

ARTICLE 2 REVIEW CRITERIA

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

- Adjustments
- Annexations
- Comprehensive Plan and Map Amendments
- Conditional Uses
- Development Code Amendments
- Nonconforming Situations
- Site Plan Review
- Vacations
- Variances, Major
- Variances, Minor
- Zoning Map Amendments

[Ord. 5445, 4/12/00; Ord. 5720, 8/12/09; Ord. 5947, 1/01/21]

2.020 Function of Review Criteria.

- (1) Review criteria describe the issues the applicant must address and that the City or affected parties may raise. A proposal that complies with all of the criteria will be approved. A proposal that can comply with the criteria with mitigation measures or limitations will be approved with conditions. A proposal that cannot comply with the criteria outright or with mitigation measures will be denied.
- (2) The review criteria are derived from the Comprehensive Plan. Reviews against the goals and policies of the Comprehensive Plan are not required unless specifically stated. The proposal conforms to the Comprehensive Plan if it fulfills the review criteria.
- (3) When review criteria require an application to meet a specific standard, such as adequate services or no negative offsite impacts, all proposed improvements and mitigation measures must be identified before the review body will make a final decision.

[Ord. 5720, 8/12/09]

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

2.050 Relationship to Other Regulations. When a land use application is approved based on review criteria in this Code, the applicant must still comply with other applicable codes, ordinances, statutes, and regulations.

ADJUSTMENTS

2.060 Purpose. The Adjustment review allows the Director to approve modifications to the application of most design standards in Article 8 and buffering and screening standards in Article 9, as noted in those articles. The Adjustment review process provides a mechanism by which the standards in the ADC may be modified if the proposed development continues to meet the intended purpose of those regulations. Adjustment reviews provide flexibility for unusual situations. They also allow for alternative ways to meet the purposes of the Code. [Ord. 5947, 1/01/21]

2.070 Procedures. Adjustment applications are processed through a Type III procedure.

[Ord. 5947, 1/01/21]

- 2.080 Review Criteria. For each standard for which an Adjustment is requested, the applicant must show that the following criteria have been met:
- (1) Granting the Adjustment will equally or better meet the purpose of the regulation to be modified; and
 - (2) The proposal will be consistent with the desired character of the base zone; and
 - (3) Any negative impacts resulting from the Adjustment are mitigated to the extent practical; and
 - (4) The proposal will not significantly detract from the livability or appearance of the surrounding area; and
 - (5) If more than one Adjustment is being requested, the cumulative effect of the Adjustments results in a project which still meets criteria (1) through (4), above. [Ord. 5947, 1/01/21]

ANNEXATIONS

2.090 Purpose. Annexation is the first step in converting land in the Albany Urban Growth Boundary to urban land. Annexation and subsequent development may provide economic and social benefits to the City of Albany through the creation of housing; business and commercial enterprise; creation of construction and permanent jobs; and expansion of the City’s tax base. When annexations are properly timed, they allow for orderly expansion of City boundaries and contribute to logical extensions of public infrastructure. An ill-conceived annexation may impose burdens on the community that could outweigh the benefits. An annexation application must meet the quasi-judicial and legislative requirements of this Code and state law.

2.095 Procedure. Annexation applications are reviewed as a Type IV procedure. An annexation shall not be effective unless it is approved by the Albany City Council at its discretion. The procedure and standards established in this chapter are required for review of proposed annexations in order to:

- (1) Provide adequate public notice, information, and sufficient time for public review before annexation hearings and elections; and
- (2) Maximize citizen involvement in the annexation process; and
- (3) Provide information to the public concerning the physical, environmental, financial, and related social effects of annexation.

Exception. These procedures do not apply to an annexation mandated by state law, which is a Type I procedure [Ord. 5947, 1/01/21]

2.100 Voting in Island Annexations. When considering the annexation of “island” territory as authorized by ORS 222.750, the City Council shall authorize the electors within the annexation territory to vote on the question of annexation. In such event, the votes of the electors in the annexation territory shall be counted with the votes of the electors within the city. This section shall not authorize the votes of the electors within the annexation territory to be considered separately from those of the citizens within the city, except that an annexation will not be approved unless the majority of votes cast by the city electors approve the annexation.

2.105 Annexation Agreement. The annexation applicant and the City of Albany may enter into an Annexation Agreement for the purpose of addressing the annexation-related quasi-judicial or legislative concerns of the City of Albany. The agreement may contain proffers made by the applicant to address quasi-judicial or legislative criteria or concerns. The annexation agreement may provide the basis for the City Council to determine that the proposed annexation is in the public interest. The terms of the annexation agreement may help the applicant meet applicable review criteria for annexation or enhance the public benefits that will result from the annexation. The terms of an annexation agreement may include, but are not limited to, timing of the submittal of an application for zoning, dedication of land for future public facilities, construction of public improvements, waiver of compensation claims, waiver of nexus or rough proportionality objections to future exactions, or other commitments deemed valuable to the City of Albany. The annexation agreement shall be recorded as a covenant running with the land, binding on the landowner’s successors in interest.

2.110 Review Criteria. When an annexation application has been properly initiated pursuant to ORS 222.111, 222.115, 222.125, 222.170, or 222.840, the review body shall make a quasi-judicial land use decision as to whether the proposed annexation complies with all of the following criteria: [Ord. 5947, 1/01/21]

- (1) Eligibility Criteria. The City shall determine that property is eligible for annexation based on the following criteria:
 - (a) The property is contiguous to the existing city limits; and
 - (b) The property is located within the Albany Urban Growth Boundary as established by the Albany Comprehensive Plan.
- (2) Infrastructure Criteria. The City shall determine that it is timely to annex property based on the following criterion:
 - (a) An adequate level of urban services and infrastructure is available, or will be made available in a timely manner.
 - (b) As used in this section:
 - i. “Adequate level” means conforms to adopted plans and ordinances.
 - ii. “Urban services” means police, fire, and other City-provided services.
 - iii. “Infrastructure” means sanitary sewer, water, storm drainage, and streets.
 - iv. “Be made available in a timely manner” means that improvements needed for an adequate level of urban services and infrastructure will be provided at the time and place needed to serve the anticipated development. Improvements may be secured by a development agreement, annexation agreement, or other funding mechanism that will place the primary economic burden on the territory proposed for annexation and not on the City of Albany generally.
- (3) Planning Criteria. The City shall determine that adequate planning has occurred based on the following criterion:

Sufficient planning and engineering data have been provided, and necessary studies and reviews have been completed so that there are no significant unresolved issues regarding appropriate Comprehensive Plan and implementing ordinances. Examples of needed studies may include public infrastructure plans, buildable lands inventories, area refinement plans, or any task in an approved work program for Periodic Review.
- (4) Reasonableness Criteria. The City shall determine that it is reasonable to annex the property.

2.115 Legislative Review. The City has been entrusted by the people of Albany to make decisions affecting the livability of the community. The people rely on the City to consider factors it deems appropriate in making quality of life determinations on their behalf.

The City Council may approve an annexation request if it finds that the annexation is in the best interest of the City based on the staff report, testimony, and evidence presented at the public hearing; and any other information, evidence, or analysis the City Council deems relevant to the application. However, the City is not obligated to approve the annexation in its legislative capacity even if it determines that the quasi-judicial review criteria have been met. Following the quasi-judicial land use determination, the City may decline to take legislative action, or make a legislative determination to approve or deny the proposed annexation if it deems such action to be in the public interest. The legislative decision to approve, deny, or to decline to take such action, shall be at the sole discretion of the City and shall be made by resolution. A decision to deny an annexation shall be specifically stated in the record and noted as a legislative act separate and apart from the quasi-judicial land use decision.

- 2.120 Proclamation of Annexation. If the annexation is approved by the City Council, the City Council by ordinance, shall set the final boundaries of the area to be annexed by a legal description of the annexation boundary and report all changes in the boundaries of the City as required by State law. [Ord. 5947, 1/01/21]

ZONING OF ANNEXATION TERRITORY

- 2.125 Interim Zoning. Any area annexed to the City shall retain the zoning classification of the county until changed by the City. During the period between the proclamation of annexation and application of City zoning, the City shall enforce the current zoning regulations of the county along with any conditions, limitations or restrictions applied by the county as though they were part of the Code, except that the provisions of this Code shall supersede comparable provisions of the county zoning regulations.
- 2.130 Procedure. Applying initial City zoning to annexation territory is subject to the provisions of ADC 2.700 through 2.760.
- 2.135 Application of Initial City Zoning. The City may exercise full discretion in determining the initial City zoning of annexation territory.
- (1) The City may initiate a zoning map amendment as provided by ADC 2.710 to apply the initial City zoning to the annexation territory.
 - (2) The City may approve the zoning requested by the applicant.
 - (3) The City may select a zoning district other than that requested by the applicant in order to best satisfy the criteria for a zoning map amendment set forth in ADC 2.740. In this event, the applicant may withdraw the annexation application by written notice to the City within ten (10) days of the City's action. [Ord. 5947, 1/01/21]
- 2.140 Concurrent Applications. The City does not have authority to zone land or to regulate development under this Code until land is annexed. However, the applicant for annexation may request zone change and development-related applications filed for concurrent review with an annexation request. As used in this section, "development-related application" includes, but is not limited to, Site Plan Review, Conditional Use, land division, or Major Variance. [Ord. 5947, 1/01/21]
- (1) If the applicant for annexation desires concurrent, pre-annexation determinations for related land use applications, those applications shall be processed concurrently through a Type IV-Q procedure. [Ord. 5947, 1/01/21]
 - (2) In order to be eligible for filing zone change and development-related applications for concurrent review with an annexation request, the applicant shall waive the provisions of state law and this Code that require a final decision within 120 days.
 - (3) The determination on all land use applications filed for concurrent review with an annexation application shall not be final for the purposes of administrative or judicial review until the date that the annexation is proclaimed
 - (4) All land use applications filed for concurrent review shall result in a single decision for purposes of appeal, such that all applications, excluding annexation, are subject to review on appeal if any one application is challenged.
 - (5) If any land use decision concurrent with annexation is reversed on appeal, all concurrent applications, excluding annexation, are void.
 - (6) Concurrent, development-related applications, once approved, may be modified pursuant to the procedures in ADC 1.330, or the development-related application may be withdrawn and a new application submitted for review. [Ord. 5947, 1/01/21]
 - (7) In the event land is not developed in substantial conformance with a concurrent, development-related approval and the decision is no longer valid, the City may initiate a zone change pursuant to ADC 2.710 to revert all or a portion of the annexation territory to the previous county zoning classification. Such a reversionary stipulation may be included in the annexation agreement. [Ord. 5636; 1/11/06]

COMPREHENSIVE PLAN AMENDMENTS

- 2.190 Purpose. The Comprehensive Plan is the City's official and controlling land use document, guiding public and private activities that affect Albany's growth, development, and livability. The Plan is intended to be a flexible document, reflecting changing circumstances and community attitudes through occasional amendments. This section provides a process for amending the Comprehensive Plan without violating its integrity or frustrating its purposes. This process applies to proposed changes to the Comprehensive Plan Map designations, text and the Urban Growth Boundary.
- 2.200 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, Planning Commission, Landmarks Commission, or Director may also initiate Plan amendments. These initiations are made without prejudice towards the outcome.
- 2.210 Procedure. If the Director determines a request for a Plan amendment is legislative, the request will be reviewed through the Type IV-L legislative procedures in Section 1.260. Quasi-judicial requests are reviewed through the Type IV-Q procedures of Section 1.250. Area specific amendments, including Map amendments outside of the City limits, are processed in accordance with the City-County Urban Growth Management Agreement. [Ord. 5947, 1/01/21]
- 2.220 Review Criteria. Amendments to the Comprehensive Plan will be approved if the Council finds that the application meets the following applicable criteria:
- (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 is 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.
- 2.225 Corrections to the Comprehensive Plan Map. The Director may initiate a review through the Type I procedure for these types of corrections to the Comprehensive Plan Map:
- (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 the map shown or referenced in the ordinance that applied the designation; or
 - (3) There is a discrepancy between maps, and there is clear legislative intent for where the line should be.
 - (4) The 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 significantly affect abutting lots.

CONDITIONAL USES

2.230 Purpose. The City does not allow some uses outright, although they may have beneficial effects and serve important public interests. These uses are subject to the Conditional Use regulations because they may have 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 review process provides an opportunity to allow the use when it will have 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 as requiring Conditional Use approval may be permitted, enlarged or altered according to the provisions of this section. In addition, when a use is not authorized in any district or when it is unclear how to classify a particular use or development within the intent of this Code, the use or type of development may be established by a Conditional Use approval in accordance with this section.

[Ord. 5947, 1/01/21]

2.240 Procedure. A Conditional Use application is reviewed as either a Type II or a Type III procedure, according to the Schedule of Permitted Uses.

[Ord. 5446, 5/10/00, Ord. 5673, 6/27/07]

2.250 Review Criteria. Requests for Conditional Use will be approved if the review body finds that the application conforms with the Albany Development Code and all of the following criteria, either outright or with conditions that bring the proposal into compliance:

[Ord. 5886, 1/6/17; Ord. 5947, 1/01/21]

- (1) The proposed use is consistent with the intended character of the base zone and the operating characteristics of the neighborhood.
- (2) The proposed use will be compatible with existing or anticipated uses in terms of size, building scale and style, intensity, setbacks, and landscaping or the proposal mitigates difference in appearance or scale through such means as setbacks, screening, landscaping or other design features.
- (3) The transportation system can support 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.

[Ord. 5720, 08/12/09]

- (4) Public services for water, sanitary and storm sewer, water management, and for fire and police protection, can serve the proposed use.

[Ord. 5720, 08/12/09]

- (5) The proposal will not have significant adverse impacts on the livability of nearby residentially zoned lands due to:

(a) Noise, glare, odor, litter, or hours of operation.

(b) Privacy and safety issues.

- (6) Activities and developments within special purpose districts must comply with the regulations described in Articles 4 (Airport Approach), 6 (Natural Resources), and 7 (Historic), as applicable.

[Ord. 5265, 12/18/96; Ord. 5764, 12/1/11]

2.260 Conditions of Approval. The review body may attach conditions of approval to ensure that the proposal will conform to the applicable review criteria.

Some of the most frequently imposed conditions relate to the following: uses, special yards, and spaces; fences and walls; street dedications and improvement petitions (or bonds); site entry and exit; signs; building textures, colors, architectural features and height; landscaping, screening and buffering; noise, vibration, odors or other similar nuisances; hours for certain activities; time period within which the proposed use shall be developed; duration of use; and preservation of natural vegetation and open space.

2.265 Application Contents. As applicable, application contents shall be the same as those required for Site Plan Review in Section 2.490.

[Ord. 5842, 1/01/15; Ord. 5947, 1/01/21]

DEVELOPMENT CODE AMENDMENTS

- 2.270 Purpose. The Development Code implements the goals and policies of the Comprehensive Plan, which reflects community values and needs. Because these values may change with time and because new techniques for implementing the Plan may become more appropriate, the Code must have some mechanism for response to those changes. Amendments to the Code should occur as needed to maintain a close relationship between it and the Comprehensive Plan.
- 2.280 Procedures. Code amendments shall be processed as a Type IV-L procedure in accordance with the legislative procedures of Section 1.260. Exception: The Director may initiate and approve amendments for the following types of corrections through a Type I procedure: typographical, grammatical, and cross-referencing errors. [Ord. 5635, 1/11/06; Ord. 5947, 1/01/21]
- 2.290 Review Criteria. The request may be approved if the Council finds that the application meets the following criteria:
- (1) The proposed amendments better achieve the goals and policies of the Comprehensive Plan than the existing 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.

NONCONFORMING SITUATIONS

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

2.333 Compliance with Former Regulations. Every nonconforming use, structure, development site or situation shall maintain compliance with all applicable regulations, including conditions of approval on land use actions by which it was governed at the time it became nonconforming.

[Ord. 5832, 4/9/14]

2.335 Loss of Nonconforming Status.

(1) The nonconforming status of a building, structure, or land shall be deemed to have terminated excluding building height, setbacks or lot coverage, if the building, structure, or land is not occupied by a permitted or legally nonconforming use for one continuous year. The “vacancy clock” stops when a land use application on the property is deemed complete. A request may be submitted to the Community Development Department for reinstatement of nonconforming status within one year from April 9, 2014, or for an extension of up to two additional years prior to the site being vacant for one year. The extension or reinstatement may be granted under the Type II procedure only if the Director finds that:

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

[Ord. 5832, 4/9/14]

(2) Any nonconforming use or development dependent upon a building or structure that has been declared a “dangerous building” and ordered demolished pursuant to the Albany Dangerous Building Code (AMC Title 18) will be considered terminated upon that declaration and order.

(3) Any nonconforming use or development dependent upon a building or structure that has been substantially damaged to the extent that repair or restoration of the building or structure would cost more than 70 percent of its fair market value will be considered terminated.

- (a) Cost of repair or restoration shall be determined by the Building Official. Fair market value shall be determined by an independent appraisal acceptable to the City. The owner or applicant may appeal these determinations of value and cost to the Building Board of Appeals, or may apply for an exception under the Type II procedure.
- (b) The Director may allow additional reconstruction upon finding that:
 - i. Conversion to a conforming use will result in substantial economic loss, and
 - ii. The proposed use will result in greater conformance with the development standards, or
 - iii. Immediately surrounding land uses are similarly nonconforming and the reconstructed use will be compatible with both the nonconforming and conforming uses in the review area.

(4) Rebuilding structures that contained nonconforming uses and which have been intentionally destroyed is prohibited.

2.340 Allowances That Apply to All Nonconforming Situations.

[Ord. 5832, 4/9/14]

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

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

[Ord. 5832, 4/9/14]

(3) Normal maintenance and repair is allowed.

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

(5) Legal nonconforming uses may continue to operate.

[Ord. 5832, 4/9/14]

- (6) A change from a legal nonconforming use to a use in the same use category or to a use not otherwise permitted in the zone may be considered through a Nonconforming Use Review in accordance with Section 2.350. [Ord. 5832, 4/9/14]

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

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

2.360 Nonconforming Use Review Criteria for Type II Decisions. A request will be approved for nonconforming uses if the review body finds that the application meets all of the following criteria: [Ord. 5832, 4/9/14]

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

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

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

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

2.370 Nonconforming Site Review Criteria. Sites that are nonconforming with the current development standards and that have lost their nonconforming status are required to bring the site into compliance with current Code standards. Incremental improvements are allowed in accordance with Subsection (1). [Ord. 5832, 4/9/14]

- (1) Incremental Improvements to Nonconforming Sites. Once the cumulative value of one or more building improvements, expansions or site modifications exceeds \$25,000, excluding the costs associated with voluntarily bringing the site into compliance with applicable development standards, 10% of the cost of all improvements proposed thereafter must be allocated toward improvements that bring the site into compliance with standards in this Code unless all of the standards listed below can be met at lesser cost. The value of a proposed building or site investment will be the value stated on the application for building permits or calculated by the Building Official, whichever is higher. Improvements that bring the site into compliance with the standards of this Code shall be implemented in the following order of priority, unless a greater benefit is achieved by implementing a lower order of priority item first: [Ord. 5832, 4/9/14]

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

SITE PLAN REVIEW

- 2.400 Purpose. Site Plan Review is intended to promote functional, safe, and attractive developments that maximize compatibility with surrounding developments and uses and with the natural environment. It mitigates potential land use conflicts through specific conditions attached by the review body. The review focuses on the layout of a proposed development, including building placement, setbacks, parking areas, external storage areas, open areas, and landscaping. [Ord. 5445, 4/12/00; Ord. 5767, 12/7/11]
- 2.410 *Section removed by Ordinance 5767 adopted December 7, 2011.*
- 2.415 Procedure. An application for Site Plan Review shall be reviewed through either a Type I or Type I-L procedure, as indicated below.
- (1) Single-family, two-family, and multi-family development up to and including four (4) units: Type I procedure.
 - (2) Multi-family development of five (5) or more units, units above or attached to a business, and manufactured home parks: Type I-L procedure.
 - (3) Non-residential development: Type I-L procedure. [Ord. 5832, 4/9/14; Ord. 5947, 1/01/21]
- 2.420 Relationship to Other Regulations. When a land use application is approved based on review criteria in this Code, the applicant must still comply with other applicable codes, ordinances, statutes, and regulations. [Ord. 5445, 4/12/00]
- 2.430 Applicability. In general, Site Plan Review is intended for all new development within the city that specifically requires Site Plan Review as listed in Articles 3, 4 and 5. It applies to new construction, additions or expansions, site modifications, and changes in land use categories. Sites that contain a legal nonconforming use will be processed in accordance with Section 2.350. [Ord. 5445, 4/12/00; Ord. 5767, 12/7/11; Ord. 5832, 4/9/14]
- (1) Any development that requires Site Plan Review, unless specifically exempt in Section 1.105. [Ord. 5947, 1/01/21]
 - (2) A change of use or reuse of a building or site when the use is allowed through Site Plan Review, and that requires construction of three or more new parking spaces, additional loading areas, or that modifies site circulation or access. [Ord. 5832, 4/9/14]

- (3) Building additions or use expansions greater than 2,000 square feet or greater than 50 percent of existing building area, whichever is less, or any expansion that requires three or more new parking spaces, additional loading areas, or modifies site circulation or access.
[Ord. 5767, 12/7/14; Ord. 5832, 4/9/14; Ord. 5886, 1/6/17]
- (4) New parking areas or expansions to existing parking areas greater than 1,000 square feet or modifications that change site circulation or access. [Ord. 5767, 12/7/11; Ord. 5832, 4/9/14]
- (5) Temporary placement of a manufactured home for: (a) night watchman; (b) business office space during construction or remodeling; (c) building space for education, non-profit, and government agencies. (See Sections 10.470-10.490.) [Ord. 5445, 4/12/00; Ord. 5767, 12/7/11]

2.440 *Section removed by Ordinance 5767 adopted December 7, 2011.*

2.450 Review Criteria – All Site Plan Review Applications. Site Plan Review approval will be granted if the review body finds that the application conforms with the Albany Development Code and meets all of the following criteria that are applicable to the proposed development.

- (1) The application is complete in accordance with the applicable requirements.
- (2) The application complies with all applicable provisions of the underlying zoning district including, but not limited to, setbacks, lot dimensions, density, lot coverage, building height, and other applicable standards.
- (3) Activities and developments within special purpose districts comply with the regulations described in Articles 4 (Airport Approach), 6 (Natural Resources), and 7 (Historic), as applicable.
- (4) The application complies with all applicable Design Standards of Article 8.
- (5) The application complies with all applicable Design Standards of Article 10.
- (6) The application complies with all applicable On-Site Development and Environmental Standards of Article 9.
- (7) The Public Works Director has determined that public facilities and utilities are available to serve the proposed development in accordance with Article 12 or will be made available at the time of development.
- (8) The Public Works Director has determined that transportation improvements are available to serve the proposed development in accordance with Article 12 or will be available at the time of development.
- (9) The proposed post-construction stormwater quality facilities (private and/or public) can accommodate the proposed development, consistent with Title 12 of the Albany Municipal Code.
- (10) The proposal meets all existing conditions of approval for the site or use, as required by prior land use decision(s), as applicable.
- (11) Sites that have lost their nonconforming status must be brought into compliance, and may be brought into compliance incrementally in accordance with Section 2.370.

Ord. 5947, 1/01/21]

2.455 Review Criteria – Additional Criteria for Non-Residential Applications (including the non-residential portion of a mixed-use development). Site Plan Review approval will be granted if the review body finds that, in addition to meeting the review criteria in 2.450, the application meets all of the following criteria that are applicable to the proposed development.

- (1) The transportation system can safely and adequately accommodate the proposed development.
- (2) Parking areas and entrance-exit points are designed to facilitate traffic and pedestrian safety and avoid congestion.

- (3) The design and operating characteristics of the proposed development are reasonably compatible with surrounding development and land uses, and any negative impacts have been sufficiently minimized.
[Ord. 5947, 1/01/21]

2.460 Conditions of Approval. The City may attach conditions to the approval of a Site Plan Review application in order to ensure that the proposal will conform to the applicable review criteria. Conditions of approval should be specific to the proposal and the facts set in the staff report for the application. In addition to conditions of approval, a list of general Code provisions that apply to the application may be attached to the approval.
[Ord. 5445, 4/12/00; Ord. 5767, 12/7/11]

2.465 Approved Plans are Final. Projects shall be completed according to the approved site plan and landscape plan. Modifications to approved plans are subject to the standards in Section 1.330.
[Ord. 5720, 08/12/09; Ord. 5947, 1/01/21]

2.490 Application Contents. A Site Plan Review application must include:

- (1) A completed application form. The application shall be signed by the subject property's owner(s) and/or the owner's legal representative(s). If a legal representative is used as a signatory, written proof of ability to be a signatory shall be furnished to the City. The owner's name(s) and address, and the applicant's name, address, and signature shall also be provided.
[Ord. 5886, 1/6/17]

- (2) A written narrative describing the proposed development and explanation of how the development satisfies applicable Albany Development Code standards and review criteria, including information required by Article 6 – Natural Resource Districts.
[Ord. 5767, 12/7/11; Ord. 5886 1/7/17]

- (3) One set of conceptual drawings, including floor plans, lighting details, and building elevations and materials.

- (4) A conceptual landscape plan showing the type and location of proposed landscaping and screening, including any vegetated post-construction stormwater quality facilities.
[Ord. 5842, 1/01/15]

- (5) A site plan showing the following applicable information:

- (a) Assessor's map and tax lot number and lot and block description or other legal description.
- (b) Lot dimensions and total lot area.
- (c) North arrow.
- (d) Location of all existing and proposed structures, including minimum distances from all structures to property lines.
- (e) Percentage of the lot covered by all existing and proposed structures and paved areas. Clearly identify the boundaries and total square footage of all new and/or replaced impervious surfaces.
[Ord. 5842, 1/01/15]
- (f) Adjacent zoning designations and land uses including approximate location of buildings, accesses, streets, sidewalks, curbs, easements, and utilities.
- (g) Locations and dimensions of rights-of-way of all abutting streets (whether public or private) and existing and proposed driveways.
- (h) Size and location of all utilities.
- (i) Locations, dimensions, and nature of any existing and proposed easements.
- (j) Location of any non-access strips.
- (k) Natural drainage patterns, flow arrows showing existing and proposed drainage patterns, and existing and proposed finished grade contours at 1-foot intervals, or at a larger interval if approved by the City Engineer.
- (l) Clearly identify any existing and proposed swales, ditches, or other drainage ways.

- (m) Location, size, type and capacity of the existing and proposed drainage system including pipe size, slope, and detention facilities. Show existing and proposed finished grade elevations at collection points and property lines. Include the location, size, and capacity of the downstream drainage system that would serve the proposed development. Also provide any supporting calculations. [Ord. 5842, 1/01/15]
- (n) Location, size, type and capacity of all existing and proposed post-construction stormwater quality facilities. Clearly identify all impervious surfaces and contributing areas draining to each facility. [Ord. 5842, 1/01/15]
- (o) Typical cross sections at adjacent property boundaries showing pre-and post-development conditions and clearly identify any changes in elevation at the property line not captured in the typical section.
- (p) Location and species of trees larger than 25 inches in circumference (approximately 8 inches in diameter) measured at 4-1/2 feet above mean ground level from the base of the trunk. To obtain the circumference of a tree with multiple trunks, add the individual trunks circumferences, which are greater than 6 inches in circumference. Identify any trees proposed for protection and the method of protection. [Ord. 5842, 1/01/15]
- (q) Location and dimensions of delivery and loading areas.
- (r) Location and dimensions of parking and circulation areas.
- (s) Location and dimensions of trash disposal areas.
- (t) Location of proposed signs. [Ord. 5338, 1/28/98; Ord. 5445, 4/12/00]
- (u) Location and type of proposed pedestrian amenities and common areas (when applicable).
- (v) Location of airport height restrictions.
- (w) Location of floodplains.
- (x) Location of hillsides with slopes greater than 12 percent.
- (y) Location of wetlands.
- (z) Location of riparian corridors.
- (aa) Location of Willamette Greenway.
- (bb) Location of historic districts, structures and sites on the City's adopted Local Historic Inventory, including individually designated National Register Historic Landmarks and archaeological sites. [Ord. 5720, 08/12/09]

2.500 Appeals. A Site Plan Review decision is a limited land use decision and may be appealed in accordance with Sections 1.220 and 1.410. [Ord. 5445, 4/12/00; Ord. 5947, 1/01/21]

2.510 through 2.580 Repealed by Ordinance 5767 adopted December 7, 2011.

VACATIONS

2.600 Purpose. This section states the procedures and review criteria for vacation of an easement, right-of-way, or plat.

2.610 Initiation. A vacation proposal may be initiated by the City Council or by petition of adjoining and area owners in accordance with Oregon Revised Statutes (ORS) 271.080.

2.620 Procedure. Type IV-Q procedures as outlined in Section 1.250 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-Q procedure.

[Ord. 5947, 1/01/21]

- 2.630 Review Criteria. 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) The requested vacation is consistent with relevant Comprehensive Plan policies and with any 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.
 - (3) 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. 2.640
- Zoning of Vacated Rights-of-Way. Except as otherwise provided in the vacation ordinance or when the official City Zoning Map is not clear as to the zoning of vacated right-of-way, the zoning of the vacated territory shall be the same as the adjoining property to which the ownership of the parcel automatically reverts.
- 2.650 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.

MAJOR VARIANCES

- 2.660 Purpose. When 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 or this Code, a Major Variance may be granted as provided in this article. [Ord. 5720, 08/12/09; Ord. 5947, 1/01/21]
- 2.670 Procedure. A Major Variance request shall be reviewed as a Type II procedure. [Ord. 5720, 8/12/09; Ord. 5947, 1/01/21]
- 2.680 Regulations That May and May Not Be Varied.
- (1) Unless listed in Subsection (2) below, all regulations in this Code may be modified using the Major Variance process. [Ord. 5947, 1/01/21]
 - (2) Major Variances are prohibited for the following items: [Ord. 5947, 1/01/21]
 - (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 that contain the word “prohibited.”
 - (c) As an exception to going through a review process or meeting standards required by a review process in this Code, such as minimum lot size. [Ord. 5720, 08/12/09; Ord. 5947, 1/01/21]
 - (d) As an exception to a definition or classification.
 - (e) As an exception to the steps of a procedure or to change assigned procedures.
- 2.690 Review Criteria. The review criteria for sign variances are stated in Sections 13.710 and 13.711 of the Sign Code. The review criteria for variances from floodplain management regulations are stated in Section 6.092. All other Major Variance requests will be approved if the review body finds that the applicant has shown that all of the following criteria have been met: [Ord. 5947, 1/01/21]
- (1) The property has unique or peculiar physical circumstances or conditions such as, irregular shape, width or depth; or exceptional natural or physical conditions such as topography, trees, native vegetation, wetlands, riparian areas, wildlife habitat, or drainage ways. [Ord. 5720, 08/12/09; Ord. 5764, 12/1/11]

- (2) The proposal will be consistent with the purpose, overview, and description for the zone in which the property is located, and with the purpose of the Significant Natural Resource Districts, if applicable; and [Ord. 5720, 08/12/09; Ord. 5764, 12/1/11]
- (3) If more than one Major Variance is requested, the cumulative effect of the variances results in a project that is still consistent with the purpose, overview and description of the zone; and [Ord. 5947, 1/01/21]
- (4) The requested Major Variance is the minimum necessary to address the peculiar or unusual conditions of the site; and [Ord. 5720, 08/12/09; Ord. 5947, 1/01/21]
- (5) Any impacts resulting from the Major Variance are mitigated to the extent practical; or [Ord. 5947, 1/01/21]
- (6) Application of the regulation in question would preclude all reasonable economic use of the site.

MINOR VARIANCES

2.692 Purpose. The Minor Variance review allows the Director to approve limited modifications to the application of numeric standards for unusual situations specific to the site. Minor Variances will not be considered to avoid a review process or standard in this Code. Minor Variances are typically for requests that are 10 percent or less of a numeric standard.

Alternative setbacks in developed areas are addressed in Sections 3.240, 4.130, and 5.130 and may not require a Minor Variance.

2.694 Procedures. Minor Variance applications are processed through a Type I-L procedure. Requests not meeting the purpose of Minor Variances may be processed as Major Variances. The Director will determine whether an application is processed as a Minor Variance or a Major Variance.

2.696 Review Criteria. The applicant must show that the following criteria have been met:

- (1) The Minor Variance is not requested to avoid a land use review process or increase density; AND
- (2) The need for the Minor Variance is created by the unusual configuration of the property, to protect natural features, due to the location of an existing structure on the site, or the site is an infill or redevelopment site less than one acre with development on both sides; AND
- (3) The Minor Variance is the minimum necessary to address the unusual circumstance, generally no more than 10 percent from a numeric standard, and the request is still consistent with the purpose of the zoning district and any applicable overlay districts. [Ord. 5947, 1/01/21]

ZONING MAP AMENDMENTS

2.700 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 that are processed in a quasi-judicial manner and those processed in a legislative manner.

2.710 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 1.260. [Ord. 5947, 1/01/21]
- (3) Initiations by a review body are made without prejudice towards the outcome.

2.720 Procedure. Zoning Map amendments will be reviewed through the Type IV-Q procedures as outlined in Section 1.250 or by legislative action as provided for in Section 1.260. [Ord. 5947, 1/01/21]

- 2.730 Special Notice Requirements. If a zone change request would change the zone of property that 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 that was mailed shall not invalidate any zone change.
- 2.740 Review 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 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.
 - (2) Existing or anticipated transportation facilities are adequate for uses permitted under the proposed zone designation.
 - (3) Existing or anticipated services (water, sanitary sewers, storm sewers, schools, police and fire protection) can accommodate potential development in the subject area without adverse impact on the affected service area.
 - (4) The intent and purpose of the proposed zoning district best satisfies the goals and policies of the Comprehensive Plan.
 - (5) The land use and transportation pattern recommended in any applicable City-contracted or funded land use or transportation plan or study has been followed, unless the applicant demonstrates good cause for the departure from the plan or study. [Ord. 5635, 1/11/06, Ord. 5764, 12/1/11]
- 2.750 Corrections to the Zoning Map. The Director may initiate and approve a review following the Type I procedure for the types of corrections to the 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 the map shown or referenced in the ordinance that 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 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.
- 2.760 Zoning. For rezoning and annexation zoning requests, the zoning of the property shall be compatible with the Comprehensive Plan designation as provided in the Table 2.760-1, Plan Designation Zoning Matrix. Zoning other than that shown in the matrix requires approval of a Comprehensive Plan Map and/or Zoning Map amendment. [Ord. 5947, 1/01/21]

**TABLE 2.760-1
PLAN DESIGNATION ZONING MATRIX**

Comprehensive Plan Designation	Compatible Zoning Districts
Light Industrial	Industrial Park (IP), Light Industrial (LI), Transit District (TD)
Heavy Industrial	Light Industrial (LI), Heavy Industrial (HI)
General Commercial	Neighborhood Commercial (NC), Community Commercial (CC), Regional Commercial (RC), Office Professional (OP)
Light Commercial	Neighborhood Commercial (NC), Office Professional (OP)
Village Center	Historic Downtown (HD), Downtown Mixed Use (DMU), Central Business (CB), Lyon-Ellsworth (LE), Pacific Boulevard (PB), Elm Street (ES), Main Street (MS), Waterfront (WF), Mixed Use Commercial (MUC), Residential Medium Density (RM), Residential Medium Density Attached (RMA), Mixed Use Residential (MUR), Office Professional (OP), Community Commercial (CC)
Medium Density Residential	Residential Single Family (RS-5), Residential Medium Density (RM), Residential Medium Density Attached (RMA), Mixed Use Residential (MUR), Office Professional (OP), Neighborhood Commercial (NC)
Low Density Residential	Residential Single Family (RS-10, RS-6.5, RS-5), Hackleman-Monteith (HM), Residential Reserve (RR), Office Professional (OP), Neighborhood Commercial (NC)
Urban Residential Reserve	Residential Single Family (RS-10, RS-6.5, RS-5), Residential Reserve (RR), Residential Medium Density Attached (RMA), Residential Medium Density (RM), Mixed Use Residential (MUR), Neighborhood Commercial (NC), Office Professional (OP)
Public and Semi-Public	All zones
Open Space	Open Space (OS)

[Ord. 5555, 2/7/03; Ord. 5556, 2/21/03; Ord. 5673, 6/27/07; 10/12/17; Ord. 5947, 1/01/21]