

ORDINANCE NO. 5619

AN ORDINANCE AMENDING ORDINANCE NO. 4441, WHICH ADOPTED THE CITY OF ALBANY DEVELOPMENT CODE AND ZONING MAP, BY AMENDING THE ZONING MAP FOR PROPERTIES LOCATED IN WEST ALBANY; ADOPTING FINDINGS; AND DECLARING AN EMERGENCY.

WHEREAS, the Albany City Council conducted a land use public hearing on January 26, 2005 on the proposed annexation and initial zoning of approximately 300 acres located in West Albany between the city limits and the Calapooia River for City of Albany File No. AN-A1-04; and

WHEREAS, the Albany City Council adopted findings in support of the annexation and adopted an ordinance proclaiming the annexation on February 23, 2005, and directed staff to prepare the necessary documents to zone the territory at a future meeting.

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

Section 1: The Albany Zoning Map is hereby amended to apply initial City zoning of Open Space (OS) to approximately 210 acres of annexation territory and Residential Single Family – 6,500-square-foot minimum lot size (RS-6.5) to approximately 90 acres of annexation territory as shown on Exhibit A.

Section 2: The Findings and Conclusions attached as Exhibit B are hereby adopted in support of this decision.

Section 3: A copy of the map showing the amendments to the Zoning Map shall be filed in the Office of the City Recorder of the City of Albany and the changes shall be made on the official City of Albany Zoning Map.

Section 4: A copy of the map showing the amendments to the Zoning Map shall be filed with the Linn County Assessor's Office within 90 days after the effective date of this ordinance.

IT IS HEREBY adjudged and declared that this Ordinance is necessary for the immediate preservation of the public peace, health, and safety of the City of Albany, and an emergency is hereby declared to exist, and this Ordinance shall take effect and be in full force and effect when passed by the City Council and approved by the Mayor.

Passed by the Council: May 25, 2005

Approved by the Mayor: May 25, 2005

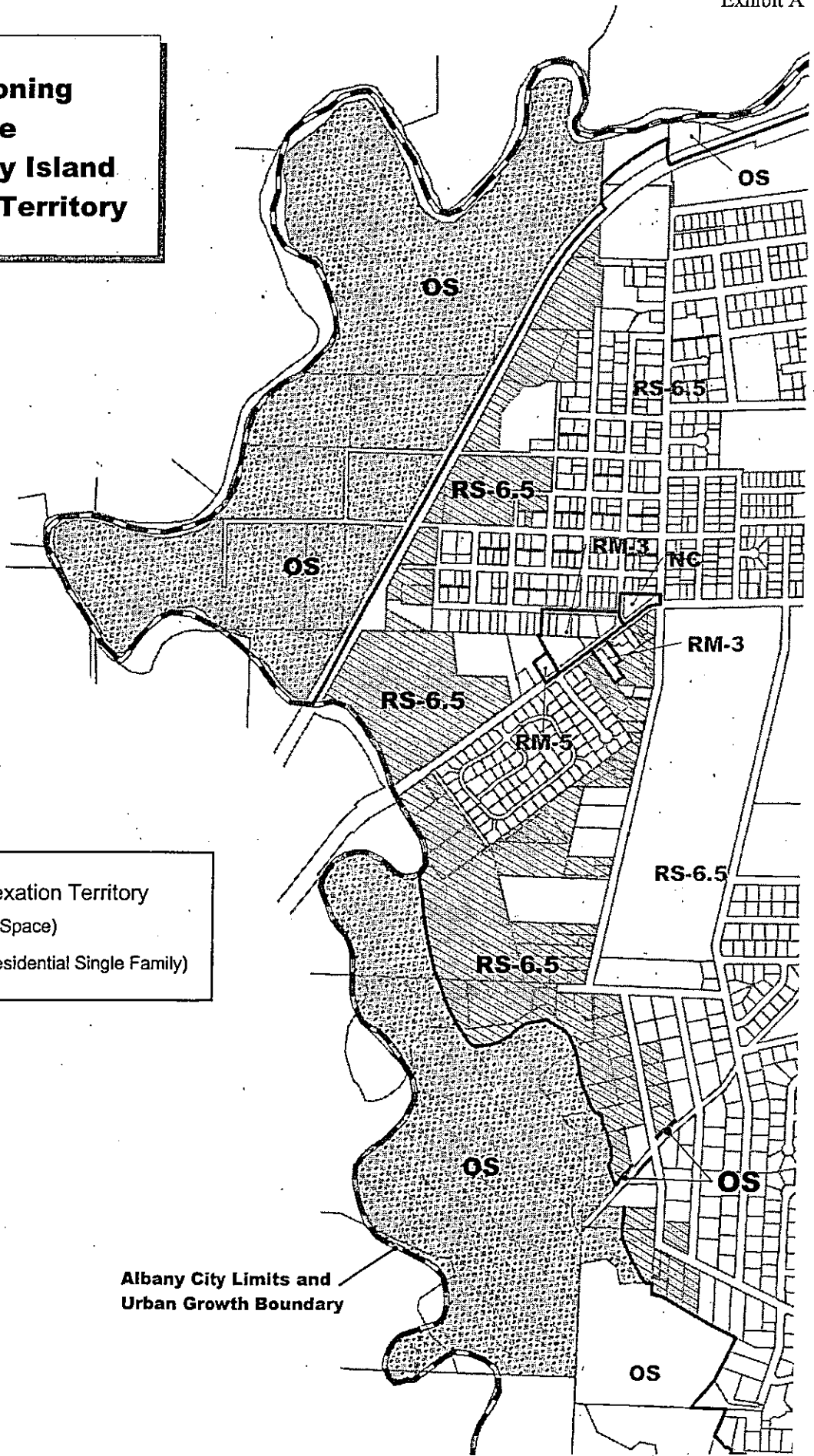
Effective Date: May 25, 2005

  
\_\_\_\_\_  
Mayor



ATTEST:

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

**Initial Zoning  
of the  
West Albany Island  
Annexation Territory**



**Zoning of Annexation Territory**

	OS (Open Space)
	RS-6.5 (Residential Single Family)

**Albany City Limits and  
Urban Growth Boundary**

**Findings and Conclusions**  
**City of Albany File No. AN-A1-04**  
**April 13, 2005**

These findings and conclusions address the application of initial city zoning to approximately 300 acres in the West Albany island annexation territory. These findings and conclusions constitute the reasons relied upon by the City Council in support of its decision to adopt the zoning designations for this area.

**1. Procedure**

Findings

- 1.1 The City mailed a *Notice of Public Hearing* to owners of property in the annexation territory, as well as to property owners within 300 feet of the proposed annexation, in advance of January 26, 2005 City Council public hearing. The notice invited them to attend and to speak to the proposed annexation. Existing Albany Comprehensive Plan designations and proposed Albany zoning districts for the territory were provided in the notice.
- 1.2 The public hearing took place on January 26, 2005.
- 1.3 Twenty-four property owners and concerned citizens presented oral and written testimony at, or prior to, this hearing, including testimony regarding the proposed zoning of the annexation territory.

Conclusion

- 1.1 The quasi-judicial public hearing was conducted in the manner prescribed by state law [ORS 197.763(6)] and local ordinance (ADC 1.490).

**2. Conformance with Comprehensive Plan**

Findings

- 2.1 On November 19, 1982, the Oregon Land Conservation and Development Commission acknowledged the Albany Comprehensive Plan to be in compliance with the Statewide Planning Goals. Acknowledgment means that the City of Albany successfully applied the Goals through its Comprehensive Plan and land use regulations.

- 2.2 The current Comprehensive Plan Map designations for the annexation territory are Open Space (about 210 acres); and Low Density Residential, Urban Residential Reserve, and Public/Semi-Public (about 90 acres).
- 2.3 On February 23, 2005, the Albany City Council adopted Ordinance No. 5611, which annexed this territory into the city limits.
- 2.4 The zoning jurisdiction is transitioning from county to city in conformance with the plan/zone matrix in the Comprehensive Plan, and in keeping with the established development pattern in the area. Those properties with the Comprehensive Plan designation of Open Space are being zoned Open Space. The remaining properties are being zoned RS-6.5 (Single Family Residential).
- 2.5 This action does not constitute a zone change. Rather, it is the application of initial City zoning based on a plan/zone matrix that was approved as part of a legislative land use process, with opportunities for citizen participation.

### Conclusions

- 2.1 An amendment to the Comprehensive Plan is not required because the Comprehensive Plan designations are not changing.
- 2.2 The City zoning being applied is consistent with the plan/zone matrix in the Comprehensive Plan.

### **3. Consideration of Natural Resources**

#### Findings

- 3.1 At the January 26, 2005 public hearing, several persons expressed concerns about potential harm to natural resources in the annexation territory. They referred to wildlife habitat, wetlands, native vegetation, and protected species found along this reach of the Calapooia River.
- 3.2 Statewide Planning Goal 5 is directed toward the protection of many types of resources and is applicable inside urban growth boundaries. Resources addressed by Goal 5 are: riparian corridors, including water and riparian areas and fish habitat; wetlands; wildlife habitat; federal wild and scenic rivers; state scenic waterways; groundwater resources; approved Oregon recreation trails; natural areas; wilderness areas; mineral and aggregate resources; energy sources; and cultural areas. Local governments are encouraged, but not required, to address historic resources; open space; and scenic views and sites.
- 3.3 Within the annexation territory, a principal tool for protection of Goal 5 resources is the City's Open Space Comprehensive Plan designation. Approximately 210

acres of the annexation territory has been designated as Open Space since 1980. The corresponding zoning district now being applied to this newly annexed area is the Open Space zoning district. The Open Space (OS) zoning district is a compatible zoning district with the Open Space Comprehensive Plan designation, according to the Plan Designation Zoning Matrix set forth in the Albany Comprehensive Plan. It is the only zoning district within the City of Albany that is compatible with the Comprehensive Plan designation.

- 3.4 Community Development Director Helen Burns Sharp explains in a written statement dated February 9, 2005, that the 210 acres of the 300-acre annexation territory designated as Open Space will continue to have resource protection pursuant to the terms of the OS zoning district. Albany relies on the OS zoning district for the greatest degree of protection of natural resources. Among those protections is a prohibition on future land divisions. The OS zone is typically applied along rivers, lakes, and streams to protect riparian areas, nearby wetlands, and fish and wildlife habitat. During Albany's last periodic review of the Comprehensive Plan (1989), this level of protection was acknowledged by the Oregon Land Conservation and Development Commission as being in compliance with Statewide Planning Goal 5.
- 3.5 Sharp notes in her written statement that zone boundaries commonly follow street centerlines and property boundaries. These are easily identifiable features. Sometimes it makes more sense to follow other features. For the OS zoning district, the zoning boundary was drawn to capture natural features such as wildlife habitat, wetlands, and a portion of the floodplain. Approximately eleven properties contain these natural features, but also have higher ground that is developable. In those cases, individual properties would be subject to multiple zoning designations, resulting in property that would be split-zoned to separate the uses.
- 3.6 The City relies upon the National Wetlands Inventory and the Local Wetlands Inventory to identify the location of wetlands. Wetlands under one-half acre are generally not mapped. When development is proposed in or near a wetland, the City directs the developer to contact the Oregon Department of State Lands and the U.S. Army Corps of Engineers. Albany relies on the OS zoning district to protect wetlands rated as "significant," as that term is defined by the Department of State Lands (OAR 141-86-0350). The Albany Development Code does not regulate development of other wetlands. The decision whether to allow development of wetlands is made by the Oregon Department of State Lands and the U.S. Army Corps of Engineers.
- 3.7 In her written statement, Sharp cites a number of important planning documents that were entered into the record at the January 26, 2005 public hearing. These plans show that the annexation territory has been considered in all of the City's infrastructure and natural resource plans relevant to that portion of the

community. In turn, these plans have been used to update the Comprehensive Plan and Development Code with their associated maps. These plans have been used to determine which areas are suitable for development and which are more appropriately conserved for open space purposes.

- 3.8 Albany relies on the OS zoning district to set aside the highest-quality natural areas for wildlife habitat. Development of other areas may result in the loss of marginal wildlife habitat, including areas suitable for foraging, nesting, and roosting.

### Conclusion

- 3.1 Goal 5 resources found within the annexation territory have been protected since 1981 by the Open Space Comprehensive Plan designation, and will now also be protected by the City's OS zoning district. The City will rely on OS zoning to protect the most valuable natural resources located on 210 acres of the 300-acre annexation territory.

## **4. Development within the Floodplain**

### Findings

- 4.1 At the January 26, 2005 public hearing, concerns were expressed about the boundary of the OS zoning district, including comments that land in the floodplain should not be considered developable or zoned for residential use.
- 4.2 Helen Burns Sharp Sharp said in her written statement that some land to be zoned RS-6.5 includes areas within the floodplain. Albany's floodplain management provisions were adapted from federal standards. Albany is a regular member in the National Flood Insurance Program, indicating that the City has adopted the minimum requirements of the Program. Albany also participates in the Community Rating System (CRS), a voluntary program whereby Albany residents receive reduced flood insurance premiums because the City has adopted more stringent floodplain management regulations. Albany's CRS rating of "8" means a 10-percent reduction in flood insurance premiums for property owners.
- 4.3 The minimum provisions of the National Flood Insurance Program allow for fill and development along the fringe of the floodplain, as long as a narrow corridor termed the floodway is reserved for passage of flood waters. Flood Insurance Rate Maps, published by the Federal Emergency Management Agency (FEMA), denote the official boundaries of the floodway and flood fringe. In determining the width of the floodway, the FEMA model has assumed that the entire flood fringe would be filled. Along the Calapooia River, the floodway is contained in the Open Space zoning district in order to minimize the risk of loss.

- 4.4 City Engineer Mark Shepard indicated in a written statement dated February 9, 2005, that none of the areas proposed for residential zoning are located within the floodway of the Calapooia River illustrated on Linn County's Floodway maps that were entered into the record, contrary to testimony regarding residential development in the floodway.

### Conclusion

- 4.1 The zoning designations in the annexed territory consider the proximity of the Calapooia River to the affected properties. The zoning designations and the City's floodplain development standards are intended to minimize impact in the floodplain.

## **5. Residential Development**

### Findings

- 5.1 The annexation territory has been included in Goal 10 Housing periodic review for the Albany Comprehensive Plan. Albany's *Housing Needs Analysis* (2004) provides a forecast for housing needs and a framework for addressing those needs. The housing strategy relies in large part on residential zoning to accommodate Albany's growing population. Approximately 90 acres of the annexation territory is proposed to be zoned Residential Single Family (RS-6.5) in partial fulfillment of Albany's housing needs.
- 5.2 The RS-6.5 zoning district is compatible with the existing Comprehensive Plan designations, according to the plan/zone matrix in the Albany Comprehensive Plan.
- 5.3 The RS-6.5 zoning district is the most appropriate zoning district for several reasons. Adjoining land inside the city limits is currently zoned RS-6.5. Existing residential development (approximately 60 homes) in the annexation territory is similar in size, density, and character to adjoining land inside the city limits. Much of the remaining undeveloped land is constrained by the floodplain of the Calapooia River.
- 5.4 At the January 26, 2005 public hearing, concerns were expressed about the application of a residential zone to land that has no development potential, such as the Bonneville Power Administration (BPA) substation and land in the floodplain.
- 5.5 The Albany Development Code does not have a zone specifically for public or semi-public uses, such as power substations, schools, churches, parks, or cemeteries. These uses are commonly found in residential areas, so they are usually zoned the same residential zone as the adjoining neighborhood. In the case

of the West Albany annexation, the BPA substation would be zoned RS-6.5. The fact that the properties are zoned for residential use does not mean that they have development potential. In fact, such lands are not included in the City's buildable land inventory.

### Conclusions

- 5.1 Only very limited development can occur in the Open Space zoning district, which applies to two-thirds of the annexation territory.
- 5.2 South of 27th Avenue, most of the residentially-zoned area is already developed and has limited potential for additional homes. Between 27th Avenue and Queen Avenue is an area with some development potential where scattered subdivision activity could occur. North of Queen Avenue, development potential in residential areas is limited by the cost of placing fill in floodplain areas. *The potential for infill development in the residential areas would not alter the feeling that this area is located on the edge of the City.*

## **6. Farm and Agricultural Use**

### Findings

- 6.1 At the January 26, 2005 public hearing, concerns were expressed about the inadequacy of the OS zoning district regarding uses allowed by county zoning.
- 6.2 The City's OS zoning district would be applied to the same areas as the County's pre-annexation zoning district, Urban Growth Area - Exclusive Farm Use – 80 (UGA-EFU-80). Section 930.130(A) of the Linn County Land Development Code reads, "Until annexation, the uses, minimum parcel size and development of land within an UGA-EFU-80 zoning district shall be consistent with the *Comprehensive Plan* designation of the affected city."
- 6.3 The Albany Comprehensive Plan designation for these areas is Open Space. While there may be differences in specific provisions of the UGA-EFU-80 and OS zoning districts, they are intended to implement the Open Space designation of the City's Comprehensive Plan Map.
- 6.4 Under the provisions of Linn County's UGA-EFU-80 zoning district, "propagation or harvesting of a forest crop" is a permitted use before annexation. The City's OS zoning district does not list this as a permitted use. However, the City's non-conforming use provisions may apply. (See Sections 2.300 to 2.400 of the Albany Development Code.) A landowner who can demonstrate that a timber management plan was initiated before annexation may be eligible for protection of the use under the City's non-conforming use provisions.



- 6.5 The Linn County Land Development Code already limits the use of land in the annexation territory. Before annexation, two-thirds of the annexation territory is protected for resource use under Linn County's UGA-EFU-80 zoning district. This same area will be protected by OS zoning after annexation. Outside these resource areas, subdivision and residential land development, which is currently suppressed under County zoning, could proceed more easily under City zoning.
- 6.6 This territory is largely developed as single-family residential or is open space.

### Conclusion

- 6.1 The Open Space designation will protect valuable natural resources in the annexed territory.
- 6.2 Some existing farm and agricultural uses may still continue as non-conforming uses.