of this ordinance, the Director shall accept it and note the date of acceptance on the required copies.~~

COMMENTARY

These changes are made to reflect actual current practice and to allow greater flexibility in scheduling public hearings.

2.015 Referral and Review of Development Permit Applications. Within 5 working days of accepting an application, the Director shall do the following:

- (1) Transmit one copy of the application, or appropriate parts of the application, to each ~~referral~~ agency and city department identified by the Director as having possible interest in reviewing and commenting on the development proposal, and including those agencies and departments responsible for determining compliance with state and federal requirements. If the ~~referral~~ agency or city department does not comment within ~~14~~ 10 days of a completed submission ~~unless an extension of up to 14 days is requested by the agency and granted by the Director,~~ the ~~referral~~ agency or city department is presumed to have no comments or objections. The Director ~~shall~~ **may** grant an extension of up to 14 days to a reviewing department or agency ~~only~~ if the application involves unusual circumstances.
- (2) Transmit the development permit application to other governmental bodies where approval of other governmental bodies is required prior to granting a development permit.
- (3) Provide for notices to be ~~given sent to affected parties~~ and hearings to be established as required under Type II, III, and IV procedures established in Sections 2.030-2.060.

2.016 Development Permit Decision.

- (1) ~~Within 30 days of the date of accepting a permit application not involving approval by other governmental bodies or within 10 days of receiving required approval by other governmental bodies, the Director shall grant or deny the development permit. The decision of the~~

~~Director shall be based upon the application, the evidence, comments from referral agencies, and approval required by other governmental bodies. The Director shall notify the applicant and, if required, others entitled to notice of the disposition of the application. The notice shall indicate the date that the decision will take effect and describe the right of appeal pursuant to Article 4.~~

- ~~(2) The Director shall issue a development permit if applicable approvals from other governmental bodies have been granted and the proposed development otherwise conforms to the requirements of this Code.~~
- ~~(3) The Director shall deny the development permit if required approvals from other governmental bodies are not obtained or the application otherwise fails to comply with code requirements. The notice shall describe the reason for denial.~~
- ~~(4) The decision of the Director shall be final upon being rendered subject only to any appeals filed under the provisions of Section 4.150.~~
- (1) Within five days of final action on a development permit application, the Director shall provide written notice of the decision to the applicant and any other parties entitled to notice. The notice shall state the effective date of the decision, describe the right of appeal, and summarize the reasons for the decision and any conditions of approval or indicate where such can be reviewed in detail.

COMMENTARY

This section more concisely states virtually the same things covered in previous Sections 1-4. In actual practice, these notices go out within 48 hours of the decision.

- (2) The City shall take final action on all development permit requests which are wholly within the authority and control of the City within 120 days of receipt of a completed application. However, by agreement with the applicant, this deadline may be extended for any reasonable time mutually agreed upon.

COMMENTARY

This provision has been added to indicate intended compliance with recently revised State law requiring final action on all development permits with 120 days of submission. Subsequent procedural amendments are proposed to insure that this time frame can be achieved which must take into account the time required for possible local appeals.

2.017 Action on Resubmission of Denied Application. An applicant may make appropriate alterations to a proposal which has previously been denied and resubmit it with a payment of any required fee. If a previously denied application is resubmitted within one year of the date denied, ~~previous approvals~~ **recommendations of advisory bodies, departments, and agencies** need not be ~~reconsidered~~ **requested again** unless the Director finds that changed conditions or changes in the proposal warrant such reconsideration. ~~Other provisions of this Code may establish a minimum amount of time between the date of denial and resubmission of some types of development proposals.~~

2.020 Summary of Procedure Types. For purposes of administering the provisions of this Code, there are ~~hereby established~~ four types of procedures for processing all development permits. The four procedures include but are not limited to the following activities:

Type I Procedure - **Code interpretations, excavation and fill permits, lot line adjustments, Type I variances, minor partitionings, site plan reviews, Type I modifications to non-conforming situations, preliminary and final planned unit development PD plans, final subdivision plats, mobile home parks, and all other development permits not included in a Type II, III, or IV review.**

Type II Procedure - Major partitionings, Type II variances, conditional use permits, **Type II modifications to non-conforming situations, final PD plans, and Greenway district use permits, and Type II Planned Industrial Developments.** ~~floodplain excavation and/or fill.~~

Type III Procedure - Interim **planned unit development** PB plans, preliminary subdivisions plats, future street plans, **Type III Planned Industrial Developments, and Type III Variances.**

Type IV Procedure - Zone changes, comprehensive plan amendments, vacations, annexations (with some exceptions, see Article 3).

2.030 Type I Procedure.

- (1) Under the Type I procedure, an application shall be processed by the Director without need for public hearing or notification of other property owners. When both the applicant and Director agree, a Type I review may be referred directly to the Hearings Board or Planning Commission for review.
- (2) Conditions and/or restrictions may be applied to the approval of any development permit granted under a Type I procedure in accordance with the relevant ~~other~~ provisions of this Code.
- ~~(3) A decision of the Director under the Type I procedure may be appealed in accordance with Article 4 by an affected party. The criteria for reaching a decision under a Type I Procedure including appeals shall be based on compliance with the provisions of this Code.~~

COMMENTARY

All appeal provisions will be included in Article 4.

2.040 Type II Procedure.

- (1) Except as provided by subsection (2) below, under the Type II procedure, an application shall be processed by the Director without ~~need for~~ a public hearing. If the Director determines that the development proposal appears to meet the required standards, the Director shall mail notice of the proposal ~~for which approval is forthcoming~~ to all abutting property owners and those separated from the development site

by a public utility, street, or railroad right-of-way except for Conditional Use Permits which shall require notices to be sent to all property owners within 300 feet. The applicant shall supply a list of the names and addresses of the owners of property to receive the notice. The mailing list must be certified by the applicant as accurate and complete as found from current County Assessor records.

The **Director's** notice shall summarize the standards and facts related to the decision and invite persons to submit information relevant to the standards that are pertinent to the proposal within ~~10~~ **7** days of notification giving reasons why the application should or should not be approved or proposing modifications the person believes are necessary for approval according to the standards. The notice also shall advise the person of ~~his~~ the right to **request** a hearing. The applicant may be required by the Director to post notices as set forth in Section 4.035. ~~If required, the notice shall be posted beginning within 3 days of filing the applications and remain posted for 7 days or the date of a scheduled hearing, whichever is longer.~~

- (2) **The applicant, the Director, or any party entitled to notice or otherwise affected by the proposed action may initiate a public hearing on a Type II proposal. The Director shall, within 30 days of receiving a written request for a public hearing, set a date for a public hearing before either the Planning Commission or Hearings Board and mail notice of such to those same persons specified in (1) above.**

- (3) ~~If the Director contemplates that persons other than the applicant can be expected to question the applications's compliance with this Code, or if any property owner entitled to notice under subsection 1 requests a public hearing in writing, the Director will initiate a public hearing on the application before the Hearings Board. The Director shall set a date for the public hearing and mail notice to those same persons receiving the original notice. The Director at his discretion may choose to initiate a public hearing and provide notice of such as required herein without making a preliminary determination and mailing notice of such as provided in subsection (1). At the public~~

~~hearing, the applicant and interest persons may present information and arguments relevant to the proposal including reasons why the application should be approved or denied or proposing modifications the person believes necessary for approval.~~ If no hearing is conducted, the Director shall within 30 days of receipt of the completed application, issue a decision in writing with notice to the applicant and all persons who requested notice in writing or filed written comments.

COMMENTARY

This simplifies previous language with the same intent. It also gives the Director the flexibility to by-pass the Hearings Board and refer the matter to the full Planning Commission for expediency or where major issues are likely to be decided. Procedural language which has been deleted is covered adequately in Article 4.

- (4) The Director, ~~or~~ Hearings Board, ~~or~~ Planning Commission shall review the application, written comments, and testimony, if any, and make a finding for each point in dispute and make a decision on the application by approving, conditionally approving, or denying the application. Conditions and/or restrictions may be applied to the approval of any development permit granted under a Type II procedure in accordance with the relevant ~~other~~ provisions of this Code. ~~A decision of the Director, Hearings Board, may be appealed by the applicant, appealed by a person who responded to the notice or, if a hearing was conducted, appealed by a party of the hearing in accordance with Article 4.~~

COMMENTARY

All appeal provisions will be included in Article 4.

2.050 Type III Procedure.

- (1) Under the Type III procedure, an application is scheduled for public hearing pursuant to Article 4 before either the Hearings Board or Planning Commission at the Director's discretion. The Director shall notify all property owners within 300 feet of the subject property.

The applicant shall supply a list of the names and addresses of the owners of property to receive the notice. The mailing list must be certified by the applicant as accurate and complete as found from current County Assessor records. The applicant shall also post notices as set forth in Section 4.035. ~~The notice shall be posted beginning at least 7 days prior to the Planning Commission hearing, and remain until a Commission decision is rendered.~~

- (2) At the public hearing, the staff, applicant, and interested persons may present information relevant to the criteria and standards pertinent to the proposal, giving reasons why the application should or should not be approved or proposing modifications and the reasons the person believes the modifications are necessary for approval. The **reviewing body** ~~Planning Commission~~ may attach certain development or use conditions in granting an approval **under the Type III procedure in accordance with the relevant provisions of this Code.** ~~if the Planning Commission determines the conditions are necessary to avoid imposing burdensome public service obligations on the City; to mitigate detrimental effects to others where such mitigation is consistent with an established policy of the City; and to otherwise fulfill the criteria for approval.~~ In approving or denying a Type III Development request, the **reviewing body** ~~Planning Commission~~ shall make findings addressing relevant criteria of this Code.
- (3) ~~A decision of the Commission may be appealed in accordance with Article 4.~~

2.060 Type IV Procedure.

- (1) Under the Type IV Procedure, an application is scheduled for public hearing pursuant to Article 4 before **either the Hearings Board or the Planning Commission at the Director's discretion.** Where required, the Director shall cause notice to be published pursuant to Article 4. **and In addition, the Director shall notify all affected property owners whom the Director determines have cause to be interested including at least those** within 300 feet of the subject property. The applicant

shall supply a list of the names and addresses of the owners of property to receive notice. The mailing list must be certified by the applicant as accurate and complete as found from current county Assessor records. The applicant shall also post notices as set forth in Section 4.035. ~~The notice shall be posted beginning at least 7 days prior to the Planning Commission hearing date, and shall remain until the Commission decision is rendered.~~

- (2) At the public hearing, the staff and interested persons may present testimony relevant to the proposal. If pertinent, they may give information on whether the proposal does or does not meet appropriate criteria for approval as specified in the sections of this Code pertaining to the type of request involved; or they may give proposals for modifications they consider necessary for approval. ~~If criteria are involved,~~ **The reviewing body Planning Commission shall make adopt a finding for each of the criteria applicable. A written report shall be submitted to the City Council.**

- (3) If the Planning Commission **or Hearings Board** has recommended against a proposal, the City Council will not consider the proposal except on appeal by the applicant. For a proposal on which the **Hearings Board or Planning Commission** has made a favorable recommendation, the City Council shall conduct their initial review within 45 days. The City Council shall set a date for the review or designate the City Manager to do so. An applicant may request a review delay of up to six months. At the Council meeting, the staff shall review the report and findings of the **Hearings Board or Planning Commission** and provide other pertinent information.

- (4) The Council may, at its discretion, review the application solely on the record **of the previous hearing at the Planning Commission level,** or call for a **de novo** public hearing. For a hearing, the form of notice and persons to receive notice are the same as for Planning Commission **or Hearings Board** review. Council hearing notices shall be provided by the City Recorder. Interested persons shall be given the opportunity to present testimony and information relevant to the proposal and make

final arguments why the matter should or should not be approved and, if approved, the conditions desired in approving the action.

- (5) To the extent that a finding of fact is required, the City Council shall ~~make~~ adopt a finding for each of the criteria applicable and in doing so may sustain or reverse a finding of the Planning Commission or **Hearings Board**. The City Council may delete, add, reject, or modify any of the provisions pertaining to the proposal or recommendation of the Planning Commission or **Hearings Board**, or attach certain development or use conditions in accordance with the relevant provisions of this Code. ~~if the City Council determines the conditions are appropriate to fulfill the criteria for approval.~~
- (6) ~~Decisions to approve a Type IV request shall be by passage of an ordinance.~~

COMMENTARY

Type III and Type IV procedures. Again, the Director's option of referring decisions to either the Planning Commission or Hearings Board is offered as a means to expedite decisions and to balance the work load for both hearing bodies.

2.070 Legislative Actions.

- (1) Nothing in this Code shall limit the authority of the City Council to make changes in the Comprehensive Plan or Development Code provisions and designations by legislative act where such changes have broad application and where quasi-judicial proceedings would be unnecessary or impractical.
- (2) The Planning Commission and/or City Council may order a review and/or public hearing on any legislative matter.
- (3) Any property owner or resident of the City may petition the Planning Commission to initiate a public hearing on any legislative matter (such as an amendment to the Development Code text).

2.071 Legislative Hearing Notice. Notice of a review or hearing on a legislative decision under this Code need not include a mailing to property owners. The Manager or Director may prepare a notice designed to reach persons believed to have a particular interest and to provide the general public with reasonable opportunity to be aware of the hearings on the proposal.

2.072 Information at Planning Commission Hearing. Interested persons may submit written recommendations and comments in advance of the hearing and this information shall be available for public inspection. At the hearing, written recommendations and other information will be received and oral statements will be permitted.

2.073 Planning Commission Recommendation. In preparing its recommendation, the Planning Commission may do any of the following:

- (1) Require the proponent to identify the provisions of the Comprehensive Plan that govern the decision and prepare findings describing how the proposal complies or fails to comply with these plan provisions.
- (2) Review the nature of the proposal and describe whether the proposal warrants processing as a legislative matter.
- (3) Prepare a recommendation and make findings in support of such recommendations.

2.074 City Council Legislative Action.

- (1) The City Council may limit the nature of the information it will receive at a legislative review and may establish separate rules for consideration of each of the following:
 - (a) Compliance with the Plan.
 - (b) Appropriateness of the legislative process.
 - (c) Policy changes or refinements proposed.

- (2) In reaching a decision on a legislative matter, the Council may adopt findings applicable to the relevant criteria in support of the decision.
- (3) After confirming, amending, or reversing the recommendations of the Planning Commission, the City Council may take any of the following steps:
 - (a) Enact or defeat ~~an ordinance on~~ all or part of the proposal under consideration.
 - (b) Refer some or all of the proposal back to the Planning Commission for further consideration.

2.075 Notice to DLCD on Legislative Matters.

- (1) Except as noted below, the Director shall cause notice to be given to the Department of Land Conservation and Development for adoption of or amendment to the Comprehensive Plan, the Development Code, or any other land use regulation. The notice shall be provided at least 45 days before the proposed final hearing on adoption and the notice shall contain information sufficient to inform the Department as to the effect of the proposal.
- (2) If the City determines that the statewide goals do not apply to a particular proposed amendment or new regulation, notice under subsection (1) of this section is not required. In addition, the City may consider an amendment or new regulation with less than 45 days' notice if the City Council determines that there are emergency circumstances requiring expedited review.

2.076 Decision Notice Requirements.

- (1) Within five working days following adoption of an amendment or new land use regulation, the Director shall forward to the Department of Land Conservation and Development a copy of the adopted text and findings

and notify the Department of any substantial changes which may have occurred in the proposal since any previous notification to the Department.

- (2) In addition, within five working days, the Director shall also forward general notice of the decision to any person who participated in the proceedings leading to adoption of the proposal and who requested in writing that they be given such notice. Such notice shall briefly describe the final action taken, state the date and effective date of the decision, and explain the requirements for appealing the action under ORS 197.830 to 197.845.

COMMENTARY

Provisions 2.075 and 2.076 closely parallel recently amended State law found in ORS 197.610 to 197.615. It is not necessary that these provisions be included here since the City cannot modify their application; however, wherever possible, it is intended that this Code can be used as a "one-stop document" to avoid the necessity of referring to State law. This will aid both the applicant and the staff in insuring that all required procedures are followed.

ARTICLE 3.

ANNEXATION, ZONE CHANGE, COMPREHENSIVE PLAN AMENDMENT, AND VACATION PROCEDURES

3.010 Annexation Procedures. A proposal to annex territory to the City may be processed by any of the following methods: ~~provided that the proposal complies with ORS Chapter 222 as now enacted or hereinafter amended.~~

- (1) Election by registered voters of the area to be annexed and, if approved, election by the registered voters of the City **in which case Planning Commission review is not required.**
- (2) Election by registered voters of the area to be annexed and action by the City Council to dispense with an election and to initiate Type IV proceedings as outlined in Section 2.060.
- (3) Consent petition of at least half of the property owners representing more than half of the land area involved which consists of more than half of the total assessed value of all real property in the subject area followed by a City election or action by the Council to dispense with an election and to initiate Type IV proceedings as outlined in Section 2.060.
- (4) Delayed annexation by signed contract binding all existing and future owners of property in an area within the Urban Growth Boundary, either contiguous or not contiguous to the City, to future annexation by the city subject to procedures for such action as may be established between the City and County and subject further to City ~~Council~~ approval of the delayed annexation contract.
- (5) By ordinance or resolution without a hearing or election ~~if where~~ such action is permitted by Oregon Revised Statutes. (For example, health hazard, ~~or~~ island, and consent annexations.) **For such annexations, the Director may, with the consent of the applicant, waive Planning Commission review and all notice and hearing requirements of the Type IV procedure.**

- (6) Properties subject to delayed annexation agreements may be annexed to the City upon becoming contiguous and without a public hearing by utilizing the procedures for consent annexation in subsection (5) above unless specified otherwise in the delayed annexation agreement.
- (7) Any other method authorized by state law.

All proposals to annex territory shall be submitted to the Planning Department on a form prescribed by the City. When the Director has determined that the territory is eligible for annexation and that all of the required information has been submitted, the application shall be processed under one of the methods described above.

COMMENTARY

State law now permits 100% consent annexations to occur without a public hearing, notice to area owners, or other quasi-judicial requirements. Since most annexations are of the consent variety, this procedure will greatly expedite approval. The added sentence in (5) would allow the Director to refer such annexations to the Planning Commission if there are planning considerations or policy issues on which they should advise the Council. Number (6) would likewise enable delayed annexation areas to be annexed expeditiously.

3.020 Annexation Criteria. ~~Any annexation proposal considered under a Type IV procedure must be demonstrated to be in conformance with the following criteria:~~ Before annexing land, except pursuant to election or health hazard procedures, the City Council must determine that:

- (1) The proposed annexation is within the Urban Growth Boundary and is a logical and efficient extension of City limit boundaries.
- (2) ~~The proposed annexation will facilitate the functional and economic provision of services within the Urban Growth Boundary without seriously impairing city services to existing portions of the City.~~

~~(3) The proposed annexation will add property to the City which is needed to provide an adequate supply of zoned lands for the uses proposed or will add property which has existing development in need of city services.~~

(2) The City is capable of providing city services commensurate with the needs of existing and any proposed new uses in the subject area without significantly impairing city services to existing portions of the City or without extending services in contradiction to Comprehensive Plan policies or an adopted Public Facility Plan.

COMMENTARY

The new criterion are intended to place the burden on the City for determining whether property proposed for annexation can be effectively serviced by the City. The previous criteria may have actually placed applicants in an unfair position of second guessing the Council's willingness to service property upon annexation without full knowledge of current fiscal restraints or other reasons the Council might have for not desiring to extend city services. Thus, while this change reduces the applicant's burden of proof, it will place a greater burden on the City in terms of evaluating the serviceability of property.

The deleted criterion (3) is adequately covered by the zone change criteria which are necessary to address in order to apply a zoning designation to annexed property.

3.030 Zoning of Annexed Property.

(1) A proposal for annexation shall include a City zoning designation request which shall be considered at the time of annexation under a Type IV procedure. The criteria for considering an annexation/zoning proposal shall be the same as the criteria for consideration of a zone change as outlined in Section 3.050. The zoning designation of annexed territory shall be specified in the annexation ordinance and shall become effective upon acceptance of the annexation by the Secretary of State.

(2) In the cases of annexation by procedures other than the Type IV procedure, the City may establish zoning classifications within the annexation ordinance or resolution, and without notice or public hearings, in conformance with the subject area Comprehensive Plan designation(s) and in accordance with the following matrix. Zoning designations other than those specified below may be established through the Type IV process, by intergovernmental agreement with the County, or by Council action to retain the existing county zoning.

ANNEXATION ZONING MATRIX

<u>If the Comprehensive Plan Designation Is:</u>	<u>The Zoning Designation Shall Be:</u>
Urban Residential Reserve.....	R-1 Single Family
Low Density Residential.....	R-1 Single Family
Medium Density Residential.....	R-1 Single Family
High Density Residential.....	R-1 Single Family
Light Commercial.....	RP Residential Professional
General Commercial.....	C-2 Community Commercial
Central Business District.....	C-3 Central Business District
Industrial Park.....	MP Industrial Park
Light Industrial.....	ML Light Industrial
Heavy Industrial.....	MH Heavy Industrial
Intensive Development Sector.....	R-1 Single Family
Public Facilities.....	R-1 Single Family
Open Space.....	OS Open Space

COMMENTARY

This simplified zoning process is intended to greatly expedite the development potential of property annexed by election, 100% consent, health hazard, or island annexation, all of which would otherwise be subject to the much more lengthy zone change process. The potential disadvantage to the public is that a neighbor's property could be annexed, zoned, and development started without any notice or other opportunity to participate in the decision

making process. On the other hand, all actions would be subject to strict conformance with the Comprehensive Plan and generally only the most restrictive or most closely associated zoning districts relative to each plan designation are applied. In many cases, it will become necessary later to rezone property to permit more intensive uses for which the property may be better suited. Without such an expedited zoning process most of the advantages of recently allowed expedited annexations are lost. This matrix should also be incorporated into the Comprehensive Plan for proper authorization before this process is fully implemented.

3.040 Procedures for Amending Major Zoning Districts and Special Purpose Districts. A proposal to change the zoning or special purpose district designation of a particular piece of property or area of the City may be initiated by the Planning Commission, City Council, or by petition of not less than half of the property owners representing more than half of the land area involved. Such proposals shall be considered under the Type IV procedures as outlined in Section 2.060 or by legislative action as provided for in Sections 2.070 - 2.110.

~~All proposals for District amendments shall be submitted to the Planning Department on a form prescribed by the City and shall include payment of required fees prior to processing. When the Director has determined that all of the required information has been submitted, the application shall be processed as required.~~

If an application would change the zone of property which includes all or part of manufactured home park, the City shall give written notice by first class mail to each existing mailing address for tenants of the manufactured home park at least 20 days but not more than 40 days before the date of the first hearing on the application. The failure of a tenant to receive a notice which was mailed shall not invalidate any zone change.

COMMENTARY

The above language is derived from ORS 227.175(6). It requires cities to give park tenants notice of zone changes which might lead to future park closure and eviction.

3.050 District Amendment Criteria. Any zoning or special purpose district amendment proposal considered under a Type IV procedure must be demonstrated to be the most appropriate zone (regarding the expected development allowed within the proposed zone) in consideration of the following criteria:

- (1) **The requested amendment is consistent with the Comprehensive Plan map designation for the entire subject area unless a Plan map amendment has also been applied for in accordance with Section 3.060.**
- (2) The adequacy of existing or anticipated transportation facilities (streets, bus routes, etc.) and the **potential** impact on traffic generation and safety.
- (3) A demonstration that the existing or anticipated services (sanitary sewers, storm sewers, schools, fire protection, etc.) can accommodate potential development within the subject area without adverse impact on the affected service area.
- ~~(3) The natural features of the site are conducive to the proposed rezoning.~~
- (4) Any **unique natural features** or special areas involved such as floodplains, slopes, **significant natural vegetation**, historic district, etc., will be protected ~~have increased protection~~ as a result of the proposed rezoning.
- ~~(5) The proposed zone is compatible with the existing and anticipated surrounding land use.~~
- (5) **In comparison with other districts permissible under the Comprehensive Plan designation, the proposal is determined to best meet the intent of the Comprehensive Plan goals and policies.**

COMMENTARY

The purpose of (5) is to require a comparison of the present description, the proposed designation, and other alternative designations and to require a determination that the proposal, on balance, is the best alternative available.

- ~~(6) Compliance with specific policies of the Comprehensive Plan as identified in the application form approved by the Planning Director.~~
- ~~(7) Impact on low and moderate income housing opportunities.~~

COMMENTARY

This criteria has had almost no application in recent years since Albany provides a considerable supply of low and moderate income housing opportunities and an ample supply of suitably zoned land for provision of additional low cost housing for the foreseeable future.

- ~~(8) Timing of the particular zone change request, in terms of efficient service provisions, energy conservation, and a comparison with other buildable lands zoned identical to the requested change or which could otherwise accommodate the proposed use.~~

3.051 Conditional Zone Changes.

- (1) Where the City Council determines that a zoning district or special purpose district amendment applied for under Section 3.050 would not be appropriate except upon conformance by the applicant with certain development conditions, the City may conditionally rezone the area as provided herein.**
- (2) An ordinance approving a district amendment may thus impose conditions as to any of the following matters which the Council deems necessary except that no condition shall allow a use or development in conflict with other provisions of this Code or district involved:**

- (a) Uses permitted.
 - (b) Size, height, and location of buildings and accessory structures.
 - (c) Landscaping when necessary to provide screening from incompatible adjacent uses or from public right-of-way.
 - (d) Protection and preservation of existing trees, vegetation, water resources, wildlife habitat, and other significant natural resources.
 - (e) Size, location, screening, drainage, and surfacing of driveways, parking and loading areas, and street access.
 - (f) Size, height, location, and illumination of signs.
 - (g) Size, height, location, and materials for the construction of fences to screen the subject property from incompatible adjacent uses or from public right-of-way.
 - (h) Location and intensity of outdoor lighting.
 - (i) Hours of operation or conduct of particular activities.
 - (j) Abatement, mitigation, or prevention of nuisances.
 - (k) Maximum time periods within which development must begin, be completed, or conditions be satisfied.
 - (l) Availability and improvement of urban service, including street improvements, traffic signs and signals, sewer, storm drainage, water, and sidewalks. Conditions under this paragraph may also require that all or part of the development or use be deferred until certain events occur such as the availability to the subject property of a certain level of urban service.
- (3) Any conditions which cannot be completely satisfied with the timely completion of a subsequent development project, shall be recorded as deed covenants.
- (4) The City shall not impose any permanent condition which would have the effect of limiting use of the subject property to one particular owner, tenant, or business. Such permanent conditions may limit the subject property as to use, but shall not be so restrictive that they may not reasonably be complied with by other occupants who might devote the property to the same or a substantially similar use.

Revocation of a Conditional Use Zone Change.

- (1) If at any time the City Council determines that any condition of a Conditional Zone Change has not been satisfied as specified within the Zone Change ordinance, the Council may call for a public hearing to rezone the subject property to its prior designation. The parties to receive notice of such a hearing shall be the same as those notified of the prior action and any subsequent recorded owners of property within the notification area. Such action shall be conducted in accordance with Type IV procedures except that only City Council review is required.
- (2) The criteria for rezoning property to a prior designation as specified above need not include demonstration of conformance with the District amendment criteria of Section 3.050. The only finding required for such rezoning action is that one or more conditions of the Conditional Zone Change ordinance has not been met. Evidence at the public hearing may be limited to the question of compliance with the condition or conditions in question.
- (3) Nothing in these provisions is intended to restrict the City's options for seeking enforcement of Zone Change conditions. All other enforcement mechanisms of the Albany Municipal Code may also be employed. Additionally, the City Council may elect to refrain from, postpone, or terminate action to rezone property as specified above upon a determination that compliance with a condition or conditions of rezoning are no longer appropriate or timely.

COMMENTARY

Sections 3.051 and 3.052 provide a specific process for allowing consideration of Zone Change proposals which would not likely receive approval except upon a guarantee of certain conditions being satisfied. It also would allow consideration of rezoning to accommodate a specific development where the zone requested could also allow other developments which may not be appropriate to the area involved. The City has, in the past on several occasions, rezoned property with the promise of a certain type of development immediately occurring thereafter. However, following the rezoning no development activity occurred and other owners of property were

prevented from rezoning due to the availability of other land created by speculation. This section was modeled after similar provisions in the City of Salem and elsewhere. However, the enforcement mechanism here is unique. Other cities have attempted to have Conditional Zone Changes expire automatically upon the failure to satisfy the conditions. This process has a questionable legal basis. The solution presented here is to give the Council a relatively simple means to rezone the property to its prior designation if the conditions are not satisfied. Due to the potential controversial nature of conditional zone changes, it is intended that they be used sparingly. Furthermore, conditions should not be imposed which are more appropriately attached to the subsequent development application or which would restrict future development beyond what is absolutely necessary in order to favorably act on the requested zone change.

3.060 ~~Procedures for Amending the Comprehensive Land Use Plan. A proposal to amend the Comprehensive Land Use Plan including text, policies, Urban Growth Boundary, or map designations may be initiated by the Planning Commission, City Council, or by petition of owners as described in Section 3.040. Such proposals shall be considered under Type IV procedures as outlined in Section 2.060 or by legislative action as provided for in Sections 2.070-2.110.~~

~~Proposals for Comprehensive Plan Amendments may be considered only on a pre-scheduled semi-annual basis as determined by the Planning Commission and City Council, except where an emergency has been declared by a vote of the City Council. In determining that an emergency situation does exist, the Council must adopt findings that the public interest would be best served by initiating a Comprehensive Plan amendment request.~~

3.060 Comprehensive Plan Amendment Procedures.

3.061 Purpose. The Comprehensive Plan is the official and controlling land use document of the City with which all other land use regulations and decisions must comply. In addition, the Comprehensive Plan is intended to provide guidance to both public and private activities which affect the growth, development, and livability of the community. The Plan is also intended to be a flexible document. Changing circumstances and community attitudes will dictate occasional amendments to the Plan. It is the purpose of this section to provide a process whereby the Compre-

hensive Plan may be amended without violating the integrity of the Plan or frustrating its basic purposes.

3.062 Initiation Process. A proposal to amend the Comprehensive Plan including text, policies, Urban Growth Boundary, or map designations may be initiated by the Planning Commission, City Council, or by petition of owners as described in Section 3.040.

3.063 Frequency of Plan Amendments. Applications for Comprehensive Plan amendments submitted by property owners shall be reviewed semi-annually in April and October by the Planning Commission. The City Council or Planning Commission may initiate Plan amendments at any time they determine that the public interest would be best served by so doing.

3.064 Procedures. Any Plan amendment determined by the Director to be legislative in nature shall be processed in accordance with the provisions of Section 2.070-2.074, with consideration also given to any applicable requirements of state law and interagency agreements. All other Plan amendments shall be processed in accordance with the Type IV procedures of Section 2.060. Area specific amendments, including map amendments, outside of the city limits shall also be processed in accordance with the City-County Urban Growth Management Agreement.

~~3.070 Plan Amendment Criteria. In reaching a decision on a Comprehensive Plan Amendment proposal, the Planning Commission and City Council shall adopt findings in consideration of the following:~~

- ~~(1) conformance with goals and policies of the Plan or demonstration of change in circumstances which would necessitate a change in the goals and/or policies;~~
- ~~(2) citizen review and comment;~~
- ~~(3) applicable state goals;~~
- ~~(4) input from affected governmental units and other agencies;~~
- ~~(5) short and long term impacts of the proposed change;~~
- ~~(6) a demonstration of public need for the change;~~

- ~~(7) a demonstration that the proposed amendment will best meet the identified public need versus other available alternatives;~~
- ~~(8) additional information as required by the Planning Commission or City Council; and~~
- ~~(9) in lieu of (6) and (7) above, demonstration that the Plan was adopted in error.~~

3.070 Plan Amendment Criteria. In general, the more drastic the change, the greater the burden in demonstrating that the change complies with the overall purposes of the Plan, state law, and the public interest. Specific findings must be adopted in consideration of at least the following factors:

- (1) Applicable state goals and administrative rules.
- (2) Relevant citizen and agency comments.
- (3) Identification of specific changed circumstances which have made the amendment desirable.
- (4) A demonstration of public need and that the amendment will best address the public need versus other available alternatives.
- (5) Demonstration that the amendment is consistent with the overall purposes of the Plan and any specific Plan provisions which relate to the proposal.
- (6) In lieu of (3), (4), and (5) above, demonstration that the Plan was adopted in error.

COMMENTARY

Sections 3.060-3.070 replace previous sections 3.060 and 3.070. the significant changes include addition of a purpose clause, which is helpful to emphasize the importance of the Plan, clarification as to when and how Plan amendments may be considered, deletion of the requirement that the Council must declare an emergency to initiate more frequent Plan amendments, improved procedure references reflecting actual practice, and revised criteria.

3.080 Vacation Procedures. A proposal to vacate an easement, right-of-way, or plat may be initiated by the City Council or by petition of adjoining and area owners in accordance with ORS 271.080. Type IV procedures as outlined in Section 2.060 shall be used as supplemented by the provisions of ORS Chapter 271. ~~Petitions for vacations shall be submitted on a form prescribed by the City and shall be accompanied by the required application fee.~~

3.090 Vacation Criteria. The Council shall give consideration to the following criteria in reaching a decision on a vacation request:

- ~~(1) Conformance to applicable Comprehensive Plan policies and maps.~~
- (1) Potential conflict with any minor or major street plan.
 - (2) Effect on access, traffic circulation, and emergency service protection.
 - (3) Need for access to existing properties, potential lots, **public facilities, or utilities** which would otherwise be without access to a public way.

COMMENTARY

The deleted language was superfluous.

3.091 Conditions. A vacation ordinance or a decision to tentatively approve a vacation may include any conditions which the Council deems reasonable including reconstruction of access, reservation of easements, and landscaping.

3.092 Zoning of Vacated Right-of-Way. Except as otherwise provided within the vacation ordinance or where the official City zoning map is not clear as to the zoning of vacated right-of-way, the zoning of each parcel of vacated territory shall be the same as the adjoining property to which the ownership of the parcel automatically reverts.

COMMENTARY

The present official zoning map does not apply zoning to public rights-of-way. This language will clarify that the property is zoned upon vacation and provides that the zoning will be the same as each property to which the vacated territory is attached.

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ARTICLE 4.

PUBLIC HEARING, DECISION, AND APPEAL PROCEDURES

4.010 Responsibility for Hearings. The Director, or the City Recorder in case of City Council hearings, shall carry out the following duties pertaining to a hearing, all in accordance with other provisions of this Code:

- (1) Schedule and assign the matter for review and hearing.
- (2) Conduct the correspondence of the hearing body.
- (3) ~~Mail--required~~ **Provide** notices of public hearings ~~at--least--10--days before--the--hearing as required by this Code and state law.~~
- (4) Maintain a record and enter into the record relevant dates such as those of giving notice, hearings, postponement, and continuances and a summary of action taken by the hearings body.
- (5) Prepare minutes to include the decision on the matter heard and the reasons given for the decision.
- (6) Reduce the decisions of the hearings body to writing and maintain permanent record of such.
- (7) Provide advance notice of all hearings and written decisions to persons requesting the same and not entitled to such by this section provided that such persons pay the actual cost for the service provided as established by the City (applicants excepted).

4.020 Notice of Hearing.

- (1) Notice of a hearing shall be reasonably calculated to give actual notice and, other than for a legislative action, shall contain the following information:
 - (a) The date, time and place of the hearing.
 - (b) A description reasonably calculated to inform a person of the location of the property for which a development permit or other action is pending, including but not limited to use of a map or

postal address, or a subdivision lot and block designation, or a metes and bounds description or the tax map designation of the County Assessor.

- (c) The nature of the issue up for hearing.
- (d) Where information may be examined and when and how written comments addressing findings required for a decision by the hearing body may be submitted.
- (e) At the discretion of the Director, information regarding the authority of the hearings body to consider alternatives or modifications to the request.

4.030 Procedure for Mailed Notice. Unless otherwise provided, addresses for a mailed notice required by this title shall be provided by the applicants for development permits. The mailing list must be certified by the applicant as accurate and complete as found from current County Assessor records. A person whose name is not in the tax records at the time of filing of an application or of initiating other action not based on an application, may only receive a notice if the person provides the Planning Department with the necessary address(es). Any deficiency in the form of notice prescribed in Section 4.020 or a failure of a property owner to receive notice shall not invalidate an action if a good faith attempt was made to comply with the requirements of this Title for notice. In addition to persons receiving notice as required by the matter under consideration, the Director may provide notice to others he has reason to believe are affected or otherwise represent an interest that may be affected by the proposed development.

- (1) Required published notice shall be published in a newspaper of general circulation at least once during the week preceding the hearing and additionally as may be required by state law for a particular proceeding.
- (2) Cost of notice mailings shall be included in the development application fee.

4.035 Procedures for Posted Notice. The applicant shall be responsible for providing a sign frame for the notice, and also responsible for posting the notice at the correct time and location. The actual notice shall be provided by the City. The posting shall comply with the following criteria:

- (1) The notice shall be a **minimum** of 2 feet by 3 feet.
- (2) The notice shall be posted in a location which is visible and within 10 feet of a ~~the right-of-way line of the most~~ traveled public road or street abutting the property. (If no public street abuts the property, the notice shall be placed in such a manner ~~or-way-be-most-readily-seen~~ by to be generally visible to the public.)
- (3) **The notice shall be posted for at least 7 consecutive days prior to the first scheduled public hearing on the matter.**
- (4) If the subject property is a corner lot, then two signs are required in locations defined in (2) above.
- (5) At least 5 days prior to any hearing (or decision made by the Director), the applicant shall file with the Director an affidavit of posting.
- (6) If the subject property is not properly posted as set forth in Section 2 or this section, the ~~hearing decision~~ may be postponed by the Director until such provisions are met.

4.036 Compliance and Waiver of Notice.

- (1) **Notice by mail shall be deemed received three calendar days after the notice is deposited with the US Postal Service, first class postage, fully prepaid, for mailing to the addressee at the addressee's last known mailing address. Failure of the addressee to actually receive notice shall not invalidate the proceeding.**

- (2) Posted notice is deemed given when the sign is first posted.
- (3) The requirement for notice shall be deemed satisfied as to any person who, in any manner, obtains actual knowledge of the time, place, and subject matter of the hearing prior thereto.
- (4) Appearance and testimony or comment on the merits of the proposed action by any person at a hearing, or submission by any person of written comment directed to the merits of the proposed action at or prior to the hearing and after the proceeding was initiated shall be deemed a waiver of such person of any defect in notice.

4.040 Challenges to Impartiality. Except for legislative hearings, a party to a hearing or a member of a hearing body may challenge the qualifications of a member of the hearing body to participate in the hearing and decision regarding the matter. The challenge shall state by affidavit the facts relied upon by the challenger relating to a person's bias, prejudice, personal interest, or other facts from which the challenger has concluded that the member of the hearing body cannot participate in an impartial manner. A challenge shall be delivered by personal service to the Director or City Manager not less than 48 hours preceding the time set for public hearing. The Director or City Manager shall attempt to notify the person whose qualifications are challenged prior to the meeting. The challenge shall be incorporated into the record at the time of the hearing.

4.050 Disqualification. Except for legislative hearings, no member of a hearing body shall participate in a discussion of the proposal without removing himself or herself from the bench or shall vote on the proposal when any of the following conditions exist:

- (1) Any of the following have a direct or substantial financial interest in the proposal: the hearing body member or the member's spouse, brother, sister, child, parent, father-in-law, mother-in-law, any business in which the member is then serving or has served within the previous two

years, ~~or any business in which the member is a principal or employee~~ or in which the member is negotiating for ~~acquisition of such interest~~ or ~~employment~~, or has an arrangement or understanding concerning prospective partnership or employment or is otherwise in a position of conflict of interest as determined by state law.

~~(2) The member owns property within the area entitled to receive notice of the public hearing.~~

COMMENTARY

Council members have previously discussed deletion of this requirement since it is more restrictive than current state law and has prevented participation in several instances. Items (2) and (3) may adequately address such conflicts of interest.

(2) The member has a direct private interest in the proposal.

(3) Any other valid reason for which the member has determined that participation in the hearing and decision cannot be in an impartial manner.

4.060 Participation by Interested Officer or Employees. No officer or employee of the City who has a financial or other private interest in a proposal shall participate in discussion with or give an official opinion **or staff report** to the hearing body on the proposal without first declaring for the record the nature and extent of such interest.

4.070 Ex Parte Contacts. Except for legislative hearings, the general public has a right to have hearing body members free from prehearing or ex parte contacts on matters heard by them. It is recognized that a countervailing public right is free access to public officials on any matter. Therefore, hearing body members shall reveal **the source and substance of** any significant prehearing or ex parte contacts regarding any matter at the commencement of the public hearing on such **and the Chair shall allow for rebuttal of any information received through such ex parte contact.** If such contacts have not impaired the member's

impartiality or ability to vote on the matter, the member shall so state and shall participate or abstain in accordance with the following section.

4.080 Abstention or Disqualification.

- (1) An abstaining or disqualified member of the hearing body may be counted for purposes of forming a quorum. A member who represents personal interest at a hearing may do so only by making full disclosure of his or her status and position at the time of addressing the hearing body, and physically removing himself or herself from the hearings body during the hearing and deliberations on the matter and abstaining from voting on the proposal.
- (2) If a quorum of a hearing body abstains or is disqualified, all members present after stating their reasons for abstention or disqualification shall, by so doing, be requalified and proceed to resolve the issues.
- (3) Except for legislative hearings, a member absent during the presentation of evidence in a hearing may not participate in the deliberations or final decision regarding the matter of the hearing unless the member has reviewed the evidence received and so states on the record.

4.100 Burden and Nature of Proof. Except for a legislative determination, the burden of proof is upon the proponent. The more drastic the change or the greater the impact of the proposal in the area, the greater is the burden upon the proponent. The proposal must be supported by proof that it conforms to the applicable ~~elements of the Comprehensive Plan and to applicable~~ provisions of this Code, especially the specific criteria set forth for the particular type of decision under consideration. ~~Additionally, the following factors are deemed relevant and material and shall be considered by the hearing body in reaching its decision on a proposal.~~

- ~~(1) mistake in the original designation or provision, and/or~~
- ~~(2) change or circumstances such that the existing condition is no longer in conformance with the intent of the Comprehensive Plan.~~

4.110 Order of Proceedings. The order of proceedings for a hearing will depend in part on the nature of the hearing. The following ~~may shall~~ be supplemented by ~~administrative procedures as~~ appropriate **rules announced by the presiding officer:**

- (1) Before receiving information on the issue, the following shall be determined:
 - (a) Any objections on jurisdictional grounds shall be noted in the record and if there is objection, the person presiding has the discretion to proceed or terminate.
 - (b) Any abstentions or disqualifications shall be determined.
- (2) The person presiding at the hearing may take official notice of known information related to the issue, such as the following:
 - (a) Provisions of the Charter or state law or of an ordinance, resolution, rule of officially promulgated policy of the City.
 - (b) Other public records and facts judicially noticeable by law.
- (3) Matters officially noticed need not be established by evidence and may be considered by the hearing body in the determination of the matters. Parties requesting **official** notice shall do so on the record. ~~provided, however, that the hearing body may take notice of matters listed in subsection (2) of this section if stated for the record. Any matter given official notice may be rebutted.~~
- (4) The hearing body may view the area in dispute with or without notification to the parties, but shall place the time, manner, and circumstances of such view in the record.

- (5) Information shall be received from the staff and from proponents and opponents. The presiding officer may approve or deny a request to ask a question from a person attending the hearing. Unless the presiding officer specifies otherwise, if the request to ask a question is approved, the presiding officer will direct the question to the person submitting testimony.
- (6) When the hearing has ended, the hearing body ~~may shall~~ openly discuss the issue and may further question a person submitting information or the staff if opportunity for rebuttal is provided.

4.120 ~~Decision. Following the hearing procedure described above, the hearing body shall approve, amend, table, or deny the application; or if the hearing is in the nature of an appeal, either affirm, modify, reverse, or remand the decision that is on appeal. A decision on a hearing or an application for a development permit may be continued for a reasonable period of time as determined by the hearing body, but not to exceed three months from the date of the first hearing on the matter unless both the hearing body and applicant agree to an extension.~~

4.120 Findings. The decision of the hearing body shall be based upon findings which, in turn, shall be ~~adopt findings of fact~~ based upon the information accompanying the application ~~applicant's report~~, staff report, and/or evidence ~~testimony~~ presented at the hearing. The decision ~~staff report and findings~~ shall include:

- (1) A statement of the applicable criteria and standards of this Code against which the proposal was tested. ~~and what is required to achieve compliance with the criteria and standards.~~
- (2) **For approval**, a statement of the facts establishing compliance or noncompliance with each applicable criteria. ~~and assurance of compliance with applicable standards.~~ **For denial**, a statement of the facts establishing non-compliance with any required criteria.

- (3) ~~The reasons for a~~ Conclusion **statement(s)** to approve or deny.
- (4) ~~The decision or recommendation to deny or approve the proposed change with or without conditions.~~

~~The staff report shall include, as a minimum, information pertaining to (1) and (2) above.~~

COMMENTARY

Deleted language is superfluous or has been addressed in earlier sections.

4.130 Record of Proceedings. When **practical, possible,** the secretary to the hearing body will be present at each hearing and shall cause the proceedings to be recorded either stenographically or electronically. Should ~~it not be possible for~~ the secretary **not to** be present, proceedings will be recorded electronically and minutes will be taken from the tape.

- (1) Testimony shall be transcribed at the expense of the requesting party if required for judicial review **or local appeal proceedings.** **The transcribing fee may include all actual costs up to \$500 plus one-half the actual costs over \$500 or as authorized by state law.**

COMMENTARY

Transcribing fees were authorized as stated by 1983 state legislation. Such fees would be in addition to any appeal fees.

- (2) The hearing body shall, where practicable, retain as part of the hearing record each item of physical or documentary evidence presented and shall have the items marked to show the identity of the person offering the same and whether presented on behalf of a proponent or opponent. Exhibits received into evidence shall be retained in the

hearing file until after all appeal periods have expired, at which time the exhibits may be released to the person identified thereon or otherwise disposed of.

- (3) The staff report and decision shall be included in the record.
- (4) A person shall have access to the record of the proceedings at reasonable times, places, and circumstances. A person shall be entitled to make copies of the record at the person's own expense.

4.140 Appeals.

- (1) A decision of the Director on issuance of a development permit may be appealed to the Hearings Board by an affected party by filing a "Notice of Appeal" with the Director within 7 days **following the deemed receipt of mailed notice** of the decision. The notice of appeal shall indicate the nature of the interpretation that is being appealed and the matter at issue will be a determination of the appropriateness of the interpretation of the requirements of this Code.
- (2) A decision of the Board may be appealed to the **City Council Planning Commission** by an affected party by filing a "Notice of Appeal" within **7 to 15 days following the deemed receipt of mailed notice** of the decision. The "notice of appeal" shall indicate the decision that is being appealed. A decision of the Planning Commission may similarly be appealed to the City Council.
- (3) **Within the appeal period, the City Council, acting upon the recommended action of the City Manager or upon its own motion, may order a de novo review of any lower level decision. Such review shall be conducted in accordance with appeal procedures as specified herein.**

COMMENTARY

The minimum appeal period currently allowed by state law for notice is 7 days and we have added an additional 3 days to allow for receipt of mail. Current practice is to mail notices within 2-5 days of the decision. Thus, the effective appeal period would become 9-12 days following the decision.

A more significant change in the appeals process is the proposal to have Hearings Board appeals go directly to the City Council. This step can save 30 to 60 days in an appeals process. Additional justification is that Hearings Board members are also Planning Commission members and the decision at the Commission level is rarely altered.

The third change allows the Council to initiate a review of any lower level decision within the 7-day appeal period. This gives the Council what has often been an assumed right to initiate an appeal or call up a decision for review. It also would give staff or other affected parties an opportunity to request the Council's review of a matter. A possible disadvantage of this procedure is that it would almost always involve the necessity of ex parte contacts in order to convince the Council that the case should be reviewed.

- (3) ~~At its discretion, the Hearings Board, Planning Commission, or City Council may limit an appeal or review to a review of the record and a hearing for receipt of oral arguments regarding the record, or may accept new evidence and testimony. If new evidence is to be received, a hearing shall be conducted pursuant to this Article after notice has been provided to the affected parties.~~

COMMENTARY

The deleted language is adequately covered in section 4.170.

- (4) For any appeal proceeding, the Director shall cause notice to be provided in the same manner as provided for the original decision plus any other parties to the proceedings who request notice in writing.

4.150 Requirements of Notice of Appeal.

A "notice of appeal" shall contain:

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- (a) An identification of the decision sought to be reviewed, including the date of the decision.
- (b) A statement of the interest of the person seeking review and that he/she was a party to the initial proceedings.
- (c) The specific grounds relied upon for review.
- (d) If de novo review ~~is requested or review by additional testimony and other evidence is requested,~~ a statement **summarizing the new evidence which will be offered and the criteria to which it will relate. relating the request to the factors listed below.**

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

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

4.170 Review on the Record.

- (1) The reviewing body may hear the entire matter **on the record; de-novo;** or it may admit additional testimony and other evidence **in a de novo hearing without holding a de novo hearing** if it is satisfied that the additional testimony or other evidence could not reasonably have been presented at the prior hearing. The reviewing body shall consider all of the following in making such a decision.
 - (a) Prejudice to the parties.
 - (b) Convenience or availability of evidence at the time of the initial hearing.
 - (c) Surprise to opposing parties.
 - (d) The competency, relevancy, and materiality of the proposed testimony or other evidence.

- (2) ~~Unless otherwise provided for by the reviewing body, review of the decision on appeal shall be confined to the record of the proceeding as specified in this section~~ When the reviewing body requests a review on the record, the record shall include:
- (a) A factual report prepared by the Planning Director.
 - (b) All exhibits, materials, pleadings, memoranda, stipulations, and motions submitted by any party and received or considered in reaching the decision under review.
 - (c) **A written transcript of the previous hearing or, if agreed upon by the parties, the minutes of the hearing below** including a detailed summary of the evidence.
- (3) The reviewing body ~~may shall~~ make its decision based **only** upon the record, or ~~may grant after first granting~~ the right of oral argument, to **all affected parties**, but not the introduction of additional evidence, ~~who has filed a "notice of appeal."~~

~~4.190~~ Review Consisting of Additional Evidence of De Novo Review.

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

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

affected the outcome of the original decision and the action necessary to rectify such.

~~(2) Action by the reviewing body shall be decided by a majority vote of its members present at the meeting at which review was made and shall be taken either at that or any subsequent meeting. The reviewing body shall render its decision no later than 90 days after the filing of the request for review.~~

COMMENTARY

In the previous sections, language has been deleted which was unnecessary or where the meaning was ambiguous.