

SUPPLEMENTAL MEMORANDUM

DATE: March 26, 2003 (date of memo)
April 9, 2003 (13th Reading and Public Hearing)

TO: LANE COUNTY BOARD OF COMMISSIONERS

FROM: Eugene Planning and Development

PRESENTED BY: Teresa Bishow and Jan Childs, City of Eugene Planning and Development

AGENDA ITEM TITLE: **ORDINANCE NO. 5-00 — IN THE MATTER OF
AMENDING CHAPTER 10 OF THE LANE CODE TO
ADOPT A REVISED AND UPDATED VERSION OF THE
EUGENE LAND USE REGULATIONS FOR APPLICATION
TO THE URBANIZABLE LANDS WITHIN THE EUGENE
URBAN GROWTH BOUNDARY; AND ADOPTING
SAVINGS AND SEVERABILITY CLAUSES**

MOTION REQUESTED:

Following the public hearing on April 9, 2003, the following motion will be requested:

**SET 14TH READING AND DELIBERATION ON ORDINANCE NO. 5-00 FOR
TUESDAY, MAY 6, 2003**

BACKGROUND:

Present Request:

The City of Eugene requests that Lane County adopt a comprehensive update of the Eugene Land Use Code, including recent amendments adopted by the Eugene City Council, to be effective outside the Eugene city limits and inside the Eugene Urban Growth Boundary. To take the requested action, the County must find that the updated Land Use Code is consistent with applicable statewide land use planning goals and the Eugene-Springfield Metropolitan Area General Plan. Ordinance No. 5-00 before the Board is intended to allow adoption of all land use regulations effective in Chapter 9 of the Eugene Code. Attached are a copy of Ordinance 5-00 with exhibits and a memorandum dated March 21, 2003. The memorandum describes and includes as exhibits the ordinances adopted by the Eugene City Council since the Board's initial public hearing on this matter.

Previous Related Board Actions:

On April 8, 1987, the Lane County Board enacted Ordinance No. 18-86 to adopt the City of Eugene land use regulations for application to urbanizable land within the Eugene Urban Growth

Boundary in accordance with the urban transition agreement with the City of Eugene.

In 1995, the City of Eugene began a comprehensive update of the Eugene Land Use Code. Based on Eugene and Lane County Planning Commission recommendations, on May 31, 2000, the Eugene City Council and Lane County Board of Commissioners conducted a joint public hearing on the April 2000 Draft Eugene Land Use Code. The Board postponed deliberation and action until the updated code was adopted by the Eugene City Council. On February 26, 2001, the Eugene City Council adopted the updated Eugene Land Use Code.

On April 11, 2001, the Board reviewed all the changes to the draft adopted by the Eugene City Council. The Board deferred action until after resolution of the legal challenge to Statewide Ballot Measure 7.

On January 16, 2002, the Board conducted an 8th Reading and Public Hearing on Ordinance No. 5-00 including a set of minor code amendments adopted by the Eugene City Council. Following the public hearing, the Board directed that Ordinance No. 5-00 be further revised to address testimony requesting allowance of golf courses in the AG Agricultural Zone and recognition of Rexius' intent to relocate a portion of their operations to property to be reclassified to I-2 Light-Medium Industrial.

At its 9th Reading on January 30, 2002, the Board reviewed the ordinance, including the set of amendments adopted by the Eugene City Council and set the next reading on the ordinance. In March and June of 2002, the Board held the 10th and 11th readings on the ordinance.

In October 2002, the Oregon Supreme Court held that Measure 7 contained two or more separate amendments to the Constitution, which should have been voted upon separately, and is "void in its entirety." At the 12th Reading on December 4, 2002, the Board set April 9, 2003 for a 13th Reading/Public Hearing on Ordinance No. 5-00, including any additional amendments adopted by the Eugene City Council as of that date.

ATTACHMENTS:

1. Ordinance No. 5-00, with Exhibits "A," "A-1," "A-2," "A-3," "A-4," "A-5," and Exhibit "B," Findings
2. Memorandum to the Board of County Commissioners dated March 21, 2003, plus Exhibits 1- 11

FOR MORE INFORMATION:

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ORDINANCE NO. 5-00

WHEREAS, on April 8, 1987, the Lane County Board of Commissioners enacted Ordinance No. 18-86 to adopt the City of Eugene land use regulations for application to urbanizable land within the Eugene Urban Growth Boundary in accordance with the urban transition agreement with the City of Eugene; and

WHEREAS, the provisions of the Eugene land use regulations adopted by Lane County Ordinance No. 18-86 have been amended by Lane County Ordinance Nos. 16-87, 5-88, 6-88, 7-88, 1-89, 2-89, 13-89, 2-90, 2-91, 12-91, 14-91, 7-92, 10-00, 2-02 and 3-02; and

WHEREAS, on January 18, 2000, the Lane County and Eugene planning commissions held a joint public hearing on revisions to the Eugene Land Use Code. Public hearings were also held by the Eugene Planning Commission on January 27, February 1 and March 28, 2000, the minutes of which were provided to the Lane County Planning Commission; and

1 - IN THE MATTER OF AMENDING CHAPTER 10 OF LANE CODE TO ADOPT A REVISED AND UPDATED VERSION OF THE EUGENE LAND USE REGULATIONS FOR APPLICATION TO THE URBANIZABLE LANDS WITHIN THE EUGENE URBAN GROWTH BOUNDARY; AND ADOPTING SAVINGS AND SEVERABILITY CLAUSES

(2) Urbanizable Land. Urbanizable lands, as defined by the Eugene-Springfield Metropolitan Area Plan, are those unincorporated lands between the Springfield City Limits and the Springfield Urban Growth Boundary. *(Revised by Ordinance No. 16-86, 11.24.86; 11-89, 11.21.89; 3-99, 8.27.99)*

10.600-15 Applicable Land Use Regulations.

Lane County has adopted the following land use regulations to be applied by Springfield on urbanizable land within the Springfield Urban Growth Boundary.

(1) The Springfield Development Code adopted by the Lane County Board of Commissioners as part of Ordinance No. 16-86, and amended by Ordinance Nos. 5-89, 18-90, 9-91, 13-91, 14-92, 5-93, 13-94, 3-97, 7-99, and 10-00.

(2) Copies of these applicable land use regulations shall be on file at the Lane County Land Management Division. *(Revised by Ordinance No. 16-86, Effective 11.24.86; 5-89, 5.31.89; 11-89, 11.21.89; 18-90, 12.19.90; 9-91, 9.20.91; 13-91, 9.25.91; 14-92, 1.8.93; 5-93, 8.26.93; 13-94, 1.11.95; 3-97, 4.18.97; 7-99, 12.8.99; 10-00, 12.13.00)*

10.600-20 Eugene Urban Growth Boundary.

The City of Eugene shall have the responsibility and the authority to administer its land use regulations on urbanizable land within the Eugene Urban Growth Boundary. For the purpose of this subsection, the following words and phrases shall mean:

(1) Eugene Urban Growth Boundary. All urbanizable land within the urban growth boundary, as defined by the Eugene-Springfield Metropolitan Area General Plan, on November 21, 1989, or as amended thereafter on the effective date of any Plan amendment enacted by Lane County, which is west of I-5.

(2) Urbanizable Land. Urbanizable lands are those unincorporated lands between the Eugene City Limits and the Eugene Urban Growth Boundary. *(Revised by Ordinance No. 18-86, Effective 4.27.87; 21-87, 11.25.87; 11-89, 11.21.89; 3-99, 7.28.99)*

10.600-25 Applicable Land Use Regulations.

Lane County has adopted the following land use regulations to be applied by Eugene on urbanizable land within the Eugene Urban Growth Boundary.

(1) The Eugene Land Use regulations as adopted by the Lane County Board of Commissioners as part of Ordinance No. ~~18-86 as amended in Ordinance Nos. 16-87, 5-88, 6-88, 7-88, 1-89, 2-89, 13-89, 2-90, 2-91, 12-91, 14-91, 7-92, 10-00, 2-02 and 3-02~~ 5-00.

(2) Copies of these applicable land use regulations shall be on file at the Lane County Land Management Division. *(Revised by Ordinance No. 18-86, Effective 4.27.87; 21-87, 11.25.87; 13-89, 1.12.90; 2-90, 7.20.90; 2-91, 3.29.91; 12-91, 9.20.91; 14-91, 9.25.91; 7-92, 8.28.92; 10-00, 12.13.00; 2-02, 2.13.02; 3-02, 2.13.02)*

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LAND USE

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EUGENE CODE

CHAPTER 9

LEGISLATIVE HISTORY

FEBRUARY 26, 2001 - JUNE 1, 2002

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Eugene Code

**CHAPTER 9 LEGISLATIVE HISTORY
FROM FEBRUARY 26, 2001 THROUGH JUNE 1, 2002**

The following chart reflects the legislative history for Chapter 9 of the Eugene Code, 1971 from its adoption on February 26, 2001 (effective on August 1, 2001) through June 1, 2002. Any legislative history for subsequent amendments is noted after the applicable section(s).

- A** Added by Ordinance No. 20224, enacted February 26, 2001 with delayed effective date; August 1, 2001 effective date set by Ordinance No. 20229, enacted May 29, 2001; remanded February 28, 2002; and readopted by Ordinance No. 20249, enacted May 8, 2002, effective June 1, 2002.
- B** Added by Ordinance No. 20224, enacted February 26, 2001, with delayed effective date; August 1, 2001 effective date set by Ordinance No. 20229 enacted May 29, 2001; amended by Ordinance No. 20235, enacted October 8, 2001, effective October 10, 2001; remanded February 28, 2002; and readopted by Ordinance No. 20249, enacted May 8, 2002, effective June 1, 2002.
- C** Added by Ordinance No. 20224, enacted February 26, 2001 with delayed effective date; August 1, 2001 effective date set by Ordinance No. 20229, enacted May 29, 2001; amended by Ordinance No. 20238, enacted December 10, 2001; remanded February 28, 2002; and readopted by Ordinance No. 20249, enacted May 8, 2002, effective June 1, 2002.
- D** Added by Ordinance No. 20224, enacted February 26, 2001 with delayed effective date; August 1, 2001 effective date set by Ordinance No. 20229, enacted May 29, 2001; amended by Ordinance No. 20235, enacted October 8, 2001, effective October 10, 2001; amended by Ordinance No. 20238, enacted December 10, 2001; remanded February 28, 2002; and readopted by Ordinance No. 20249, enacted May 8, 2002, effective June 1, 2002.
- E** Added by Ordinance No. 20224, enacted February 26, 2001 with delayed effective date; August 1, 2001 effective date set by Ordinance No. 20229, enacted May 29, 2001; remanded February 28, 2002; and readopted and amended by Ordinance No. 20249, enacted May 8, 2002, effective June 1, 2002.
- F** Added by Ordinance No. 20224, enacted February 26, 2001 with delayed effective date; August 1, 2001 effective date set by Ordinance No. 20229, enacted May 29, 2001; amended by Ordinance No. 20235, enacted October 8, 2001, effective October 10, 2001; remanded February 28, 2002; and readopted and amended by Ordinance No. 20249, enacted May 8, 2002, effective June 1, 2002.

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- G** Added by Ordinance No. 20224, enacted February 26, 2001 with delayed effective date; August 1, 2001 effective date set by Ordinance No. 20229, enacted May 29, 2001; amended by Ordinance No. 20235, enacted October 8, 2001, effective October 10, 2001; remanded February 28, 2002; readopted and amended by Ordinance No. 20249, enacted May 8, 2002, effective June 1, 2002; and amended by Ordinance No. 20250 enacted May 8, 2002, effective June 1, 2002.
- H** Added by Ordinance No. 20224, enacted February 26, 2001 with delayed effective date; August 1, 2001 effective date set by Ordinance No. 20229, enacted May 29, 2001; remanded February 28, 2002; readopted and amended by Ordinance No. 20249, enacted May 8, 2002, effective June 1, 2002; and amended by Ordinance No. 20251 enacted May 8, 2002, effective June 1, 2002.
- I** Added by Ordinance No. 20224, enacted February 26, 2001 with a delayed effective date; August 1, 2001 effective date set by Ordinance No. 20229, enacted May 29, 2001; remanded February 28, 2002; readopted and amended by Ordinance No. 20249, enacted May 8, 2002, effective June 1, 2002; and amended by Ordinance No. 20250 enacted May 8, 2002, effective June 1, 2002.
- J** Added by Ordinance No. 20224, enacted February 26, 2001 with delayed effective date; August 1, 2001 effective date set by Ordinance No. 20229, enacted May 29, 2001; amended by Ordinance No. 20235, enacted October 8, 2001, effective October 10, 2001; remanded February 28, 2002; readopted and amended by Ordinance No. 20249, enacted May 8, 2002, effective June 1, 2002; and amended by Ordinance No. 20251 enacted May 8, 2002, effective June 1, 2002.
- K** Added by Ordinance No. 20249, enacted May 8, 2002, effective June 1, 2002.
- L** Added by Ordinance No. 20224, enacted February 26, 2001 with delayed effective date; August 1, 2001 effective date set by Ordinance No. 20229, enacted May 29, 2001; remanded February 28, 2002; readopted by Ordinance No. 20249, enacted May 8, 2002, effective June 1, 2002; and administratively corrected on May 24, 2002.

Section	A	B	C	D	E	F	G	H	I	J	K	L
All sections not listed below	X											
9.0500						X						
9.2160		X										

Eugene Code

Section	A	B	C	D	E	F	G	H	I	J	K	L
9.2161		X										
9.2170		X										
9.2171		X										
9.2173		X										
9.2175				X								
9.2180		X										
9.2460		X										
9.2461		X										
9.2510					X							
9.2520					X							
9.2530					X							
9.2610					X							
9.2681					X							
9.2741		X										
9.2750			X									
9.2760		X										
9.2775				X								
9.2795		X										
9.4260		X										
9.4290		X										
9.4710					X							
9.4715					X							
9.4720					X							
9.4740					X							
9.4815					X							
9.4820					X							
9.4830					X							

Eugene Code

Section	A	B	C	D	E	F	G	H	I	J	K	L
9.5750												X
9.6010											X	
9.6105		X										
9.6205		X										
9.6220					X							
9.6230		X										
9.6410		X										
9.6505					X							
9.6510					X							
9.6650		X										
9.6670		X										
9.6675		X										
9.6710						X						
9.6715						X						
9.6725		X										
9.6730							X					
9.6745		X										
9.6775		X										
9.6805					X							
9.6815					X							
9.6820									X			
9.6835					X							
9.6845					X							
9.6850					X							
9.6865					X							
9.6885						X						
9.7005		X										

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Section	A	B	C	D	E	F	G	H	I	J	K	L
9.7405		X										
9.7505		X										
9.7520		X										
9.8030		X										
9.8055					X							
9.8090					X							
9.8100						X						
9.8110		X										
9.8215		X										
9.8220						X						
9.8305		X										
9.8320								X				
9.8325							X					
9.8405		X										
9.8415		X										
9.8440										X		
9.8445						X						
9.8515						X						
9.8520						X						
9.8650		X										
9.8670		X										
9.8680		X										
9.8860		X										
9.9630		X										

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**LEGISLATIVE HISTORY
MAP and FIGURE AMENDMENTS**

Map/Figure Number	Map/Figure Title	Action	Amending Ordinance Number	Date Ordinance Enacted	Effective Date
9.0500	Vision Clearance Area	Amended	20269	11/ 25/ 2002	12/ 25/ 2002
9.2171(5)	Maximum Front Yard Setbacks, Building Orientation, and Entrances	Amended	20235	10/ 8/ 2001	10/10/ 2001
9.5500(12)	Multiple-Family Parking	Amended	20235	10/8/2001	10/10/ 2001
9.5500(12)	Multiple-Family Parking (Continued	Amended	20235	10/8/2001	10/10/2001
9.6410(4)(a)	Downtown and West University Automobile Parking Exempt Areas	Amended	20235	10/8/2001	10/10/ 2001
9.6715(4)	Gillespie Butte Height Limitation Area	Amended	20235	10/8/2001	10/10/2001
9.6715(4)	Gillespie Butte Height Limitation Area	Deleted	20269	11/25/2002	12/25/2002
9.7805	Industrial Corridor	Amended	20269	11/25/2002	12/25/2002
9.8010	Adopted Plans	Amended	20235	10/8/2001	10/10/2001

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General Administration

General

9.0010 **Title.** Chapter 9 of the Eugene Code, 1971, is known and may be cited as the “land use code.” When referring to specific sections of the Eugene Code, 1971, the letters EC should precede the numerical designation. References to “this code” are references to the Eugene Code, 1971.

(Section 9.0010, see chart at front of Chapter 9 for legislative history from 2/26/01 through 6/1/02.)

9.0020 **Purpose.** The purpose of the land use code is to protect and promote the health, safety, and general welfare of the public and to preserve and enhance the economic, social, and environmental qualities of the community. The land use code is intended to effectively and efficiently implement the Metro Plan, Growth Management Study, and applicable state and federal laws. The land use code is designed to help:

- (1) Attain community goals and policies.
- (2) Allow amendments to local plans and regulatory measures to address changes in circumstances and public values.
- (3) Ensure an appropriate mix of land uses that provide the economic and social advantages which result from an orderly, planned use of land.
- (4) Provide adequate public facilities and services; allow for adequate light, air, and open space; and protect from fire, flood, and other risks and dangers.
- (5) Preserve and restore significant historic resources and increase public awareness of the community’s historic and cultural heritage.
- (6) Preserve and enhance environmental resources, the natural scenic beauty of the area, and aesthetic qualities of the community.

(Section 9.0020, see chart at front of Chapter 9 for legislative history from 2/26/01 through 6/1/02.)

9.0030 **Authority.** The Eugene Charter of 1976 empowers the city to adopt all forms of regulations including those related to land use. Oregon Revised Statutes, including Chapters 92, 197, and 227, also provide authority for this land use code.

(Section 9.0030, see chart at front of Chapter 9 for legislative history from 2/26/01 through 6/1/02.)

9.0040 **Land Use Code and Decision Interpretation.**

- (1) The planning director is authorized to interpret this land use code and decisions issued pursuant to this land use code. Requests for interpretations shall be submitted on a written form approved by the city manager and accompanied by a fee established pursuant to EC Chapter 2. Within 10 days of receipt of the written request, the planning director shall make a written interpretation and mail or deliver a copy to the party requesting the interpretation. Appeals of these

interpretations shall be heard by a hearings official in the manner set out in EC 9.7600 - 9.7635.

- (2) Notwithstanding subsection (1) of this section, or any other section of this land use code, the planning director may appeal to the planning commission any interpretation by a hearings official, including both interpretations rendered as part of an appeal under subsection (1) of this section and interpretations rendered as part of any other land use matter. Appeals by the planning director pursuant to this subsection shall be filed not later than 7 days following the date of the hearings official's decision. If the hearings official's decision is appealed by another person, the appeals of the decision and interpretation shall be merged and determined in one appeal proceeding. The planning commission's review under this subsection shall be limited to determining whether the hearings official made an incorrect interpretation. Prior to reaching a decision, the planning commission shall hold at least one public hearing, and shall provide the parties with at least 7 days notice of the date and time of the hearing. If the planning commission concludes that the hearings official erred, the planning commission shall remand the decision to the hearings official with instructions to issue a new decision consistent with the interpretation rendered by the planning commission. The hearings official's written revised decision shall be mailed or delivered to the parties within 15 days from the date of the planning commission's remand.
- (3) In lieu of appealing an interpretation of a hearings official pursuant to subsection (2), the planning director may request the planning commission to issue a general interpretation of a code section or its application. Prior to reaching a decision, the planning commission shall hold at least one public hearing. The interpretation issued by the planning commission pursuant to this subsection shall not affect previous land use decisions that applied the code section for which the planning director requested the interpretation. Unless the planning commission reconsiders its interpretation, the interpretation shall apply in all decisions issued following the date of the planning commission's interpretation except those made by the city council.

(Section 9.0040, see chart at front of Chapter 9 for legislative history from 2/26/01 through 6/1/02.)

9.0050 **Interpretation of Purpose Sections.** Many of the divisions of this land use code contain "introduction" and "purpose" sections which are intended in most instances to provide general explanatory information concerning subsequent code sections. The content of these sections shall not constitute approval criteria or be used to interpret such criteria unless the sections are specifically referenced for that purpose in another section of this land use code.

(Section 9.0050, see chart at front of Chapter 9 for legislative history from 2/26/01 through 6/1/02.)

9.0060 **Compliance with Standards Prior to Issuance of Permit.** Unless otherwise provided in this code, development permits shall not be approved unless the applicant has demonstrated compliance with, or obtained an approved adjustment or variance to:

- (1) All applicable general development standards;
- (2) All development standards specifically applicable in the subject base zone, special area zone, or overlay zone; and
- (3) All development standards applicable to the specific use proposed. Such compliance may be demonstrated as part of approval of a land use application or approval of a development permit as provided in this code. Development permits shall not be granted for uses not allowed by this land use code. If a requirement of this land use code conflicts with a federal or state statute, the federal or state statute shall control.

(Section 9.0060, see chart at front of Chapter 9 for legislative history from 2/26/01 through 6/1/02.)

9.0080 **Religious Exercise.** A person believing that the application of a land use regulation in this Chapter would violate the federal Religious Land Use and Institutionalized Persons Act of 2000 may assert such claim by submitting a written request for review to the city. Within 15 days of receipt of the written request, the planning director shall issue a written decision as to whether the city will waive the application of the provision. Appeals of these decisions shall be heard by a hearings official in the manner set out in EC 9.7600 to 9.7635.

(Section 9.0080, see chart at front of Chapter 9 for legislative history from 2/26/01 through 6/1/02.)

Code Enforcement & Penalties

9.0200 **Inspection and Right of Entry.** When necessary to investigate a suspected violation of this land use code, or an application for or revocation of any permit issued under this land use code, the city manager may enter on any site or into any structure open to the public for the purpose of investigation, provided entry is done in accordance with law. Absent a search warrant, no site or structure that is closed to the public shall be entered without the consent of the owner or occupant. No owner or occupant or agent thereof, shall, after reasonable notice and opportunity to comply, refuse to permit entry authorized by this section. If entry is refused, the city manager shall have recourse to the remedies provided by law to secure entry.

(Section 9.0200, see chart at front of Chapter 9 for legislative history from 2/26/01 through 6/1/02.)

9.0210 Abatement. Any use or structure established, operated, erected, moved, altered, enlarged, painted, or maintained contrary to this land use code is unlawful and a public nuisance, and may be abated as provided in EC Chapter 6.

(Section 9.0210, see chart at front of Chapter 9 for legislative history from 2/26/01 through 6/1/02.)

9.0220 Legal Proceedings by City Attorney. The city attorney, upon request of the city manager, shall institute any necessary legal proceedings to enforce the provisions of this land use code. The proceedings may include, but are not limited to, suit in circuit court to prohibit the continuance of any use, occupation, building, structure, or sign or the carrying on of other conduct or activities in violation of any provision of this code.

(Section 9.0220, see chart at front of Chapter 9 for legislative history from 2/26/01 through 6/1/02.)

9.0230 Stop Work Orders.

- (1) The city manager may order work stopped whenever the city manager has reason to believe work is being performed contrary to this land use code or to a permit issued under this land use code, or that the project for which the work is being performed is in violation of a provision of this land use code.
- (2) The city shall post a written notice of the stop work order at the project site, or serve such notice on any person engaged in the work or causing such work to be performed. Upon the posting or service of notice, all persons engaged in the work or causing the work to be performed shall immediately stop such work until authorized in writing by the city manager to proceed. Failure to stop work shall be independent grounds for penalties and additional enforcement actions.
- (3) Any person to whom a stop work order is issued pursuant to this section may file a written notice of appeal in the manner prescribed in EC 2.021 Appeal Procedures. Notwithstanding any provisions of this code to the contrary, the filing of an appeal shall not stay an order issued hereunder, which shall remain in effect until the final determination of the appeal, or the city manager issues a revised order lifting the stop work order.

(Section 9.0230, see chart at front of Chapter 9 for legislative history from 2/26/01 through 6/1/02.)

9.0240 Stop Use Orders.

- (1) The city manager may order a use regulated by this land use code stopped or limited when:
 - (a) The use of any building, structure, or land is contrary to the provisions of this land use code or a permit issued pursuant to this land use code; or
 - (b) The use becomes hazardous to life, health, or property, but only to the extent it poses a danger to life, health, or property.
- (2) The city shall post a written notice of the stop use order on the property or serve such notice on any person engaged in the use of the property. The notice shall fix a time limit for compliance with the order. After the time limit has expired,

no person shall use or occupy a structure, premises, or property or portion thereof in violation of the order.

- (3) Any person to whom an order is issued pursuant to this section may file a written notice of appeal in the manner prescribed in EC 2.021 Appeal Procedures. Notwithstanding any provisions of this code to the contrary, the filing of an appeal shall not stay an order issued hereunder, which shall remain in effect until the final determination of the appeal, or the city manager issues a revised order lifting the stop use order.

(Section 9.0240, see chart at front of Chapter 9 for legislative history from 2/26/01 through 6/1/02.)

9.0260 Revocation of Conditional Use Permits.

- (1) If revocation proceedings are initiated by the planning director, a conditional use permit may be revoked under this section upon a finding by the hearings official that:
 - (a) The permit was issued on the basis of erroneous or misleading information or a material misrepresentation;
 - (b) The development violates the permit or other applicable law; or
 - (c) There was a failure to pay an administrative penalty as provided under EC Chapter 2 or EC 9.0270 Administrative Civil Penalties for violations relating to the subject development site.
- (2) The hearings official shall conduct a public hearing concerning a potential revocation of a conditional use permit according to the Type III procedures in this land use code. After a public hearing and determination by the hearings official that one or more of the criteria in subsection (1) are satisfied, the hearings official may, by issuing a written notice of such determination, suspend or revoke a conditional use permit issued under the provisions of this land use code.
- (3) The permit holder shall be entitled to appeal the decision of the hearings official in the manner provided in EC Chapter 2.

(Section 9.0260, see chart at front of Chapter 9 for legislative history from 2/26/01 through 6/1/02.)

9.0270 Administrative Civil Penalties.

- (1) In addition to, and not in lieu of any other enforcement mechanism authorized by this land use code, upon determination by the city manager that a person has violated a provision of this land use code, the city manager may impose an administrative civil penalty, as provided in EC Chapter 2, upon the responsible person. For purposes of this section, "responsible person" includes the violator and, if the violator is not the owner of the building or property at which the violation occurs, the owner.
- (2) In addition to enforcement mechanisms authorized elsewhere in this code, failure to pay an administrative penalty imposed pursuant to subsection (1) of this section shall be grounds for the city manager to:

- (a) Withhold issuance of any requested permits or licenses other than those issued pursuant to EC Chapter 8; or
- (b) Issue a stop work order or stop use order.

(Section 9.0270, see chart at front of Chapter 9 for legislative history from 2/26/01 through 6/1/02.)

9.0275 Penalties - Specific.

- (1) The illegal removal of trees shall be subject to the penalties set forth in EC Chapter 6.
- (2) Violation of any other provision of this land use code is punishable by a fine not to exceed \$1,000 for each day the violation exists, or confinement in jail not to exceed 100 days, or both such fine and imprisonment.

(Section 9.0275, see chart at front of Chapter 9 for legislative history from 2/26/01 through 6/1/02.)

9.0280 Remedies - Cumulative. The remedies provided for in sections 9.0200 Inspection and Right of Entry to 9.0275 Penalties - Specific are cumulative and not mutually exclusive.

(Section 9.0280, see chart at front of Chapter 9 for legislative history from 2/26/01 through 6/1/02.)

Definitions

9.0500 Definitions. As used in this land use code, unless the context requires otherwise, the following words and phrases mean:

Adjustment Review - Major. An adjustment review that includes a request to adjust at least 2 of the following:

- (A) Maximum front yard setbacks,
- (B) Building orientation,
- (C) Building entrances,
- (D) On-site pedestrian circulation,
- (E) Block requirements or street layout,

when such request is for a large commercial facility, large multi-tenant commercial facility, or multiple family development.

Adjustment Review - Minor. Any adjustment review that is not defined as "major." This includes all adjustments to any proposed project that does not contain a large commercial facility, large multi-tenant commercial facility, or multiple-family development.

Arborist, Certified. A person certified by the International Society of Arboriculture as having specialized knowledge, experience and training related to arboriculture, including, but not limited to, knowledge of best management practices for tree pruning and maintenance, construction impacts to trees, tree pests and diseases, and hazardous tree evaluation.

Access. The place, means, or way by which pedestrians, bicyclists, or vehicles have ingress and egress to a property, use, or parking space.

Accessory Building. Any authorized, detached building subordinate to the main building on the same development site.

Accessory Use. A use incidental to the primary use of the development site.

Adversely Affected Person. A person whose personal use and enjoyment of property owned or occupied by that person will be directly negatively affected by the land use decision. A person is not adversely affected due to actual or prospective economic loss from increased business competition that may result from the decision.

Alley Access Lot/Parcel. A lot or parcel abutting an alley and created from the rear portion of an existing lot or parcel.

Amateur Radio Antenna Structure. An antenna and any structure supporting an antenna that a federally licensed amateur radio operator uses to transmit or receive electromagnetic waves.

Annexation. An extension of the boundaries of a city or special district.

Appeal. A formal challenge to a land use decision or interpretation to a higher authority.

Assisted Care. The 24-hour care and boarding of persons by a paid caregiver who is not the parent or guardian of and is not related by blood, marriage, or legal adoption to the persons served, or other support services for adult transitory individuals. Services provided may include the training or rehabilitation for physically, mentally, or socially dependent persons requiring assisted living care. Services provided may also include meals, housekeeping, and personal care assistance. "Assisted Care" does not include temporary housing or other support services for adult transitory individuals. For purposes of determining residential density, if the design of the facility does not contain dwellings, as defined in this land use code, then every 1.5 beds equals 1 dwelling. Fractional dwellings shall be rounded to the next highest integer, e.g., 2 beds equals 2 dwellings.

Athletic Field(s). Open playing fields applicable to team-oriented sports such as football, baseball, softball, soccer, rugby, field hockey, ultimate frisbee, and other field-based activities. Athletic fields are distinguished from parks or playgrounds that provide for a greater range of use.

Banner. A sign made of any non-rigid material that is not contained by an enclosing framework and is allowed some freedom of movement. Banners include (but are not limited to) streamers, pennants, and flags.

Bar or Tavern. An establishment licensed as a bar or tavern by the OLCC for the sale and consumption of alcoholic beverages on the premises.

Base Flood. As used in sections 9.6705 to 9.6709, the flood having a one percent chance of being equaled or exceeded in any given year. Also referred to as the "100-year flood." Designation on maps always includes the letters A or V.

Bed and Breakfast Facility. A dwelling together with at least one room where travelers are lodged for sleeping purposes on an overnight or weekly basis, with a morning meal provided, and for which compensation is paid and received.

Bicycle Path. A bikeway that is physically separated from motor vehicle traffic by an open space or barrier, that may be within the public right-of-way, easement, or other publicly-owned land.

Billboard. Any sign with a sign face of 200 square feet or greater in surface area.

Biofiltration. Deliberate filtering of sediments and other pollutants from stormwater runoff by directing flow through a vegetated area.

Block. Lots, parcels, or other units of land that are surrounded on all sides by public street right-of-way.

Block Length. The distance along a street between the centerline of two intersecting through public streets, including "T" intersections but excluding cul-de-sacs.

Blood Bank. An organization that accepts human whole blood, donated voluntarily, and for which no financial compensation is received.

Boarding and Rooming House. At least one dwelling together with 3 or more rooms that are offered for rent, but which rooms, individually or collectively, do not constitute separate dwellings. A rooming and boarding house is designed to be occupied by long term residents (at least month-to-month tenants) as opposed to overnight or weekly guests.

Boardwalk. A raised walkway with railings, that allows humans to enter a sensitive natural area without damaging plants or compacting soils.

Building. A structure designed and used as a place of occupancy, storage, or shelter.

Building Addition. An expansion, extension or increase in the gross floor area or height of a building or facility. The terms "building addition" and "building expansion" are used interchangeably in this land use code.

Building Alteration. Development that does not result in a building addition.

Building Articulation. The design emphasis given to architectural elements such as walls, windows, balconies, and entries that serve to provide visual interest and elements of scale.

Building Bulk. The spatial dimensions of a structure.

Building Facade. The exterior wall of a building exposed to public view where the building, or a portion thereof, is located within 40 feet of public right-of-way, private drives, or public pedestrian way.

Building Height. The vertical distance above a reference datum measured to the highest point of the coping of a flat roof, to the deck line of a mansard roof, or to the average height of the gables of a pitched or hipped roof. The maximum height of a

stepped or terraced building is the maximum height of all segments of that building. The reference datum shall be whichever of the following two measurements results in the greater building height:

- (A) The reference datum is the lowest grade when the highest ground surface within a five-foot horizontal distance of the exterior wall of the building is not more than 10 feet above the lowest grade.
- (B) The reference datum is 10 feet higher than the lowest grade when the highest ground surface described in item (A) above is 10 feet or more above the lowest grade.

(See **Figure 9.0500 Building Height Calculation.**)

Building, Main. A structure within which the primary use permitted on the lot or parcel is conducted.

Building Mass and Scale. The building mass is the three-dimensional bulk of a structure defined by the height, width, and depth of the horizontal and vertical planes of a building. Building scale is the relative or apparent size of a building, the relationship between the mass of a building and its surroundings, including the width of the street, open space, and the size of surrounding buildings.

Building Official. The person authorized by the city manager to carry out the duties of the city's building official under this code, or the building official's designee.

Building Offset. Change in vertical planes along the facade of a structure.

Building Offset Interval. The distance between change of vertical planes of a structure.

Business Occupant. An owner, lessee, or renter of a non-residential use of a development site. Each user that has an independent or distinct property right in the development shall be considered a separate business occupant.

Business Park. A planned development with an integrated physical environment and characterized by a variety of industrial, and to a lesser extent, office and related commercial use.

Carpool. A group of two or more commuters, including the driver, who share the ride to and from work on a regularly scheduled basis.

Campus Living Organization. A structure having sleeping facilities and a common kitchen, used for providing living facilities for a student organization, including a fraternity or sorority, that received official sanction from an institution of higher learning.

Canopy Tree. A horizontally branching deciduous tree species that generally grows to have a mature canopy width of at least 50 feet.

Cemetery. Land used or intended to be used for the burial of the human dead and dedicated for cemetery purposes. Columbaria, crematories, mausoleums, and mortuaries are considered part of the cemetery when operated in conjunction with and within the boundary of the cemetery.

Change of Use.

- (A) Except as provided in (B), a change from the existing use to another land use according to the land use and permit requirement tables in this land use code.
- (B) As used in Willamette Greenway Permits beginning at EC 9.8800, making a different use of the land or water than that which existed on December 6, 1975. It includes only a change that requires construction, alterations of the land, water, or other areas outside of existing buildings or structures and that substantially affects the land or water. It does not include a change of use of a building or other structure that does not substantially alter or affect the land or water upon which it is situated. The sale of property is not in itself considered to be a change of use. An existing open storage area shall be considered to be the same as a building for purposes of defining "change of use" with regard to Willamette Greenway permits.

Channel Maintenance. Periodic removal of debris, sediment, vegetation, litter and other material within the bed or banks of a stream or channel recognized as part of the city's stormwater drainage system, and performed by the city or in accordance with city policy.

Channelize, Channelizing. Human alteration of the bed or banks of a natural stream or river to maintain or increase its conveyance or capacity characteristics without maintaining its natural character, typically by straightening its course, increasing its depth and removing obstructions in the bed or on the banks.

City Manager. The city manager of the city of Eugene, or his or her designee.

Clinic. Single or multiple offices for State of Oregon licensed physicians, surgeons, dentists, chiropractors, osteopaths, and other members of the healing arts providing out patient care.

Cluster Subdivision. A subdivision with 6 or more lots with dwellings grouped in a manner that achieves protection of natural environmental features or creates common open space that is suitable for use by residents through the relaxation of the lot and development standards. The subdivision shall include reductions in the minimum lot area requirements.

Collection Center. A temporary, portable structure or trailer placed on or near private parking areas by charitable non-profit organizations to collect donations of used household goods, clothing, or other useful materials.

Common Open Space. An area for the use or enjoyment of all residents of a development site, excluding parking areas, streets, and other areas designed for motor vehicle circulation or storage. Common open space may include areas that provide for the preservation or enhancement of natural resource habitats.

Community Center. A building owned and operated by the city or other public agency, and used for recreational, social, educational, and cultural activities.

Constructed Wetlands. A facility that exhibits wetland characteristics but was constructed for the express purpose to perform a utility need, such as a sedimentation pond, and is not eligible for mitigation credit or subject to the jurisdictional requirements of federal and state wetland law.

Controlled Income and Rent Housing. A housing project, or that portion of a larger project, consisting of any dwelling type or types exclusively for low-income individuals and/or families, sponsored by a public agency, a non-profit housing sponsor, a developer, a combination of the foregoing, or other alternatives as provided for in the Oregon Revised Statutes or Federal Statutes to undertake, construct, or operate housing for households that are low-income. For the purposes of this definition, low-income means having income at or below 80 percent of the area median income. (See Map 9.2740 Areas Unavailable for Controlled Income and Rent (CIR) Housing with Increased Density.)

Corner Cut-Off. An area of right-of-way or easement provided at a corner in addition to the standard street width, to allow additional room for vehicle clearance and vision clearance at the corner and for construction of sidewalks.

Corner Lot or Parcel. A lot or parcel with 2 or more front lot lines in which the interior angle formed by the extensions of the front lot lines in the direction which they take at their intersections with the side lot lines forms an angle of 135 degrees or less. In the event a street front lot line is a curve at its point of intersection with a side lot line, the tangent to the curve at that point shall be considered the direction of the front lot line. (See Figure 9.0500 Corner Lot or Parcel.)

Correctional Facility. A facility designed for the short and/or long term confinement of persons held in lawful custody, involving the treatment of offenders through penal, parole and probation programs. Correctional facilities are staffed 24 hours a day and may include related uses such as legal and medical access, (courtrooms or clinics), counseling and rehabilitative services, recreation activities, and administrative offices.

Critical Root Zone (CRZ). That area surrounding a tree that:

- (A) Has a radius of 18 inches times the diameter breast height expressed in inches of the tree trunk or trunks; or
- (B) Encompasses an area determined for an individual tree to be the necessary root area for the tree's continued normal growth as demonstrated in a written report by a certified arborist and based on documented field investigation and non-destructive physical testing, including, but not limited to non-destructive excavation to delineate the root system to a minimum depth of 24 inches below grade, and no more than 48 inches below grade.

Cul-de-sac. A dead-end street intended for local traffic that terminates with a bulb or other turnaround suitable for use by appropriate vehicles, including emergency vehicles.

Cut-off Light Fixture. A light fixture designated as cut-off when the candlepower per 1000 lamp lumens does not numerically exceed 25 (2 ½ %) at an angle of 90 degrees above nadir (horizontal), and 100 (10%) at a vertical angle of 80 degrees above nadir. This applies to any lateral angle around the lighting fixture.

Day Care. Care or supervision of 3 or more persons by a paid caregiver who is not the parent, guardian, or related by blood or marriage to the persons being served. Day care does not include boarding or temporary care or other support services for adult transitory persons.

Decision-Maker. The person or hearing body designated in provisions beginning at 9.7000 of this land use code to make a decision on an application.

Density (gross). The number of dwelling units per each acre of land, including areas devoted to dedicated streets, neighborhood parks, sidewalks, and other public facilities.

Density (net). The number of dwelling units per each acre of land in residential use, excluding from the acreage dedicated streets, neighborhood parks, sidewalks, and other public facilities.

Develop. To bring about growth or availability; to construct or alter a structure, to conduct a mining operation, to make a physical change in the use or appearance of land, to divide land, or to create or terminate rights to access. "Develop" includes, but is not limited to, new building, building alterations or additions, site improvements, or a change in use.

Development. The act, process or result of developing. As used in sections 9.6705 to 9.6709, any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading,

paving, excavation or drilling operations located within the area of special flood hazard.

Development Permit.

- (A) A permit authorized or required by the Oregon Structural Specialty Code and Oregon One and Two Family Dwelling Code, including but not limited to permits for:
1. New buildings.
 2. Additional square footage added to a building.
 3. Building demolition.
 4. Foundations.
 5. Change of occupancy.
 6. Grading/Fill.
 7. Site improvements.
- (B) Open waterway permits are not development permits.

Development Site. A tract of land under common ownership or control, either undivided or consisting of two or more contiguous lots of record. Property under common ownership that is bisected by a public street or alley shall be considered one development site, unless the land was legally divided.

Diameter Breast Height (d.b.h.). The diameter of the trunk or trunks of a tree measured at 4.5 feet above mean ground level at the base of the trunk or trunks.

Direct Connection. The shortest reasonable connection between two points. A connection is direct if it does not involve travel more than 40% above the most direct route practicable between two points.

Drive Through Only Establishment. An establishment providing services solely to customers that do not enter the building.

Dwelling. A building, or portion thereof, designed and used as a residence for occupancy by 1 family. This includes both buildings constructed on-site and manufactured homes.

Dwelling, Duplex. A building designed and used as dwellings for 2 families living independently of each other and having separate housekeeping facilities for each family. A building is not a duplex if one of the dwellings is a secondary dwelling.

Dwelling, Four-Plex. A building designed and used as dwellings for 4 families living independently of each other and having separate housekeeping facilities for each family.