

ORDINANCE NO. 4954

TITLE: AN ORDINANCE AMENDING THE ALBANY MUNICIPAL CODE, TITLE 20, KNOWN AS THE "CITY OF ALBANY DEVELOPMENT CODE," RELATIVE TO REVIEW CRITERIA, ADOPTING FINDINGS, AND DECLARING AN EMERGENCY.

WHEREAS, the Albany City Council has directed staff to perform an update of the Albany Development Code; and

WHEREAS, the Planning Commission following a public hearing on February 18, 1991, recommended approval of proposed amendments to the Development Code (Case No. DC-03-91) relative to Review Criteria for land use applications; and

WHEREAS, a notice of the City Council public hearing has been published, and

WHEREAS, the Albany City Council held a public hearing on March 27, 1991 and members of the public were given an opportunity to be heard.

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

Section 1: The Findings below are hereby adopted in support of this decision:

- A. The proposed amendments are consistent with Development Code policies on prompt review of development proposals and provision of adequate public facilities and services.
- B. The proposed amendments are consistent with Comprehensive Plan goals and policies regarding public information and participation and a workable, flexible, understandable and updated Development Code.
- C. The proposed amendments result in a Code structure that is easier to follow and utilize.
- D. The proposed amendments will clarify the text of the Code and improve readability of the regulations.

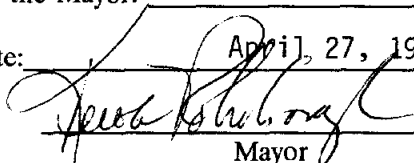
Section 2: The Albany Municipal Code, Title 20, known as the "City of Albany Development Code," Articles 1, 3, 14, and 15 is hereby amended as shown on Exhibit "A."

Section 3: A copy of this ordinance is to be forwarded to the Department of Land Conservation and Development.

Passed by the Council: March 27, 1991

Approved by the Mayor: March 28, 1991

Effective Date: April 27, 1991



Mayor

ATTEST:



City Recorder

**CITY OF ALBANY
DEVELOPMENT CODE AMENDMENTS
DC-03-91
STAFF REPORT**

<u>HEARING BODIES</u>	<u>DATES</u>	<u>TIMES</u>
Albany Planning Commission	February 18, 1991	4:00 P.M.
Albany City Council	March 27, 1991	7:15 P.M.

HEARING LOCATION: 250 Broadalbin SW, City Hall II Council Chambers

GENERAL INFORMATION:

Staff-initiated amendments to the Albany Development Code, Articles 1, 3, 14, and 15.

PROPOSAL FOR CONSIDERATION:

The attached proposed amendments to the Development Code restructure the Code relative to review criteria. On February 18, 1991 the Planning Commission met and unanimously voted to recommend that the Council approve the attached amendments to the Development Code.

DEVELOPMENT CODE AMENDMENT CRITERIA:

Staff has evaluated the proposed amendments and found them to be in compliance with the following Development Code policies on purpose and legislative intent:

1.020 (3): Assure prompt review of development proposals and the application of clear and specific standards.

1.020 (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.

Staff has also found the proposed amendments to be in compliance with the following goals and policies in the Comprehensive Plan:

GOAL 1: Ensure that local citizens and other affected groups, neighborhoods, agencies, and jurisdictions are involved in every phase of the planning process.

Policy 4: Ensure information is made available to the public concerning development regulations, land use, and other planning matters including ways they can effectively participate in the planning process.

GOAL 14: Ensure that all new developments are reviewed expeditiously and thoroughly and result in compliance with Comprehensive Plan goals and policies and ordinance standards.

Policy 4: Encourage flexibility in design review and interpretation of policies and regulations by ensuring that functional design and community benefit remain as the principal review criteria. Consider variance, conditional use, and special request procedures where strict interpretation of regulations would impede fulfillment of these criteria.

Policy 5: Ensure that the City's land use planning process and its policy framework is workable and

understandable for local officials, staff, and the public. Ensure that the degree of application and review is commensurate with the size and complexity of various development requests.

Policy 7: Periodically review and update all City and County implementing ordinances to ensure continued coordination, consistency in procedure, and efficient processing of development applications within the Urban Growth Management Area.

GOAL 9: Assure that regulatory requirements provide for high standards of public health, safety, and welfare but are not detrimental to economic development opportunities.

Policy 15: Ensure that all building permit and planning regulations and procedures are clear, uncomplicated, concise, and are administered in a timely manner to avoid unnecessary delays.

Policy 16: Periodically review the Albany Development Code with the assistance of public input to eliminate inconsistencies, conflicts, and ambiguities.

PROPOSED FINDINGS FOR APPROVAL:

1. The proposed amendments are consistent with Development Code policies on prompt review of development proposals and provision of adequate public facilities and services.
2. The proposed amendments are consistent with Comprehensive Plan goals and policies regarding public information and participation and a workable, flexible, understandable and updated Development Code.
3. The proposed amendments result in a Code structure that is easier to follow and utilize.
4. The proposed amendments will clarify the text of the Code and improve readability of the regulations.

PLANNING COMMISSION AND STAFF RECOMMENDATION: That the City Council **ADOPT** the attached amendments to the Albany Development Code (Casefile DC-03-91) relative to review criteria based on the findings listed in the staff report.

PROPOSED CITY COUNCIL MOTION: I move that the City Council **APPROVE** the attached amendments to the Albany Development Code (Casefile DC-03-91) relative to review criteria by **ADOPTING** the attached ordinance, which contains findings in support of the decision.

ARTICLE 2 REVIEW CRITERIA

2.010 Overview. The Development Code provides a combination of nondiscretionary and discretionary standards for the City to use in evaluating land use proposals for compliance with the use and development requirements of the Code. The nondiscretionary criteria provide the certainty needed in most situations by providing straightforward, clear, and objective standards. Discretionary criteria provide needed flexibility by allowing more subjective standards and objectives, and providing for the modification of regulations in response to specific site conditions. This chapter contains the criteria for evaluation of the following land use applications:

- | | |
|---------------------------------|----------------------------|
| ■ Adjustments | ■ Nonconforming Situations |
| ■ Annexations | ■ Vacations |
| ■ Comprehensive Plan Amendments | ■ Variances |
| ■ Conditional Uses | ■ Zoning Map Amendments |
| ■ Development Code Amendments | |

GENERAL COMMENT

Unless specific comments follow a set of changes, those changes have been made to clarify the content and improve the readability.

2.020 Function of Review Criteria.

- (1) Review criteria set the bounds for the issues that must be addressed by the applicant and which may be raised by the City or affected parties.
- (2) The review criteria have been derived from and are based on the Comprehensive Plan. Reviews against the goals and policies of the Comprehensive Plan are not required unless specifically stated. Fulfillment of all requirements and review criteria means the proposal is in conformance with the Comprehensive Plan.
- (3) When review criteria refer to the request's meeting a specific threshold, such as adequate services or no significant detrimental environmental impacts, the threshold includes any proposed improvements, mitigation measures, or limitations. All proposed improvements, mitigation measures, and limitations must be identified prior to a final decision by a review body.

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

2.040 Conditions of Approval. The City may attach conditions to the approval of a land use decision in order to ensure that the proposal will conform to the applicable review criteria.

COMMENT

This section specifically states the City's right to impose conditions. This is consistent with the existing Code, however this wording tightens the parameters of possible conditions. Conditions are now limited to those needed to meet the approval criteria.

2.050 Relationship to Other Regulations. Approval of a land use application based on review criteria in this Code does not relieve the applicant of responsibility for compliance with other applicable codes, ordinances, statutes or regulations.

ADJUSTMENTS

COMMENT

This section introduces a new name for what we currently process as a Type I variance. The result is two different sections, one for adjustments and one for variances, and clarification of existing regulations.

- 2.060 **Purpose.** The adjustment review process provides a mechanism by which the Director may make limited modifications to the application of regulations in the Development Code. Adjustment reviews provide limited flexibility for unusual situations, while continuing to provide certainty and rapid processing for land use applications. Requests for changes from a numerical development standard of 10 percent or less of the standard are processed as adjustments. Requests for changes to standards which are not numeric or which are for more than 10 percent of the standard are processed as variances.
- 2.070 **Procedures.** Adjustment requests are processed through a Type I procedure.
- 2.080 **Review Criteria.** The review criteria for sign adjustments are stated in Section 18.230, Sign Code. Setback adjustments in developed areas are addressed in Section 6.080. All other adjustment requests will be approved if the Director finds that the applicant has shown that the following criteria have been met:
- (1) The requested adjustment is for 10 percent or less of the numerical development standard.
 - (2) The need for the requested adjustment is created by the configuration of the structure on the site.

ANNEXATIONS

2.090 **Purpose.** Annexation provides the mechanism for addition of territory to the city limits. The land use aspect of the process focuses on the issue of service delivery, both in the area proposed for annexation and in the existing city limits.

2.100 **Annexation Procedures.** A proposal to annex territory to the city may be processed by any method authorized by state law. of the following methods: The Director will determine the appropriate type (quasi-judicial or legislative) and level of land use review (Types II - IV). This determination shall be based on the proposed method of annexation.

- ~~(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 approval of the delayed annexation contract.~~
- ~~(5) By ordinance or resolution without a hearing or election where such action is permitted by Oregon Revised Statutes. (For example, health hazard, 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.~~

COMMENT

State law regarding annexations change frequently enough to make an attempt to list all methods of annexation very difficult and usually inaccurate. There is also a question as to whether the listing really clarifies anything for the applicant.

~~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.~~

2.110 **Annexation Review Criteria.** ~~Before annexing land, except pursuant to election or health hazard procedures, the City Council must determine that: Annexation requests may be approved if the Council finds that the applicant has shown that the following criteria are met:~~

- ~~(12) 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.

- (21) The proposed annexation is within the Urban Growth Boundary and is a logical and efficient extension of city limit boundaries.

COMMENT

The "may approve" rather than "will approve" wording reflects the fact that annexation is a political as well as a land use decision.

2.120 Zoning of Annexed Property. The zoning of annexed property shall be as provided on the annexation zoning matrix. Zoning other than shown on the matrix requires approval of a zoning map amendment.

- ~~(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	Linn County -- R-1 Single Family Benton County -- UR-5 Urban Residential
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

COMPREHENSIVE PLAN AMENDMENTS

2.130 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 providing 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, reflecting changing circumstances and community attitudes will dictate through occasional amendments to the Plan. It is the purpose of This section to provides a process whereby the Comprehensive Plan may be amended without violating the integrity of the Plan or frustrating its basic purposes. This process applies to proposed changes to the Comprehensive Plan map designations, text and the Urban Growth Boundary.

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.

2.140 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, or Director may also initiate Plan amendments. at any time they determine that the public interest would be best served by so doing. Such initiations are made without prejudice towards the outcome.

2.150 Procedure. Any Requests for Plan amendments determined by the Director to be legislative in nature shall be processed in accordance with the provisions of Section 3.070-3.074 are reviewed through the legislative procedures stated in Section 1.470. 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 Quasi-judicial requests are reviewed through the Type IV procedures of Section 3.060-1.260. Area specific amendments, including map amendments outside of the city limits, shall also be are processed in accordance with the City-County Urban Growth Management Agreement.

2.160 Plan Amendment Review 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: Amendments to the Comprehensive Plan will be approved if the Council finds that the applicant has shown that the following applicable criteria are met:

- (1) A legislative amendment is consistent with the goals and policies of the Comprehensive Plan, the statewide planning goals, and any relevant area plans adopted by the City Council.
- (2) A legislative amendment is needed to meet changing conditions or new laws.
- (3) The requested designation for a quasi-judicial map amendment meets all of the following tests:
 - (a) The requested designation for the site has been evaluated against relevant Comprehensive Plan policies and on balance has been found to be more supportive of the Comprehensive Plan as a whole than the old designation.
 - (b) The requested designation is consistent with any relevant area plans adopted by the City Council.
 - (c) The requested designation is consistent with the Comprehensive Plan map pattern.
 - (d) The requested designation is consistent with the Statewide Planning Goals.
- (4) The Director may initiate a review through the Type I procedure for the types of corrections to the Comprehensive Plan Map listed below:

(a) The correction may be made for mapping errors such as:

1. A map line that was intended to follow a topographical feature does not do so. Topographical features include the tops and bottoms of hillsides, the banks of water bodies, and center lines of creeks or drainage ditches;
2. The line on the map does not match the legal description or map shown or references in the ordinance which applied the designation; or
3. When there is a discrepancy between maps and there is clear legislative intent for where the line should be.

(b) The correction may be made when a map line is based on the location of a reference item that has since been moved. Reference items are rights-of-way, tentative rights-of-way, utility easements and similar items. Map line changes in these cases must not be more than a minor change to the map pattern and must not result in any significant impacts to abutting lots.

COMMENT

The addition of a map correction process is in response to the cumbersome procedure we have been following on "legitimate" mapping errors.

- ~~(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.~~

CONDITIONAL USES

- 2.170 ~~Description and Purpose.~~ Certain uses are conditional uses instead of being allowed outright, although they may have beneficial effects and serve important public interests. They are subject to the conditional use regulations because they may, but not necessarily do, have significant adverse effects on the environment, overburden public services, change the desired character of an area, or create major nuisances. A review of these proposed uses is necessary due to the potential individual or cumulative impacts they may have on the surrounding area or neighborhood. The conditional use process provides an opportunity to allow the use when there are minimal impacts, to allow the use but impose conditions to address identified concerns, or to deny the use if the concerns cannot be resolved.

Uses identified in Article 5 as requiring Conditional Use Permits approvals may be permitted, enlarged or altered in accordance with the provisions of this Article Section. In addition, where a use is not authorized in any district or where ambiguity exists concerning the appropriate classification of a particular use or type of development within the intent of this Code, said the use or type of development may be established by a Conditional Use Permit approval in accordance with this Article Section.

~~The purpose of conditional use permits is to allow determination of the appropriateness and compatibility of certain uses proposed to be located in areas not specifically designated for such uses and which may only be suitable for location in such areas with application of special conditions as allowed by this section.~~

- 2.180 ~~Procedure.~~ An application for a Conditional Use Permit shall be processed applications are reviewed as a Type II procedure. and shall be made by the owner of the subject property or authorized agent on a form prescribed by the Planning Division and shall be accompanied by the prescribed fee and evidence demonstrating compliance with the criteria noted below.

~~Plan Requirements.~~ Review of a Conditional Use Permit shall be based upon submission of detailed plans containing the same information as required for Site Plan Approval in Section 13.030. However, a Conditional Use Permit may be reviewed based upon submission of preliminary or conceptual plans provided that both the applicant and approval authority agree to utilize the Site Plan Review Criteria procedures of Article 13 for final development review.

- 2.190 ~~Review Criteria.~~ A Requests for Conditional Uses Permit shall be granted will be approved if the approval review body authority finds that the proposal conforms with the Site Plan Review criteria as set forth in 13.040 and the following additional criteria: applicant has shown that all of the following criteria have been met, either outright, or with conditions that bring the proposal into compliance:

- ~~(1) That the proposed use will be compatible with the abutting properties and the surrounding neighborhood in terms of both appearance and the particular operating characteristics of the area. Special consideration shall be given to:~~
- (b1) How the operation of The proposed use will fit in is consistent with the purpose intended character of the base zone and enhance the operating characteristics of the particular neighborhood.
- (a2) How The proposed structures will fit in use will be compatible with existing or anticipated uses in terms of size, building scale and style, intensity, setbacks, and landscaping or the proposal calls for mitigation of difference in appearance or scale through such means as setbacks, screening, landscaping or other design features. bulk, coverage, density, architectural, and aesthetic design.
- (3) The transportation system is capable of supporting the proposed use in addition to the existing uses in the area. Evaluation factors include street capacity and level of service, on-street parking

impacts, access requirements, neighborhood impacts and pedestrian safety.

- (4) Public services for water, sanitary and storm sewer, water management and for fire and police protection are capable of servicing the proposed use.
- (5) The proposal will not have significant adverse impacts on the livability of nearby residentially zoned lands due to:
 - (a) Noise, glare, odor, litter, and hours of operation.
 - (b) Privacy and safety issues.

~~Conditional Use of Approval.~~ The Approval Authority review body may attach conditions to a conditional use approval to ensure that the proposal will conform to the applicable review criteria. ~~designate conditions in connection with the Conditional Use Permit as it deems necessary to secure the purpose of this Article and may require the guarantees and evidence that such conditions will be complied with. Such Conditions may include:~~

Some of the most frequently imposed conditions relate to the following: ~~regulation of uses; special yards, and spaces; fences and walls; street dedications and improvement petitions (or bonds); regulations of points of vehicular ingress and egress; Regulation of signs; Regulation of building textures, colors, architectural features and height; landscaping, screening and buffering; where necessary to increase compatibility with adjoining uses. Regulation of noise, vibration, odors or other similar nuisances; Regulation of hours for certain activities; time period within which the proposed use shall be developed; duration of use; and preservation of natural vegetative growth and open space.~~

- ~~(14) Such other conditions as will make possible the development of the City in an orderly and efficient manner in conformity with the intent and purposes of this Article and the Comprehensive Plan.~~

DEVELOPMENT CODE AMENDMENTS

- 2.200 **Purpose.** The Development Code is designed to implement the goals and policies of the Comprehensive Plan, which is a reflection of community values and needs. Because these values may change with time and because new techniques for implementing the Plan may be appropriate, the Code must have some mechanism for response to those changes. Amendments to the Code should occur as needed in order to maintain a close relationship between the Development Code and the Comprehensive Plan.
- 2.210 **Procedures.** Code amendments shall be processed in accordance with the legislative procedures of Sections 1.470-1.505.
- 2.220 **Review Criteria.** The request may be approved if the Council finds that the applicant has shown that all of the following criteria are met:
- (1) The proposed amendments better achieve the goals and policies of the Comprehensive Plan than the existing regulatory language.
 - (2) The proposed amendments are consistent with Development Code policies on purpose and with the purpose statement for the base zone, special purpose district, or development regulation where the amendment is proposed.

COMMENT

We currently have no review criteria for Code amendments.

NONCONFORMING SITUATIONS

2.230 Non-Conforming Situations - General Purpose. Within the zoning districts established by this Code, City there exist are lots, developments, and uses which were lawful before this Code was adopted or amended, but which would otherwise be prohibited or restricted no longer be allowed 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 nonconformities are referred to inclusively as "Nonconforming Situations."

~~(2) Any legally established non-conforming situation may be continued as lawful unless and until terminated as provided in Section 2.630, subject to restrictions as to expansion, alteration, and change of use as provided in this article.~~

COMMENT

With a few exceptions, this entire section has been replaced. The previous wording was enigmatic. The purpose we are trying to achieve remains the same.

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

2.250 Types of Nonconforming Situations. A specific site may be nonconforming because it contains either a nonconforming use, an allowed residential use that exceeds the allowed density, a nonconforming development, or a combination of these.

2.260 Regulations That Apply to All Nonconforming Situations.

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

2.270 Loss of Nonconforming Status.

- (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 Director finds that:
 - (a) 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

- (b) 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.
- (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 70 percent of its fair market value shall be deemed terminated.
 - (a) Cost of repair or restoration shall be determined by the Building Official. Fair market value shall be determined 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.
 - (b) The Director may allow additional degrees of reconstruction upon finding that:
 - 1. Conversion to any conforming use will result in a substantial economic loss, and
 - 2. The proposed use will result in greater conformance with the development standards of the zone, or
 - 3. 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.

COMMENT

Subsections 1-4 above are from the current text, reworded and revised for clarity.

COMMENT TO THE COUNCIL

The Planning Commission put considerable effort into the revision of this Section. The wording above reflects any changes staff effected following the discussion.

- (5) Rebuilding of structures which have been intentionally destroyed and which contained nonconforming uses is prohibited.

2.280 Nonconforming Uses.

- (1) Nonconforming uses may continue to operate. Changes in operations are allowed. However, nonconforming uses in residential zones may not extend their hours of operation into the period of 11 pm to 6 am.
- (2) A change to another use in the same use category is allowed by right. A change to a use in a different use category which is prohibited by the base zone may be allowed through a nonconforming use review.

- (3) Structural expansions shall be limited to the following:

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

- (4) Non-conforming uses and buildings may expand one time only.

COMMENT

Subsections 3 and 4 are retained from the old version.

- (5) Expansion of the nonconforming use onto another site is prohibited, except in the following situation:
- (a) The site is abutting the site of the nonconforming use; and
 - (b) The site was in the same ownership as the nonconforming site when it became nonconforming; and
 - (c) The prior zoning regulations on the expansion site would have allowed the use; and
 - (d) The expansion is approved through a nonconforming use review.
- (6) The addition of new residential units to a nonconforming residential use is prohibited.

2.290 Nonconforming Residential Densities.

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

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

- (1) Changes may be made to the site which are in conformance with the base zone development standards.
- (2) Development not complying with the following standards must be brought into compliance with the base zone standards to an extent commensurate with the proposed changes.
- (a) Landscaped setbacks for surface parking and exterior development areas;
 - (b) Interior parking lot landscaping;
 - (c) Landscaping in existing building setbacks;
 - (d) Minimum landscaped area (where land is not used for structures, parking, or exterior improvements);
 - (e) Screening; and
 - (f) Paving of surface parking and exterior storage and display areas.

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

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

2.330 Review Criteria. The request will be approved if the review body finds that the applicant has shown that all of the following criteria are met:

- (1) The nonconforming situation was not created unlawfully. See Section 2.240.
- (2) With mitigation measures, there will be a net decrease in overall detrimental impacts (over the impacts of the previous use or development) on the surrounding area taking into account factors such as:
 - (a) The hours of operation;
 - (b) Vehicle trips to the site and impact on surrounding on-street parking;
 - (c) Noise, vibration, dust, odor, fumes, glare, and smoke;
 - (d) Potential for increased litter; and
 - (e) The amount, location, and nature of any outside displays, storage, or activities; and either (3) or (4) below.
- (3) If the nonconforming use is in a residential zone, and if any changes are proposed to the site, the appearance of the new use or development will not lessen the residential character of the area. This is based on taking into account factors such as:
 - (a) Building scale, placement, and facade;
 - (b) Parking area placement;
 - (c) Buffering and the potential loss of privacy to abutting residential uses; and
 - (d) Lighting and signs.
- (4) If the nonconforming use is in a commercial or industrial zone, and if any changes are proposed to the site, the appearance of the new use or development will not detract from the desired function and character of the zone.

~~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.~~
- ~~(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 a-c 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 this 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:~~

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.~~

~~3.052 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.~~

COMMENT

The provision for Conditional Zone Changes have been stricken because staff and the City Attorney have questions concerning the legality. Staff feels that rezoning should be made based on sound planning principles. These provisions have not been used since being added to the Code.

- 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 1.~~

- (6) ~~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.~~

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 that:

 - (a) ~~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~~
 - (b) ~~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.~~
- (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.~~

VACATIONS

- 2.340 Purpose. This section states the procedures and review criteria for the vacation of an easement, right-of-way, or plat.
- 2.350 Initiation. A vacation 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.
- 2.360 Procedure. Type IV procedures as outlined in Section ~~3.060~~ 1.260 shall be used as supplemented by the provisions of ORS Chapter 271. State law defines the affected area and mandates notice requirements that are more stringent than the City's Type IV procedure.
- 2.370 Vacation Review Criteria. ~~The Council shall give consideration to the following criteria in reaching a decision on a vacation request:~~ A vacation request may be approved if the review body finds that the applicant has shown that all of the following review criteria are met:
- (1) ~~Potential conflict~~ The requested vacation is consistent with relevant Comprehensive Plan policies and with any ~~minor or major~~ street plan city transportation or public facility plan.
 - (2) The requested vacation will not have a negative effect on access between public rights-of-way or to existing properties, potential lots, public facilities or utilities. ~~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.~~ The requested vacation will not have a negative effect on traffic circulation or emergency service protection.
 - (4) The portion of the right-of-way that is to be vacated will be brought into compliance with Code requirements, such as landscaping, driveway access, and reconstruction of access for fire safety.
 - (5) The public interest, present and future, will be best served by approval of the proposed vacation.

COMMENT

The new criteria addressing "present and future" public interest reflects the seriousness of giving up land in public ownership.

- 2.380 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.
- ~~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.~~
- 2.390 Conditions of Approval. The City may attach conditions to the approval of a vacation request to ensure that the proposal will conform to the review criteria.

VARIANCES

COMMENT

The proposed changes to this section result in more realistic criteria and clarify the purpose of a variance. What was formerly referred to, under the old Code, as a Type I variance is now an adjustment. See Sections 2.060 - 2.080.

~~15.010 Description and Purpose. Where a practical difficulty, unusual hardship, or the literal interpretation of a provision of this Code results in rendering a property incapable of reasonable economic use or causes specific hardships unintended by the Comprehensive Plan and the provisions of this Code, a variance may be granted as provided in this Article; however, no variance shall be granted which would permit a use outright or conditionally contrary to the schedule of Permitted Uses outlined in Article 5.~~

2.400 Purpose. Variances provide flexibility for unusual situations, while continuing to provide certainty and rapid processing for land use applications. Variances are necessary when the applicant requests a deviation from numerical standards of more than 10 percent, or a variation from non-numerical development standards. Requests for changes of less than 10 percent of a numerical standard are processed as adjustments.

2.410 Procedure. Variance requests shall be processed reviewed as a Type II procedure. ~~except as follows:~~

- ~~(1) A Type I procedure may be used to process a variance request involving not more than a 10 percent reduction or expansion of the quantifiable provisions of this Code where such variation can be determined to have no adverse impact on surrounding properties.~~
- ~~(2) A Type III procedure may be required by the Director when a variance request can be expected to establish a new precedent, interpretation of Code provisions, or have substantial impact on a surrounding area.~~

~~Application for a variance shall be made by the owner of the subject property or authorized agent on a form prescribed by the City and shall be accompanied by the prescribed fee and evidence demonstrating compliance with the criteria noted below.~~

- ~~(3) A Type III procedure shall be used to process any Variance request which involves an increase in project density or a decrease in a lot area requirements provided that no Variance shall be considered which would result in a project density increase or lot size reduction of more than 20% beyond existing density standards. In addition, such Variances shall not be considered where the Density Bonus provisions of Section 6.040 could be reasonably utilized to achieve the same result.~~

2.420 Regulations Which May and May Not Be Varied.

- (1) Unless listed in Subsection (2) below, all regulations in this Title may be modified using the variance process.
- (2) Variances are prohibited for the following items:
 - (a) To allow a primary or accessory use that is not allowed by the regulations.
 - (b) As an exception to any restrictions on uses or development which contain the word "prohibited".

- (c) As an exception to a threshold for a review, such as the size of accessory structures.
- (d) As an exception to a definition or classification.
- (e) As an exception to the procedural steps of a procedure or to change assigned procedures.

~~15.030 Criteria. A variance shall be granted if the proposal is determined by the Approval Authority to comply with all of the following where applicable:~~

- ~~(1) That there are unique physical circumstances or conditions, such as irregularity, narrowness or shallowness of the lot, or exceptional topographical or other physical conditions peculiar to the affected property.~~
- ~~(2) The property together with any adjoining property under the same ownership is not otherwise reasonably capable of economic use under the provisions of this Code and would thus be deprived of a substantial property right if the variance were not granted.~~
- ~~(3) That the situation requiring the variance has not been intentionally created by the applicant.~~
- ~~(4) Granting of the variance would not be inconsistent with the Comprehensive Plan.~~
- ~~(5) Granting of the variance would not be materially detrimental to the public welfare or adversely affect other property in the vicinity.~~
- ~~(6) That compliance with the provisions of this Code are achieved to the maximum extent possible.~~
- ~~(7) That the intent if not the letter of the Code cannot be achieved by alternative means.~~

~~2.430 Review Criteria. The review criteria for sign variances are stated in Section 18.230, Sign Code. All other variance requests will be approved if the review body finds that the applicant has shown that all of the following criteria have been met:~~

- ~~(1) The proposal will be consistent with the desired character of the area; and~~
- ~~(2) If more than one variance is being requested, the cumulative effect of the variances results in a project which is still consistent with the overall purpose of the zone; and~~
- ~~(3) The requested variance is the minimum necessary to allow the proposed use of the site; and~~
- ~~(4) Any impacts resulting from the variance are mitigated to the extent practical; or~~
- ~~(5) Application of the regulation in question would preclude all reasonable economic use of the site.~~

~~15.040 Conditions. The Approval Authority may attach conditions similar to those outlined for conditional uses where such may be deemed necessary to implement the purposes of this Code.~~

ZONING MAP AMENDMENTS

2.440 **Purpose.** This section states the procedures and review criteria necessary to process an amendment to the base zones, special purpose districts, and other map symbols of the Zoning Map. The section differentiates between amendments which are processed in a quasi-judicial manner and those processed in a legislative manner.

~~Procedures for Amending 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.~~

2.450 **Initiation.**

- (1) Quasi-judicial zoning map amendments may be initiated by a property owner, a representative of the owner, the Director, the Planning Commission, or the City Council.
- (2) Legislative zoning map amendments may be initiated by the Director, Planning Commission or City Council. Citizens may request that the Planning Commission initiate a legislative amendment. This type of initiation is addressed in Section 1.470.
- (3) Initiations by a review body are made without prejudice towards the outcome.

2.460 **Procedure.** ~~Such proposals shall be considered under~~ Zoning map amendments will be reviewed through the Type IV procedures as outlined in Section 3.060 1.260 or by legislative action as provided for in Sections 3.070 - 3.080 1.470 - 1.490.

2.470 **Special Notice Requirements.** ~~If an application~~ a zone change request would change the zone of property which includes all or part of a 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.

2.480 **District Amendment Review 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:~~ Zoning map amendments will be approved if the Council finds that the applicant has shown that all of the following criteria are met:

- (1) ~~The requested amendment proposed base zone~~ 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 2.080.
- (2) ~~The adequacy of Existing or anticipated transportation facilities (streets, bus routes, etc.) are adequate for uses that are permitted under the proposed zone designation. and the potential impact on traffic generation and safety.~~
- (3) ~~A demonstration that the~~ Existing or anticipated services (water, sanitary sewers, storm sewers, schools, police and fire protection etc.) can accommodate potential development within the subject area without adverse impact on the affected service area.
- (4) Any unique natural features or special areas involved such as floodplains, slopes, significant natural vegetation, historic district etc., ~~will be protected will not be jeopardized~~ as a result of the proposed rezoning.

(5) The intent and purpose of the proposed zoning district best satisfies the goals and policies of the Comprehensive Plan.

~~(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.~~

2.490 Corrections to the Official Zoning Map. The Director may initiate and approve a review following the Type I procedure for the types of corrections to the Official Zoning Map listed below:

- (1) A map line that was intended to follow a topographical feature does not do so. Topographical features include the tops and bottoms of hillsides, the banks of water bodies, and center lines of creeks or drainage ditches.
- (2) The line on the map does not match the legal description or map shown or referenced in the ordinance which applied the designation.
- (3) There is a discrepancy between maps and there is clear legislative intent for where the line should be.
- (4) It can be clearly shown that a map line is based on the location of a reference item that has since been moved. Reference items are rights-of-way, tentative rights-of-way, utility easements and similar type items. Map line changes in these cases must not be more than a trivial change to the map pattern and must not result in any significant impacts to abutting lots.

~~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.~~

~~3.052 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.~~

COMMENT

The provision for Conditional Zone Changes have been stricken because staff and the City Attorney have questions concerning the legality. Staff feels that rezoning should be made based on sound planning principles. These provisions have not been used since being added to the Code.