

ORDINANCE NO. 5831

AN ORDINANCE AMENDING ORDINANCE NO. 4441, WHICH ADOPTED THE CITY OF ALBANY DEVELOPMENT CODE AND ZONING MAP BY AMENDING THE DEVELOPMENT CODE TEXT RELATED TO REDEMPTION CENTERS, ADOPTING FINDINGS, AND DECLARING AN EMERGENCY (FILE DC-02-13).

WHEREAS, the state of Oregon has delegated the responsibility to local government units to adopt regulations designed to promote public health, safety, and the general welfare of its citizenry; and

WHEREAS, from time to time it is appropriate to amend the Albany Development Code based on changing conditions, and to be in compliance with other state and federal laws; and

WHEREAS, this amendment is proposed as a part of the on-going process of evaluating and updating the Code; and

WHEREAS, on December 30, 2013, notice of the Planning Commission and City Council public hearings was published in the *Albany Democrat-Herald*; and

WHEREAS, on January 6, 2014, the Planning Commission held a public hearing on the proposed amendment; and

WHEREAS, the Planning Commission recommended the changes to the City Council, based on public testimony, their deliberation, and the staff report; and

WHEREAS, on February 12, 2014, the Albany City Council opened a public hearing on the proposed amendment, reviewed the amendment recommended by the Planning Commission and any testimony presented at the public hearing and then deliberated.

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

Section 1: The Albany Development Code text is hereby amended as shown in the attached Exhibit A for the articles listed below:

Exhibit A: Section 22.400 of Article 22, Use Categories and Definitions

Section 2: The City Council Findings Document, attached as Exhibit B, is hereby adopted in support of this decision.

Section 3: Inasmuch as this Ordinance is necessary for the immediate preservation of the peace, health, and safety of the citizens of the City of Albany, an emergency is hereby declared to exist. This ordinance will be in full force and effect on February 26, 2014, when signed by the Mayor.

Passed by the Council: Feb 26, 2014

Approved by the Mayor: Feb 26, 2014

Effective Date: Feb 26, 2014



Mayor

ATTEST:



City Clerk



CITY COUNCIL FINDINGS DOCUMENT

City of Albany File DC-02-13; Beverage Container Redemption Center Code Amendments

FINDINGS OF FACT

These findings are based on evidence presented at the City Council public hearing consisting of a staff report with attachments, supplemented by written testimony provided by two (2) individuals, and verbal testimony provided by five (5) individuals who spoke in opposition at the Council hearing.

Background

1. Recycling drop-off centers are allowed through an approved site plan review in the Community Commercial (CC) and Regional Commercial (RC) zones, and, through an approved site plan review or conditional use in the Light Industrial (LI) zone (if the recycling drop-off center is classified as a “waste and recycling-related” use). Recycling drop-off centers are not allowed in the Neighborhood Commercial (NC) and Main Street (MS) zoning districts because the intent of these zoning districts is to primarily support neighborhood-scale commercial development that serves nearby residences and employees rather than a use with a regional draw.
2. On February 12, 2014, the Albany City Council held a public hearing on a Development Code Amendment application to add a definition for “Redemption Centers” in Albany Development Code Article 22, and amend Special Conditions in Articles 4 and 5 to allow Redemption Centers through Site Plan Review or Conditional Use approval. The property owner is the Salvation Army of Long Beach, California, and the applicant is Stephanie Marcus, Property Acquisition Coordinator; Oregon Beverage Recycling Cooperative, of Portland, Oregon. Following the public hearing, the City Council passed a motion to tentatively deny the amendment application and directed staff to bring back findings to the next City Council meeting to support denial. Those findings follow.

Regional versus Neighborhood Scale Use

3. Grocery retailers within a 2-mile radius of a redemption center will no longer be required by law to accept bottle bill containers. These retailers include Costco, Fred Meyer, Bi-Mart, Safeway, Target, Mega-Foods, and Albertsons. Grocery retailers within a radius greater than 2 miles but less than 3½ miles are allowed to limit the quantity of returns per person to 24 a day. This will include Wal-Mart. Each customer that currently drops off redeemable containers at grocery retailers will need to take them to a single, regional redemption center instead.
4. An adequate supply of land has been zoned to provide for a full range of economic development around the greater Albany region. Staff does not know if all stores within the 2-mile and 3½-mile radius will change their policies accepting containers. However, since only one redemption facility is proposed in Albany, the redemption center will function as a regional facility serving Albany and the surrounding area rather than just the surrounding neighborhood. This finding is buttressed by the testimony of the applicant that the recycling center would process approximately 18 million units per year.
5. All grocery stores within the city limits of Albany are within a 3½-mile radius. Having just one recycling drop-off center centralizes beverage container redemption which will increase the need for travel and dependency on the private automobile. This will not promote energy efficiency nor reduce motor vehicle trips and their impact on the City’s transportation network.
6. The Comprehensive Plan designation for the former Salvation Army site and its surrounding neighborhood is “Village Center.” It has retained this designation and Main Street zoning for 18 years. Land controls, such as zoning districts and design standards, are used to preserve village centers for their intended use. Allowable retail uses are limited to small neighborhood-scale developments in the village center zones in order to meet the neighborhood needs. Village Center commercial uses shall be located, designed, and operated so as to be compatible with surrounding residential uses, according to the Comprehensive Plan.

7. The City, together with the Central Albany Revitalization Area (CARA), continues to invest significant resources to foster a neighborhood “feel” to the Main Street district by encouraging proposed developments that support and strengthen both the current zoning as well as the fabric of the neighborhood. In addition to outreach to the East Salem Neighborhood group to better understand their needs and goals, the City and CARA have invested in specific projects including the new workforce housing at Woodland Square, the community garden, the forthcoming traffic circle, as well as finding a future user for the historic church on Main Street and Santiam Road.
8. Commercial zones, such as Community Commercial (CC) and Regional Commercial (RC), are better suited for retail and service uses that draw customers city or region wide such as a bottle redemption center. As noted above, the Neighborhood Commercial (NC) district is intended primarily for small areas of retail establishments serving nearby residents’ frequent needs in convenient locations. The Neighborhood Commercial district is appropriate for small clusters or service centers located at intersections within residential neighborhoods. Businesses should fit into the residential pattern of development and not create land use, architectural, or traffic conflicts. Generally, uses located within Neighborhood Commercial districts should have as their primary market area the population within a one-half mile radius.
9. The Main Street district is intended as an employment center with supporting commercial and retail services for residents and employees in the area. As a Village Center zoning designation, uses in the Main Street district are intended to be easily accessible to nearby residences, pedestrian-friendly, and relate to adjacent land uses. Commercial uses must fit the scale of adjacent neighborhoods and the desired character envisioned for each Village Center.

Neighbors’ Concerns

10. Two letters of written testimony were provided to council members at the hearing, both in opposition of the proposed amendment that would permit a redemption center in the Main Street zone. One writer represents a developer working with the City to construct 54 units of “workforce” housing on Salem Avenue. The developer sees this as a significant investment and believes it will stimulate other redevelopment in the neighborhood. The other writer reiterates staff’s contention that the proposed redemption center would be a citywide or regional facility and that there are suitable buildings available in other zones where the use is permitted through Site Plan Review or Conditional Use.
11. Verbal testimony provided at the Council hearing voiced concerns over the amount of foot and vehicle traffic a redemption center would bring to Main Street. Heather Hill, owner of Legacy Ballet at 104 Main Street SE, opposes the amendments. She has leased her current office space for six years and has tried to make a positive impact in the neighborhood together with other businesses and neighbors. The neighborhood now has a community garden and the City has a vision now for Main Street and the waterfront. She and the neighbors have hopes to become part of a hub to connect to waterfront and downtown. Ms. Hill also believes a redemption center in the Main Street neighborhood will attract transients that will search peoples’ garbage cans to collect bottles and cans. She fears the foot traffic this use will create in the neighborhood, especially if other stores do not take returns. As a Main Street business owner she does not see it as a vision for her area. She wants to stay in the area and is excited to see vision take shape. The City Council finds these concerns true and valid.
12. Arthur Meeker, owner of Xtreme Grafx at 505 Main Street SE, is right around the corner from the old Salvation Army building. He is concerned about traffic and already sees lots of it on Main Street and Santiam Road. A redemption center in the neighborhood will bring more traffic. He also believes the use would generate extra foot traffic along with more crime such as stealing from vehicles, cutting through fences, and littering. When he works at his business in the middle of night, he sees foot traffic collecting things along the way. He is concerned about adding more foot traffic. The City Council finds these concerns true and valid.
13. Penny Williams, a homeowner at 434 Main Street SE, is concerned about having a redemption center placed in her small neighborhood. Foot and vehicle traffic is a huge concern and is for other neighbors. She believes if there was a redemption center there would be more traffic. People walking through the neighborhood to get to and from the homeless center will create more theft, littering, and traffic all day and

night, even if the open hours are only during the day. This will create more problems for the neighborhood. She notes this is already a concern for those who live there; most have lived there a long time, and are homeowners. All the residents are trying to make the neighborhood better, even though it is by the railroad. The Salvation Army is just one street away from all these homes. Ms. Williams is also concerned about noise from trucks, when they will be picked up, and how often. The Main Street district is a small residential neighborhood and the businesses are also small. If everyone in the city has to take their recycling there it will no longer be a small neighborhood, but more like an industrial area. The City Council finds these concerns true and valid.

14. Margaret Fourné lives at 926 Fourth Avenue SE, #9, which is about two blocks away from the old Salvation Army building. It is a very quiet neighborhood, during the week day. She is concerned about what the noise level will be like. She has been to other recycling drop-off centers already and can hear glass and other things crushing. She wondered if the operation will be going 24/7 or just 9:00 to 6:00 daily. She feels weekend noise will degrade the quality of the neighborhood. She agreed with other speakers' comments about the increase of foot traffic the use would bring, and added that she lives in an apartment, and all through the night there are folks in the dumpster. It is very unsettling to find them in the dumpster, and she does not know what drugs they are on. Traffic will be unbelievable, especially when trains come through. There is only room for 20 cars to wait along the street and she fears the use would add more cars pulling in and out, which would be ridiculous. Ms. Fourné testified she works at DariMart. She wants a redemption center and thinks we need it, but she has a different location in mind, for instance the old Toms Garden Center on Pacific Blvd, and the building next to it. The site might lessen what she takes in at work, but she says not worth what she will give up in her neighborhood. It is about traffic, quality of life, and noise. The City Council finds these concerns true and valid.
15. Emma Eaton, who lives at 1638 First Avenue SE, emphasized the tremendous investment in terms of emotional and financial "blood" she has made in the Main Street neighborhood and she is been seeing promising changes. She feels allowing the zoning amendment is setting a bad precedent. People are starting to have hope that they do have a Main Street and good quality of life. It also affects property values. She asked Council not to take their hope away. The City Council agrees that allowing regional commercial uses in the Main Street zone will not promote the values which the zone is intended to encourage. The City Council finds these concerns true and valid.

Burden of Proof

16. At the City Council meeting, the applicant described the operation of Bottle Drop facilities including different options available for customers to redeem bottles and cans and the types of properties that provide a good fit.
17. The property owner testified that the building has been difficult to maintain and sell because the Main Street zoning designation is restrictive on allowable uses. Stating that a vacant building was not good for the neighborhood, Mr. VanDomelen asked Council to approve the amendment that would permit the redemption center in the Main Street zone.
18. In rebuttal to verbal testimony from opponents, Ms. Marcus stated that business is conducted indoors and described the hours of operation as 9:00 a.m. to 6:00 p.m., seven days a week, closing at 7:00 p.m. during summer hours. Their facilities are clean and well-kept and include surveillance cameras. They enforce rules and expectations to discourage people from hanging out. Ms. Marcus contended there have been no concerns from businesses operating next door to redemption centers in other cities. When asked about the amount of truck traffic expected on site, the applicant stated it depended on the amount of product being removed from the center, but usually not daily. She estimated 20 to 25 cars per hour come to use centers or may use the outside drop-off facility at centers that do twice the volume anticipated at the Albany center. No evidence or documentation was provided to support these assertions.
19. The Council did not find the applicant's testimony to be credible and persuasive. The testimony was directed at the operational characteristics of the applicant's recycling centers particularly rather than the operational characteristics of the industry, generally. The testimony was largely anecdotal without supporting analysis concerning the accuracy of the information or the means by which it had been

determined. For example, the applicant testified that based upon its service area, the proposed center would likely process approximately 18 million units per year. The applicant also testified that based upon operating characteristics of similar facilities, the city should expect approximately 12 customer visits per hour. Considering the applicant's testimony that the facility would operate 9:00 to 6:00 daily, and a mathematical extrapolation reveals that for these numbers to be correct, the average person would have to bring about 350 bottles or cans at each recycling visit. That number appears to be extraordinarily high given the general experience of the Council and its observation of existing community practices. The applicant's numbers are suspect.

20. The applicant did not explain how or why a regional recycling center in the Main Street zone "better achieves the goals and policies of the Comprehensive Plan" or why such an amendment would be consistent with the "Development Code's policies...and with the purpose statement for the base zone (Main Street zone)." Therefore, the applicant has not presented evidence supporting its burden of proof.
21. Albany Development Code (ADC) Section 2.290 lists the applicable review criteria for approving Development Code amendments. Both review criteria must be met for the City Council to approve an amendment application:
 - (1) The proposed amendments better achieve the goals and policies of the Comprehensive Plan than the existing regulatory language; and
 - (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.
22. Commercial zones, such as Community Commercial and Regional Commercial, are better suited for retail and service uses that draw customers city or region wide such as a bottle redemption center. The Neighborhood Commercial and Main Street districts are intended primarily for small areas of retail establishments serving nearby residents' frequent needs in convenient locations. The City, together with the Central Albany Revitalization Area (CARA), continues to invest significant resources to foster a neighborhood "feel" to the district by supporting proposed developments that support and strengthen both the current zoning as well as the fabric of the neighborhood.
23. The City Council finds that the proposed amendments do not better achieve the goals and policies of the Comprehensive Plan and are not consistent with Development Code policies on purpose and with the purpose statement for the base zones where the amendments are proposed.
24. The Code change that adds a definition for redemption centers is acceptable.

CONCLUSIONS

1. The proposed amendments to permit redemption centers in the Main Street and Neighborhood Commercial districts do not better achieve the goals and policies of the Comprehensive Plan than the existing regulatory language.
2. The proposed Development Code amendments that would allow redemption centers in the Main Street and Neighborhood Commercial districts are not consistent with the purpose and purpose statements of the zones.
3. The review criteria are not met, so the amendment application to permit redemption centers in the Main Street and Neighborhood Commercial districts is denied.
4. In order to create certainty that redemption centers are allowed within the Community Commercial, Regional Commercial, and Light Industrial zones, the Development Code should be amended to include a definition of redemption centers per the attached ordinance.

CITY COUNCIL SAMPLE MOTION

I MOVE that we ADOPT the findings and decision prepared by staff based upon our tentative decision at the previous Council meeting. (If approved, direct City Attorney to read ordinance relating to the addition of a definition for redemption centers to be added to Article 22 of the Development Code and following second reading adopting ordinance.)

Proposed Amendment to the Albany Development Code

1) Proposed amendment to Albany Development Code (ADC) Section 22.400:

“Redemption Center: An indoor retail facility approved by the Oregon Commission as provided for in ORS 459A that facilitates the return of empty beverage containers and serves dealers of beverages, at which any person may return empty beverage containers and receive payment of the refund value of such beverage containers.”

STAFF COMMENT: Planning Commission recommends APPROVAL



COMMUNITY DEVELOPMENT DEPARTMENT

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NOTICE OF DECISION

DATE OF NOTICE: February 27, 2014
FILE: DC-02-13
TYPE OF APPLICATION: Legislative amendments to the following Development Code Articles


- Article 4, Commercial and Industrial Zoning Districts
- Article 5, Mixed Use Village Center Zoning Districts
- Article 22, Use Categories and Definitions

REVIEW BODIES: City Council and Planning Commission
PROPERTY OWNER: The Salvation Army; 180 East Ocean Boulevard; Long Beach, CA 90802
APPLICANT: Stephanie Marcus, Property Acquisition Coordinator; Oregon Beverage Recycling Cooperative; 3900 NW Yeon Avenue; Portland, OR 97210
ADDRESS/LOCATION: 1224 Santiam Rd SE
MAP/TAX LOT: Linn County Assessor's Map No. 11S-03W-06DD; Tax Lot 11000 & 10900
ZONING: MS (Main Street) District
CP DESIGNATION: Village Center

On February 26, 2014, the Albany City Council DENIED the Development Code Amendment application referenced above that would have allowed redemption centers as a permitted use in the Neighborhood Commercial (NC) and Main Street (MS) zoning districts. However, the Albany City Council adopted Ordinance No. 5831 to amend Article 22 of the Albany Development Code that added a definition for "redemption center" as described in Exhibit A.

A copy of Ordinance No. 5831 is attached. Exhibits are available upon request. The City based its decision on the proposed code amendment's conformance with the review criteria listed in the Albany Development Code. The supporting documentation relied upon by the City in making this decision is available for review at City Hall, 333 Broadalbin Street SW. For more information, please contact David Martineau, Project Planner at 541-917-7550.

The City's decision may be appealed to the State Land Use Board of Appeals (LUBA), if a person with standing files a completed Notice to Appeal application and the associated filing fee no later than 21 days from the date the City mails the Notice of Decision.


City of Albany Mayor