

TITLE X

ZONING

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CHAPTER 110

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REVISION NOTE:

The Salem Zoning Code was adopted as Title X of the Salem Revised Code by Ordinance No. 186.82, effective February 1, 1983. Chapter and section numbers which are used in the following Title X may, in many cases, be the same as chapter and section numbers appearing in the former "Salem Zoning Ordinance," previously codified as SRC Title X. Reuse of chapter and section numbers is not intended to in any manner relate back to or otherwise coincide with the provisions of any such former chapters and sections. For the user's convenience, all current replacement pages in Title X of the Salem Revised Code bear the legend "last printing 1/83" or later in the lower right corner of the face page of the sheet. Any pages not so captioned should be discarded. This explanation is inserted as required by Sec. 23, Ord. No. 186-82, and does not constitute a part of the Salem Revised Code.

110.010. SHORT TITLE. Chapters 110 to 161 of this Code shall be known and may be cited as the "Salem Zoning Code;" and are referred to therein as such or as "this zoning code." (Ord No. 1-05)

110.020. INTENT AND PURPOSE. It is the intent and purpose of the regulations, restrictions, and procedures contained in this zoning code:

- (a) To codify the primary regulatory instrument with which to implement the comprehensive plan;
- (b) To promote and to protect the public health, safety, and general welfare of the community;
- (c) To classify by zone all property in such manner as to reflect its present suitability for particular uses, and to provide a process whereby property may be reclassified to reflect other suitable uses consistent with the comprehensive plan and changing conditions and community values;
- (d) To provide sanctions for violation of the provisions of this zoning code.

110.030. APPLICATION AND CONSTRUCTION OF REGULATIONS. (a) The regulations set forth in this zoning code, are intended and shall be construed as minimum regulations, and shall apply uniformly to each class or kind of use, structure or land unless varied or otherwise conditioned as allowed in this zoning code.

(b) Where a compliance period or other time for performing an act is expressed as a certain number of days after a certain date or event, such reference shall mean consecutive calendar days beginning with the first day after the date or event from which the period begins, and ending at five o'clock p.m. on the last day of the number of days stated, unless the last day is not a city business day, in which case the last day of the period shall be the first city business day following the last of the consecutive calendar days. A period expressed in terms of "city business days" shall mean consecutive city business days calculated as above.

(c) Where a period of time is expressed as between particular hours, the period shall begin and end on the same day unless the first hour mentioned is after noon and the second hour is before noon, in which case the period shall end at the second hour stated on the day following the first hour stated.

110.040. EFFECT ON OTHER PUBLIC AND PRIVATE REGULATIONS AND RESTRICTIONS. This zoning code shall be construed and applied independently of, and without regard to any private easement, deed restriction, covenant or other legally enforceable restriction imposed on the use or development of land. It is not intended by this zoning code to in any way impair or interfere with any other provision of public regulatory law or ordinance relating to the use of buildings or land, or relating to the construction or alteration of any buildings or improvements. (Ord No. 57-2000)

110.050. FORMAL INTERPRETATIONS. (a) When, in the administration of this zoning code, the administrator deems it appropriate that a question as to its intent be formally rather than administratively resolved, the administrator may request an interpretation of the provision by the commission as provided in this section. Alternatively, any person, upon application, may request such interpretation. Upon such request, or on its own motion, and following notice applicable to zone code text amendments, in the case of general interpretations and affected property owner notification, in the case of applicant-initiated requests, the commission may issue a formal interpretation if it has determined that such interpretation is within its ability and is not a legislative act. The commission shall, in the event it does not render an interpretation, either refer the question to the council with any explanation it deems appropriate, or recommend to the council appropriate revisions to this zoning code to resolve the question, or to revise or supplement a policy issue.

(b) The purpose of a formal interpretation is to clarify the intent of this zoning code and its application in particular circumstances; and the commission shall not, by interpretation, vary or modify any clear and unambiguous provision thereof, nor supplement the provisions thereof by adding new restrictions, standards, or policies not apparent or necessarily implied within this zoning code itself.

(c) The commission may, in rendering an interpretation, solicit the advice of any person or organization, including city staff, whose advice it deems of benefit; and may cause to be researched any public records which may disclose the historical basis of the provision in question, and the legislative intent expressed therein.

(d) In rendering interpretations, the commission shall always consider the comprehensive plan where applicable, and shall render no interpretation inconsistent with either its provisions or its intent.

(e) Formal interpretations by the commission shall be in writing, and a copy shall be placed before the council for its information. The administrator shall keep a permanent file of all such interpretations. Further copies shall be distributed as directed by the commission, the administrator, or both.

(f) The council may, upon its own motion or in response to an interpretation made by the commission, render its own interpretation as to the meaning, intent or application of any provision of this zoning code.

(g) Formal interpretations made by the commission shall control future administrative interpretation and enforcement of this zoning code unless superseded by subsequent commission formal interpretations, or vacated or superseded by the council. The commission shall give great weight to prior formal interpretations when considering any subsequent issue for interpretation. (Ord No. 56-90; Ord No. 1-91)

110.060. Reserved for Expansion.

110.070. AMENDMENT OF ZONING CODE TEXT. (a) Any amendment of this zoning code which amends, supplements, or changes only the text hereof, shall be initiated by the council or by the commission by resolution. Whenever an amendment is initiated by the council, the resolution shall be referred to the commission for its recommendation.

(b) In every case of a proposed amendment the administrator shall fix a date for a public hearing before the commission and shall cause notice to be published as provided in SRC 114.080. After the public hearing the commission may refer its recommendations to the council; except that if the amendment was initiated by the council, the commission shall forward a recommendation or report of its deliberations.

110.080. through 110.190. Reserved for Expansion.

APPLICATION PROCEDURE

110.200. APPLICATIONS, GENERALLY. Applications for all land use actions and permits under this zoning code shall be filed with the administrator and processed as provided in SRC 110.200 to 110.250.

110.210. APPLICATION FORMS. (a) The administrator shall prepare and provide application forms for land use actions requiring review and approval and all permits under this zoning code. Application forms shall require at least the following information.

- (1) The names and mailing addresses of the applicant and owners of the subject property;
- (2) The address and legal description of the subject property;
- (3) The nature and reasons for the request;
- (4) The names and addresses of property owners in the notification area;
- (5) A plot plan of the property showing such details as the administrator may require;
- (6) A Transportation Impact Analysis as may be required by the Public Works Design Standards.

(7) Such other information as may be required for particular actions or permits elsewhere in this zoning code, and any other information which the administrator may require to review and analyze the proposed action as to its merits.

(b) All applications for land use actions shall be filed with the administrator on forms prescribed under this section, and shall be complete as to all factual information required to be stated on or furnished with the application. The applicant shall supply an accurate list of the names and addresses of all owners of the property within the notification area prepared by a title company or by the city for a fee set by the city.

(c) The administrator may reject any application which contains demonstrably inaccurate factual information.

(d) The commission may, at its pleasure, review the forms prepared and provided by the administrator, and may direct revisions as to any particular not required under paragraphs (1) to (4) of subsection (a) of this section, or as to plot plan details required by the administrator under paragraph (5) of subsection (a) of this section. (Ord No. 148-84; Ord No. 116-94; Ord No. 57-2000)

110.220. FEES. The fees which may, from time to time, be prescribed by resolution of the council, shall be paid at the time and as a condition of acceptance of the application. The fee schedule so adopted may include a requirement that persons, other than city administrative bodies, requesting transcripts of hearings for appeal to council pay a deposit as a condition of preparing the transcript. Any unused portion of the deposit shall be refunded once the exact cost is established; the remainder shall be credited against the transcript fee to be paid by the person requesting the transcript. Receipt of prescribed fees shall be jurisdictional. Payment of the fee is necessary for an application or appeal to be considered complete. (Ord No. 51-91; Ord No. 99-96)

110.230. APPLICATIONS; BY WHOM FILED. An application for a land use action or permit may be filed by one or more of the following persons:

- (a) The owner of the subject property;
- (b) A purchaser of the subject property under a duly executed written contract when the application is accompanied by proof of the purchaser's status as such, and the seller consents in writing to such application;
- (c) A lessee in possession of the property, when the owner consents in writing to such application; or
- (d) The agent for any of the foregoing when duly authorized in writing provided the application is accompanied by proof of the agent's authority.

110.240. PROCESSING OF APPLICATIONS. (a) Except as provided in subsection (b) or (c) of this section, after an application has been filed, the administrator shall check the application within 30 days and determine if there is cause for rejection of the application or if the application is incomplete. If the application is accepted, the administrator shall schedule the matter for hearing before the appropriate administrative body where required, or otherwise act upon the application as elsewhere provided in this zoning code. If the application is rejected, the administrator shall return the application to the applicant with an explanation of the cause for rejection and the refund provided in SRC 110.220(c). Rejection of an application shall not bar or in any way prejudice the right of an applicant to refile a corrected application at any time. If an application is incomplete, the administrator shall notify the applicant of what information is missing and shall allow the applicant 30 days from the date of the original submission to submit the missing information. An application shall be deemed complete upon receipt by the administrator of the missing information or on the 31st day after the application was first received by the administrator, if an applicant refuses to submit the missing information.

(b) After a zone change application has been filed with the planning administrator, the administrator shall check the application within 30 days to determine if the petition is complete under the provisions of this ordinance. During review of the application within this same 30 day time period the planning administrator shall also determine if the proposed zone change, with or without conditions, would conflict with the Salem Area Comprehensive Plan and notify the applicant if the determination is made that the proposal does not conform to the Salem Area Comprehensive Plan. If it is determined that there is a conflict, the applicant for the zone change shall have standing to initiate a Category 4 comprehensive plan change, as described in SRC 64.060(c) and 64.100(c), and the proceedings for the requested zone change shall be stayed until the Category 4 comprehensive plan application is received. Upon receipt by the planning

administrator the comprehensive plan change petition shall be processed concurrently with the zone change application, except that the planning commission shall hear and determine the comprehensive plan change application before considering the zone change application. If the applicant for the zone change does not agree with the determination of the planning administrator that a conflict exists, then the applicant may appeal that determination pursuant to SRC 64.060(c).

(1) If the application be sufficient, the planning administrator shall then fix the time of the hearing on such zone change application before the hearings officer, or the planning commission, as required by SRC 114.020, and cause notice of hearing to be given as provided in chapter 114. The hearings officer, or commission, shall thereafter conduct a hearing and render a decision as provided in this chapter and chapter 114.

(2) If the application is rejected for cause under SRC 110.210(c), the planning administrator shall return the application to the applicant with an explanation of the reasons for rejection. All but \$10 of the fee for the complete application shall be returned. If the corrected application is refiled within 14 calendar days, the \$10 withheld from the filing fee of the first filing may be applied to the filing fee for the refiled.

(3) If the application is incomplete, the planning administrator shall notify the applicant of what information is missing and shall allow the applicant 30 days from the date of the original submission to submit the missing information. An application shall be deemed complete upon receipt by the administrator of the missing information or on the 31st day after the application was first received by the administrator.

(c) After an application for a proposal within the jurisdiction of the planning administrator has been filed, the administrator shall review the application within two city business days and determine if it is complete. If an application is incomplete, the administrator shall notify the applicant of what information is missing and shall allow the applicant 30 days from the date of the original submission to submit the missing information. An application shall be deemed complete upon receipt by the administrator of the missing information or on the 31st day after the application was first received by the administrator, if the applicant refuses to submit the missing information.

(d) All documents or evidence relied upon by the applicant shall be submitted to the administrator no later than 10 days of an evidentiary hearing on the application. (Ord No. 53-83; Ord No. 148-84; Ord No. 14-90; Ord No. 57-2000)

110.245 PROCESSING APPEALS. The administrator or designee shall process appeals, accepting those that are of prescribed form, accompanied by the proper fee, and timely filed. Untimely appeals, and those lacking the proper fee, will be rejected and all others will be held pending notice and correction of defect or incompleteness. (Ord No. 99-96; Ord No.60-97)

110.250. RESUBMISSION OF APPLICATION. If any land use action applied for is denied on the merits, such denial shall be a bar to refile the same or substantially similar application for a period of one year from the date of the final decision, unless a different period is specified in this zoning code or in the final decision or unless the administrative body which rendered the final action is satisfied, upon an ex parte showing of good cause, that the applicant's proposal has been so amended that the substantive basis for denial no longer exists, or has been so mitigated that a new application should be given consideration. The decision to grant leave to

refile within the one year bar is wholly within the discretion of the administrative body; is not a review.

Approval of a land use application with conditions shall for a period of one year be a bar to the refile of a variance or the same or substantially similar application for the purpose of modifying approval conditions. (Ord No. 70-91)

110.260. through 110.290. Reserved for Expansion.

VALIDITY OF APPROVALS

110.300. TERMINATION AND EXPIRATION GENERALLY. Except for zone changes:

(a) All land use actions and permits granted under this zoning code shall expire by limitation and become null and void unless the applicant shall have commenced exercise of the rights therein granted within a period of one year from the final decision on the action or the issuance of the permit, unless a different period is specified in this zoning code or in the final decision, or unless the period for exercise of rights is extended as provided in SRC 110.310.

(b) Where the exercise of rights under a land use action or permit involves work for which a building permit is required under SRC Chapter 56, no exercise of rights under the land use action or permit shall be deemed to have commenced until a building permit has been applied for. Expiration of plan approval after application for a building permit as provided in UBC Sec. 304(c), or expiration of the building permit once issued as provided in UBC Sec. 303(d) shall terminate the land use action or permit unless an extension has been granted as provided in SRC 110.310.

(c) Discontinuance of the exercise of the rights granted under a land use action or permit, including actions and permits granted prior to February 1, 1983, for a continuous period of 12 months shall terminate those rights whose exercise was thus discontinued.

(d) Any rights granted under a land use action or permit, the exercise of which is dependent upon a building or structure which is wholly destroyed, or which is substantially damaged or becomes deteriorated to the extent that it has been declared a "dangerous building" and ordered demolished pursuant to the Salem Dangerous Building Code (SRC 56.200 to 56.390), shall terminate upon such destruction or declaration and order.

(e) The provisions of this chapter do not apply to land use actions and permits granted prior to February 1, 1983. All such prior grants shall be governed as to termination and expiration by the ordinances applicable at the time they were made. (Ord No. 148-84)

110.310. EXTENSIONS. (a) Whenever any person entitled to rights under a land use action, other than an adjustment granted by the administrator, is required to exercise those rights or meet any conditions precedent to the full enjoyment of such rights within a particular period of time, such person may apply for an extension of such period by filing an application with the administrator prior to the expiration of such period. The administrator shall review the application and, may, in his discretion if he deems good cause exists, grant no more than two extensions, neither being for a period longer than either the original compliance period or the specific maximum period which could have originally been granted, whichever is greater. At the discretion of the planning administrator, he may refer the extension application to the administrative body which entered the original decision granting the action. Upon referral, the

administrative body may exercise the same authority as the planning administrator in considering the application. The decision granting such extension is appealable and reviewable as provided in SRC 114.200 and 114.210.

(b) Compliance periods under adjustments and other land use actions granted by the administrator may be extended as provided in subsection (a) of this section, except that his decision shall not be appealable or reviewable.

(c) While an application for an extension is pending, no further action to develop the subject property or expand any use dependent upon the action shall be taken after the compliance period expires; but an existing established use may continue during the pendency of the application, and a final decision granting an extension shall revive all rights under the original action as they existed prior to the expiration of the original compliance period. Unless otherwise specified in the decision granting an extension, the new compliance period shall begin to run from the date of the final decision granting the extension. (Ord No. 148-84)

110.320. REVOCATION OF ACTIONS AND PERMITS. (a) Any land use action or permit granted under this zoning code may be revoked by the administrative body which had original jurisdiction over the proceeding or issued the permit if it is at any time ascertained that the application contains any false, inaccurate, or incomplete statements as to material facts, or if development pursuant to such land use action or permit is contrary to the proposal embodied in the application, the provisions of this zoning code, or the conditions imposed in the final decision. In such case it shall be unlawful for any person to exercise or continue to exercise any right, privilege or permit granted by or dependent on the revoked action or permit.

(b) Notice of revocation shall be given, in writing, to the applicant or his successors in interest under the land use action; and shall state the grounds and factual basis for revocation, the date upon which the revocation becomes effective, and the right of appeal provided in subsection (d) of this section.

(c) No revocation shall be effective until ten days following the earlier of: the date on which written notice thereof was either personally delivered, or mailed by certified mail; or actually received by each person entitled to notice under subsection (b) of this section, whichever comes first.

(d) Any person entitled to notice under subsection (b) of this section may appeal such revocation to the council by filing written notice of appeal with the city recorder on any regular city business day prior to the effective date of the revocation. The scope of such appeal shall be limited to the accuracy of the factual basis for revocation as specified in the notice. The filing of an appeal shall stay the effective date of the revocation until final decision on the appeal.

(e) Revocation of an action or permit on the basis of false, inaccurate or incomplete facts in the application shall not bar, nor shall it in any way be held to prejudice the right of the applicant to file a new application stating the complete and correct facts. Revocation on any other grounds shall be treated as provided for denials of applications on their merits as provided in SRC 110.250.

110.330. through 110.890. Reserved for Expansion.

VIOLATIONS

110.900. COMPLIANCE REQUIRED; RESPONSIBILITY FOR VIOLATIONS. (a) No property shall be developed, redeveloped, or changed in use; no building structure or premises shall be used or occupied; and no building or structure or part thereof shall hereafter be erected, constructed, moved, structurally altered, or enlarged unless in conformity with all applicable regulations herein specified, and all conditions imposed in the granting of any applicable land use action, and then only after applying for and securing all permits and licenses required by all applicable laws and ordinances.

(b) It shall be unlawful for any person to violate, or to cause, suffer, or permit any violation of the provisions of subsection (a) of this section.

(c) Proof of the existence of a violation of subsection (a) of this section shall be deemed prima facie evidence that such violation is that of the occupant of the premises as well as that of the owner or with such owner's consent. Prosecution or lack thereof of either the owner or of the occupant shall not relieve the liability of the other for any violation of this zoning code.

110.910. through 110.980. Reserved for Expansion.

110.990. VIOLATIONS. Violation of subsection (a) of SRC 110.320; SRC 110.900; or subsection (b) of SRC 114.130 is an infraction and is punishable by a fine of not less than \$100 and not more than \$250. The second and subsequent violation in any one year period is punishable by a fine of not less than \$250. In addition to any other penalty provided by law, a person adjudged responsible for violation of subsection (a) of SRC 110.320; SRC 110.900; or subsection (b) of SRC 114.130 may be ordered by the court to correct the violation. (Ord No. 47-97)