

SUBCHAPTER 52

WILLAMETTE GREENWAY DEVELOPMENT DISTRICT

52.005 Purpose

The purpose of the Willamette Greenway Development District are the following:

- A. To protect, conserve, enhance and maintain the natural, scenic, historical, agricultural, economic and recreational qualities of lands along the Willamette River.
- B. To implement the Independence Comprehensive Plan.
- C. To implement the City's responsibilities pursuant to statutory requirements.
- D. To establish criteria, standards and procedures for the intensification of uses, changes of uses, or development of lands within the GREENWAY Development District.
- E. To minimize the need for a public hearing for each development application.
- F. To ensure those who occupy the area within the GREENWAY District assume the responsibility of their actions.

52.010 Definitions

- A. Administrative review means inspection of a site plan in order to review compatibility with the primary and overlying zone and to determine if the intensification, change of use or development requires a conditional use hearing and to insure that development requirements are met and zone guidelines are adhered to. The administrative review is to be done by the City Manager or designee.
- B. Change of use means a different use of the land or water than that which existed on December 6, 1975. It includes a change which requires construction, alterations of the land, water or other areas outside of existing buildings or structures and which substantially alters or affects the land or water. Such changes of use include, but are not limited to storage of materials on a previously vacant site, construction or expansion of marine facilities or parking lots, or construction or major remodeling of a structure. It does not include a change of use of a building or other structure which does not substantially alter or affect the land upon which it is situated. Change of use shall not include the completion of

a structure for which a valid permit has been issued as of December 6, 1975. 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.

C. Development means the act, process or result of developing.

D. Develop means 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 into parcels, or to create or terminate rights of access.

E. Intensification means any additions which increase or expand the area or amount of an existing use, or the level of activity. Remodeling of the exterior of a structure is an intensification when it will substantially alter the appearance of the structure. Intensification shall not include the completion of a structure for which a valid permit has been issued as of December 6, 1975. Maintenance and repair, usual and necessary, for the continuance of an existing use is not an intensification of use. Reasonable emergency procedures necessary for the safety or protection of property are not an intensification of use. Residential use of land within the GREENWAY includes the practices and activities customarily related to the use and enjoyment of ones home. Landscaping, construction of driveways, modification of existing structures, or construction or placement of such accessory structures or facilities adjacent to the residence as are usual and necessary to such use and enjoyment shall not be considered an intensification. Seasonal increases in gravel operations shall not be considered an intensification of use.

F. River Dependent Use means a use or activity which can be carried out only on, in, or adjacent to water areas because the use requires access to the water body for water-borne transportation, recreation, energy production, or source of water.

G. River Related Use means a use which is not directly dependent upon access to a water body, but which provide goods or services that are directly associated with water dependent land or waterway use, and which, if not located adjacent to water, would result in a public loss of quality in the goods or services offered.

H. Site Plan means a vertical depiction of a site within the GREENWAY boundary that is the subject of the administrative review process. It will indicate access, structures, setbacks, height, prominent landscape features and other such information as required by the Administrative Reviewer.

I. Willamette Greenway Development District means all land within the City of Independence lying east of the boundary as depicted on the Willamette Greenway Map of the City of Independence, hereby adopted as Exhibit C.

52.015 Application of Willamette Greenway Development District

A. The provisions of this chapter shall apply to all lands within the Greenway boundary as designated on the Willamette Greenway map.

B. The provisions of this chapter shall apply to lands within the Greenway Development District in addition to the standards and requirements of any primary zone that may apply to such lands. A portion of land subject to this zone is also subject to the flood plain overlay zone. In no way is one overlay zone intended to conflict or over-ride the other overlay zone. They are intended to be applied simultaneously to the primary zone. In the case of any conflict between the provisions of this chapter and the provisions of any other chapter of this ordinance, the more restrictive provisions shall apply.

52.020 Site Development Requirements

For any lot or parcel located within the Greenway Development District the requirements for the following shall be determined by the primary zone except when such requirements are specifically modified by this chapter:

- A. Minimum area;
- B. Maximum density;
- C. Front Yard;
- D. Side yard;
- E. Rear yard;
- F. Building height;
- G. Lot or parcel coverage;
- H. Off street parking and loading; and
- I. Signs.

52.025 Permitted Uses

A Greenway review approval shall not be required for the following in overlay zones specified:

- A. Gravel removal from the bed of the Willamette River conducted under a permit from the State of Oregon; (WG-I)

- B. Customary dredging and channel maintenance, (all zones);
- C. The placing by a public agency of signs, markers, aids, etc., to serve the public, (all zones);
- D. Activities to protect, conserve, enhance and maintain public recreational, scenic, historical and natural uses on public lands, (WG-PP);
- E. On scenic easements acquired under ORS 390.332 (2)(a), the maintenance authorized by that statute and ORS 390.368, (all zones);
- F. The maintenance and repair of existing flood control facilities, (all zones);
- G. Any use permitted in the primary zone and after administrative review, not considered an intensification, change of use, or development;
- H. Reasonable emergency procedures necessary for the safety or protection of property, (all zones);
- I. Maintenance and repair usual and necessary for the continuance of an existing use, (all zones);
- J. Landscaping, construction of driveways, and repair or maintenance of existing structures, provided that such activities are conducted in conjunction with uses already existing on the same property and that they are accomplished in a manner compatible with the purpose of this chapter, (all zoned).

52.030 Administrative Review Approval Required

All development, change of use or intensification within the Willamette Greenway Development District requires Administrative Review prior to issuance of a building permit. Administrative Review does not require a hearing and approval will be given if the proposal is consistent with the Primary Zone and adequately meets the guidelines of the appropriate overlay zone. Additional standards that must be met prior to Administrative Review Approval are as follows:

- A. The proposed use or structure is consistent with the purpose of the Willamette Greenway Development District.
- B. Administrative Review Approval shall not be given for any structure over 30 feet in height.

A public hearing may be required as a result of Administrative Review, if:

- A. The Administrative Reviewer is not convinced that the application or site plan adequately represent an intent to carry out the purpose of the Greenway.

- B. The proposed use is not consistent with the Primary Zone or overlaying zone.
- C. After Administrative Review there are still unanswered questions in the opinion of the Reviewer.
- D. A guideline is not adequately met or if a determination as to whether it is or isn't being met can be made from the application and site plan.

52.035 Conditional Use Approval Required

A conditional use permit is required if during the Administrative Review process it is determined that the proposed use is not consistent with either the Primary Zone or the overlay zone guidelines. The conditional use permit procedure requires a public hearing as prescribed by Subchapter 71 of this ordinance. If the proposed use is a prohibited use in the Primary Zone of is not a conditional use, it may require approval of a different type of action. Standards for conditional use permit approvals are as follows:

- A. A decision on a Greenway conditional use application shall be based on findings of compatibility with all elements of the Willamette Greenway section of the Comprehensive Plan.
- B. The proposed use or structure is consistent with the purpose of the Willamette Greenway Development District.

52.036 Appeal Period and Notice Requirements

- A. Any land use action or ruling made by the City Manager or designee in accordance with the provisions of this subchapter may be appealed. Such an appeal shall be directed to the Planning Commission; it shall be filed in writing with the City Manager or designee no later than 12 days of the date of the decision. If no appeal is filed within 12 days of the decision, that decision shall be final.
- B. If an appeal is filed, the Planning Commission shall be given a report of the City Manager or designee's action or ruling. The Planning Commission shall hold a public hearing of the appeal. Notice for such a public hearing shall be provided in accordance with the provisions for public hearings set forth in this ordinance. The public hearing of an appeal shall be conducted in accordance with the procedures for public hearings set forth in this ordinance. The decision of the Planning Commission regarding any appeal shall constitute a final local decision.

C. Notification of the proposed land use action and administrative decision shall be sent to:

1. Oregon State Department of Transportation (State Parks Branch) by certified mail, with return receipt requested.
2. Polk Soil and Water Conservation District.
3. Division of State Lands.
4. Residents with 250 feet of affected property.

WILLAMETTE GREENWAY DEVELOPMENT DISTRICT OVERLAY DESIGNATIONS

52.040 Industrial (WG-1)

Intent: To insure the opportunity for continuing industrial operation, especially that which is river dependent and river related.

Guidelines:

A. The development of new, or the intensification of existing river dependent and river related industrial uses within this overlay zone and may be permitted if the applicant demonstrates that:

1. The use is actually river dependent or related.
2. Other elements of this ordinance and the Comprehensive Plan are not contrary to the use.

B. The development of new, or the intensification of existing non-river dependent and non-river related industrial uses within this overlay zone shall not be approved unless the applicant demonstrates that:

1. There is a low demand for river dependent or river related industrial sites.
2. The site of the proposed development is not particularly well adapted for river dependent or river-related industrial uses.
3. There are no available industrial sites outside the Greenway that can accommodate the proposed use.
4. The current operation is no longer a viable endeavor and serves no public need.

C. Landscaping which preserves or re-establishes the river's natural vegetative fringe shall be required where and as it does not interfere with the industrial operation or economic function of the proposed use. Such landscaping shall consist of plant materials native to the Willamette River and be of sufficient depth to provide a screening of the proposed use from the river.

D. The development of new non-industrial uses shall only be permitted after zone change approval by the city. Conditional use approval of any non - industrial proposal may be granted only if the following findings can be made:

1. There is a low demand for river-related industrial sites and the site of the proposed development is not particularly well adapted for river related industrial uses.

52.045 Commercial and Residential

Intent: To insure the continued opportunity for utilization of privately owned property for commercial or residential uses consistent with the primary zone and not subject to flooding.

Guidelines:

A. Proposals to change or intensify land uses within this zone shall be permitted if the development complies with all of the following criteria:

1. The proposed use is permitted by the primary zone.
2. The scale of the project, density of development and/or intensity of use is in keeping with the function of the Greenway Plan and protects, conserves, enhances and maintain the natural, scenic, historical, agricultural, economic and recreational qualities of lands along the River, the site and adjacent riparian lands.
3. Uses which are not directly dependent on the river are set back landward from the 100-year flood plain line to protect public safety, open space, vegetation, scenic resources and public access to and along the river as outlined in the Comprehensive Plan.
4. The proposed development is in harmony with existing and proposed adjoining development, land uses, and zones.
5. Proposed landscaping is to be of native plant materials commonly found along the river, and be of sufficient amount of density to visually screen and/or break up the building mass.
6. Care is taken to recognize the visibility of property in this zone and to lessen any adverse effect development of these parcels will have.

52.050 Public Park (WG-PP)

Intent: To allow and encourage recreational development and public access to and along the river while preserving protecting and enhancing the scenic qualities of the river and the riparian environment.

Guidelines:

- A. The city shall permit proposals to change or intensify land use within this zone which comply with all of the following conditions:
1. The proposal is for recreational uses or uses directly related to recreation.
 2. The proposed development reflects river-related recreational needs, the character of the river and the unique opportunities presented by the particular site.
 3. The proposed development maximizes open space and landscaping which emphasizes native plant materials.
 4. The proposed development is in harmony with existing and proposed adjoining developments and land uses, and does not significantly detract from the value of an abutting property lying in a different Greenway zone.
 5. The proposed development provides for public access as outlined in the Greenway Plan.
- B. Public access as outlined in the Comprehensive Plan shall be provided in such a way as to disturb the natural environment and wildlife habitat as little as possible.
- C. In order for land to be included in this zone it must first be publicly owned.

52.055 Agriculture and Riparian (WG-AR)

Intent: To allow for use consistent with the primary zone while preserving, protecting and enhancing the resource qualities of the river, adjacent land and the riparian environment.

Guidelines:

- A. With the exception of agricultural uses, all other development proposals will require a conditional use permit. The following guidelines shall be used in the granting of a conditional use permit.
1. All development must also conform to the flood plain zone requirements.

2. No use will be permitted that has an adverse effect on adjacent agricultural land and its continued use.

3. No development or use which will be detrimental to the natural environment, wildlife, wildlife habitat, agriculture land use or scenic quality shall be allowed within this zone.

4. Developments which support the natural environment, wildlife and wildlife habitat or allow for its viewing and interpretation shall be allowed on a conditional use basis.

5. The applicant shall be required to submit a statement assessing the construction and long range impacts of the proposed development on the natural environment, wildlife, wildlife habitat and agricultural land use.

B. Public access as outlined in the Greenway Plan shall be provided in such a way as to disturb the natural environment and wildlife habitat as little as possible.

52.060 Conditions Limiting Uses

In accordance with the provisions of this ordinance governing conditional uses, the Planning Commission may impose conditions or limitations upon the use of land or structures in the Willamette Greenway Development District. Such conditions may include, but shall not be limited to the following:

- A. Location and arrangement of structures.
- B. Imposition of deed restrictions.
- C. Retention of natural vegetation.
- D. Natural resource protection methods.
- E. Landscaping.
- F. Structure height limitations.

52.065 Prohibited Uses

The following uses are hereby declared to be inconsistent with the purpose of the Willamette Greenway Development District and shall not be permitted in this zone:

- A. Subdivision.
- B. Removal of significant protective riparian vegetation with no intent to landscape or provide alternate protective measures.

- C. Access to the river through private property without permission.

52.070 Non-Liability of City

The granting of any request for a conditional use for structures or uses in the flood plain shall not constitute a representation, guarantee, or warranty of any kind by the City of Independence of the practicability or safety of any structure or use proposed, and shall create no liability upon or cause of action against the city or any employee thereof for any damage that may occur.